THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Stephanie P. McDonald, Circuit Court Judge

Appellate Case No.: 2013-000407

Alan Sheppard.....Appellant

v.

William O. Higgins, Russell Bennett, Ronald C. Owens, Charles P. Darby, Lynn McCants and Kiawah Resort Associates, L.P.....Defendants

Of whom Russell Bennett, Ronald C. Owens, Charles P. Darby, Lynn McCants and Kiawah Resort Associates, L.P.,..... are the Respondents.

RECEIVED
JAN 31 2014
SC Court of Appeals

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	NINTH JUDICIAL CIRCUIT
ALAN SHEPPARD, Plaintiff, vs. WILLIAM O. HIGGINS, RUSSELL BENNETT, RONALD OWENS, CHARLES P. DARBY, LYNN MCCANTS, AND KIAWAH RESORT ASSOCIATES, L.P. Defendants.	C.A. No.: 2011-CP-10-4537 **ORDER GRANTING DEFENDANTS' MOTION FOR JUDGMENT ON THE PLEADINGS**

FILED
2013 JAN 25 PM 12:04
JULIE J. ARMSTRONG
CLERK OF COURT
BY

THIS MATTER COMES BEFORE THE COURT on a Motion for Judgment on the Pleadings filed by Defendants Russell Bennett ("Bennett"), Ron Owens ("Owens"), Charles P. Darby ("Darby") and Kiawah Resort Associates, L.P. ("KRA") (collectively, the "Defendants"), relating to the Complaint filed in this action by Plaintiff Alan Sheppard. A hearing took place before the undersigned on April 25, 2012. After a careful review of the submissions and arguments of the parties, I find that no viable cause of action exists against these Defendants and judgment on the pleadings is warranted. Thus, Defendants' Motion is **GRANTED**.

LEGAL STANDARD

After the pleadings are closed, but within such time as not to delay the trial, any party may move for a judgment on the pleadings. Rule 12(c), SCRCP. The motion will be sustained only where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action or defense is stated. *Rosenthal v. Unarco Indus., Inc.*, 278 S.C. 420, 297 S.E.2d 638 (1982). All properly pleaded factual allegations are deemed admitted for

purposes of considering the motion for judgment on the pleadings. *Baker Hosp. v. Firemans Fund Ins. Co.*, 314 S.C. 98, 441 S.E.2d 822 (1994).

FINDINGS OF FACT

1. On February 4, 2008, Defendants KRA and Bennett filed an action against Plaintiff to enforce a contract relating to the Wando River Property (the "Prior Action").[1]

2. Plaintiff asserted counterclaims for (1) interference with contractual relationship, (2) breach of fiduciary duty, (3) interference with contract and (4) breach of the implied covenant of good faith and fair dealing, which included factual allegations relating to alleged interference [by the current Defendants] with Plaintiff's relationship with his attorney and retention of earnest money (the "Counterclaims").

3. Plaintiff, KRA and Bennett settled the Prior Action and memorialized the terms of their settlement in a Settlement and Release Agreement, which allowed for an entity controlled by Plaintiff (Wando River, LLC) to sell the Wando River Property to a third party (Wando E, LLC).

4. Plaintiff signed the Settlement and Release Agreement both in his individual capacity and as managing member of Wando River, LLC, as Plaintiff was a named party in the Prior Action. The Settlement Agreement included a broadly-worded, unrestricted mutual release of claims ("Mutual Release"), as follows:

> Mutual Release of Claims. In consideration for the mutual promises and obligations hereunder, KRA, Bennett, Wando River, Sheppard, [and] Simmons, on behalf of themselves and their

[1]The documents relevant to the prior action, including the Complaint, Amended Answer and Counterclaims, Stipulation of Dismissal with Prejudice, and the Settlement and Release Agreement, were all attached as exhibits to Defendants' Amended Answer in this case, and are therefore considered part of the pleadings for purposes of Defendants' Motion for Judgment on the Pleadings.

> subsidiaries, affiliate entities, principals, shareholders, directors, officers, employees, representatives, members, managers, agents, heirs, successors, and assigns each hereby release and discharge each other and their respective subsidiaries, affiliate entities, principals, shareholders, directors, officers, employees, representatives, members, managers, agents, heirs, successors, and assigns from any and all claims or causes of action of any kind as they may have against one another including but not limited to all claims and counterclaims raised in this Action.

See Settlement and Release Agreement, Exhibit C, at Section 6.

5. KRA and Bennett were parties to the Settlement and Release Agreement. Darby signed the document on behalf of KRA as its authorized officer. As alleged in the Complaint, Defendant Owens is an agent of KRA. As agreed, the Mutual Release included not only the parties to the Settlement Agreement, but also their "subsidiaries, affiliate entities, principals, shareholders, directors, **officers, employees,** representatives, members, managers, **agents,** heirs, successors, and assigns." *Id.* (*emphasis added*).

6. Consistent with the terms of the Settlement Agreement, the parties concluded the Prior Action by filing a Stipulation of Dismissal with Prejudice with the Berkeley County Court of Common Pleas on July 15, 2008.

7. On June 27, 2011, Plaintiff filed the current lawsuit ("Complaint") in which Plaintiff asserted the same claims against Defendants that he set forth in his Counterclaims in the Prior Action. These claims relate to the purchase and sale of the Berkeley County Wando River property ("Wando River Property").

8. The Prior Action, including the Counterclaims, was based on the same facts and alleged injuries as set forth in the current Complaint.

-3-

CONCLUSIONS OF LAW

9. The Court finds that this matter is barred by *res judicata*. The Complaint is based on the same claims and subject matter as the Counterclaims in the Berkeley County lawsuit. The Counterclaims were dismissed with prejudice. Under South Carolina law, a dismissal with prejudice constitutes an adjudication on the merits and, operating as *res judicata*, precludes subsequent litigation to the same extent as if the action had been tried to a final adjudication. *See Nunnery v. Brantley Constr. Co., Inc.*, 289 S.C. 205, 209, 345 S.E.2d 740, 743 (Ct. App. 1986); *see also Nelson v. QHG of S.C., Inc.*, 354 S.C. 290, 311 580 S.E.2d 171, 182 (Ct. App. 2003) (affirming grant of motion to dismiss on basis of *res judicata* for parties who were omitted from the initial action but were related to the parties included), *aff'd in part and rev'd in part on other grounds,* 362 S.C. 421, 608 S.E.2d 855 (2005). Based on the pleadings, *res judicata* applies to these facts and precludes Plaintiff from pursuing his Complaint.

10. To establish *res judicata* and obtain dismissal of the Complaint, Defendants proved the following three elements: (1) identity of the parties, (2) identity of the subject matter and (3) adjudication of the issue in the former suit. *See e.g., Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 109 (1999).

11. The first element is satisfied, as the parties in the two actions are the same. Plaintiff, KRA, and Bennett were named parties in the Prior Action, while Darby and Owens are officers or agents of KRA and are therefore considered "parties" for purposes of *res judicata*.

12. The second element is also satisfied, as there is identity of subject matter between the two actions. Both the Prior Action and Plaintiff's Complaint relate specifically to the Wando River Property, allegations of interference with the attempt to sell the Wando River Property, and

allegations that Defendants should not have received the earnest money for the Wando River Property.

13. The third element is also satisfied as the entry of a Stipulation of Dismissal with Prejudice is specifically considered a prior "adjudication" of the issues under South Carolina law. *See, e.g., Nunnery*, 289 S.C. at 209 345 S.E.2d at 743.

14. The Court further finds that the Complaint is barred by the Mutual Release in the Settlement and Release Agreement. The Settlement and Release Agreement included a broadly-worded Mutual Release, which was a component of the consideration for the Settlement and Release Agreement. As indicated by its terms, the Mutual Release was intended specifically to apply to each of the Defendants, who are named parties or officers or employees of named parties, as indicated in the record. Because the Complaint attempts to assert claims that were released under the Mutual Release against parties that were included in the Mutual Release, the Complaint is barred and should be dismissed. Under South Carolina law, a release is recognized to constitute a contract. *See Hyman v. Ford Motor Co.*, 142 F.Supp.2d 735 (D.S.C. 2001). In construing the terms of a contract, this Court must first look at the language of the contract to determine the intentions of the parties. *C.A.N. Enterprises, Inc. v. South Carolina Health & Human Services Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988).

15. By looking at the language of the Mutual Release, it is clear that it was intended as a voluntary and mutual waiver of all claims relating not only to the Wando River Property, but also to any claim relating to any subject that was asserted or could have been asserted in the Prior Action. Through the Complaint, Plaintiff is attempting to re-assert claims relating to the Wando River Property, which are squarely within the scope of the binding Mutual Release.

16. The Court further finds that the Complaint is barred by the applicable statutes of limitations. The Complaint was filed nearly five years after the events relating to the earnest money occurred and more than three years after Plaintiff asserted the same claims in the Prior Lawsuit. Plaintiff did not commence this action until more than three years after the alleged claims accrued. Pursuant to S.C. Code Ann. §15-3-530, the applicable statute of limitations for each of the claims asserted or alluded to in the Complaint (conversion, conspiracy, fraud and negligence) is three years. Claims relating to the earnest money arose in September 2006, when Plaintiff authorized the money to be disbursed. Any other claims asserted in the Complaint arose before April 4, 2008, the date when the same claims were asserted in the Prior Action. Additionally, these claims existed prior to June 26, 2008, which is the date on which Plaintiff previously released these same claims by entering into the Settlement and Release Agreement. Plaintiff has not made any allegation relating to causes of action arising on or after June 27, 2008, and therefore his Complaint is barred under the applicable statutes of limitations.

WHEREFORE, the Court grants Defendants' Motion for Judgment on the Pleadings on the separate and independent grounds that the claims in the Complaint are barred by (1) *res judicata*, (2) prior release and (3) the applicable statutes of limitation.

AND IT IS SO ORDERED.

Stephanie P. McDonald
Presiding Judge
Charleston County Court of Common Pleas

January 18, 2013
Charleston, South Carolina

STATE OF SOUTH CAROLINA)
)
COUNTY OF: CHARLESTON)
)
IN THE MATTER OF:ALAN SHEPPARD VS)
WILLIAM HIGGINS ET AL)

IN THE CIRCUIT COURT

MOTION FOR NEW TRIAL

CASE NUMBER: 2011CP1004537

MOTION FOR A NEW TRIAL

Rule 60(b)

TO adequately address question of fraud in the REPLY TO MOTION AND SUPPORTING MEMORANDUM Dated October 29, 2012, to develop the record accordingly and make the court aware of all of the circumstances AND MOVE THE COURT FOR AN ORDER TAKING "JUDICAL NOTICE" OF THIS FRAUD the existence of a "planned and fraudulent scheme,"

Outside the court the same cause supports claims beyond a reasonable doubt. Here in the civil case the court does not find the same facts prove the same claims by the preponderance of the evidence. Historically similar cases in like circumstance did meet these fundamental requirements. Which calls into question procedural due process, and where this case finds itself in the balancing test in violation of the Fifth Amendment of the Constitution of the United States

To develop the record accordingly the circumstances so require,
Court must be aware of all of the circumstances before it acts.
that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done
Thus, the parties must be allowed to develop the record accordingly.

FILED
2013 FEB 27 PM 12:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Applicant: ALAN SHEPPARD

Executed this 25 day of January, 2013.

Signature: alan sheppard
Name: ALAN SHEPPARD
Address: 462 Commonwealth Rd
MtPleasant SC 29466
Telephone (O): 843-224-9169
(H):

Signature:
Name:
Address:
Telephone (O):
(H):

ORDER FOR NEW TRIAL

IT IS HEREBY ORDERED that the NEW TRIAL ☐ GRANTED ☒ DENIED

Executed this 20th day of February, 2013

P. McDonald
, Circuit Court Judge

FORM #352PC (1/89)
62-3-704, 62-3-706, 62-3-804, 62-3-1003

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF Charleston)
) C/A NO.: 2011-CP-10-4537

Alan Sheppard,

Plaintiff,

vs.

William O. Higgins, Russell Bennett,
Ron Ownes, Charles Darby, Lynn Mccants
(KRA) Kiawah Resort Associates

Defendants.

FILED
2011 JUN 27 PM 5:04
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

SUMMONS
(Jury Trial Requested)

TO: DEFENDANT ABOVE NAMED.

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your pleading to said Complaint upon the subscribers at their offices at 462 Common Wealth Rd Mt. Pleasant SC 29466, within 30 days after the service hereof, exclusive of the day of such service, and if you fail to answer the Complaint within the time aforesaid, the Plaintiff will apply to the Court for judgment by default for the relief demanded in the Complaint.

Alan Sheppard

Alan Sheppard
462 Common Wealth Rd.
Mt. Pleasant, SC 29466
(843) 224-9169

September 15, 2009
Charleston, South Carolina

Common Pleas COURT OF THE STATE OF SC

2011-CP-10-4537

COUNTY OF CHARLESTON

Alan Sheppard,)

)

Plaintiff,)

v

)

William O. Higgins, Russell Bennett, Ronald Owens

Charles P. Darby, Lynn McCants,)

(KRA) Kiawah Resort Associates

Defendants

FILED

2011 JUN 27 PM 5:07

JULIE J. ARMSTRONG

CLERK OF COURT

BY _____

COMPLAINT

Come now Alan Sheppard,

and brings this action for damages against the Defendant William Higgins, William O. Higgins, Russell Bennett, Ronald Owens, Charles P. Darby, Lynn McCants, in support hereof would respectfully show unto the Court the following facts and matters, to- wit:

A. Plaintiff is a resident of the State of SC, whose address 462 Common Wealth Dr. Mt. Pleasant 29466._

B. Defendant,_ William O. Higgins, Russell Bennett, Ronald Owens Charles P. Darby, Lynn McCants, ,are adult resident of the State of SC

-1-

Further, the cause of action which is the subject of this suit occurred and accrued in Charleston County, SC, In connection with

property located at on Detyens Lamb Lane in Mt. Pleasant, SC, hereinafter "Legal Matter" and other real estate contracts.

C. *Additional Defendants (provide the same information for each defendant as listed in Item B above):*

Ronald C Owens as agent with guarantor, KRA
1386 Parkshore Dr
Charleston, SC 29407-3124
(843) 769-0183

Russel Bennett as guarantor
3124 Marshall Blvd
Sullivans Island, SC 29482-9638
(843) 883-3396

Charles P Darby as guarantor.
933 MIDDLE ST
Sullivan's Island SC 29482.
(843) 883-3828

Lynn McCants
Of Mt Pleasant SC

III. STATEMENT OF CLAIM

State here, as briefly as possible, the facts of your case. Describe how each defendant is involved. Include also the name(s) of other persons involved, dates, and places. Do not give any legal arguments or cite any cases or statutes. If you intend to allege a number of related claims, number and set forth each claim in a separate paragraph. Use as much space as you need. Attach extra sheets if necessary.

Public Corruption / FRAUD
Conspiracy to commit offense or to defraud
Defendant's Conversion and conspiracy to fraudulently aquire My groups prized property or money from sale of property is based on three elements: (1) (Higgins/Bennell/Owens) together; (2) for the purpose of injuring the plaintiff ($500,000 00), (3) which causes the plaintiff special damage($500,000.00, Taxes paid on the $500,000.00 income, The Development loan, Wando Outpost and its income for years to come

. The Defendant William Higgins undertook to provide legal services for Plaintiff and held himself out as competent in the area of law dealing with the legal matter for which Plaintiff retained the services of Defendant. Plaintiff and Defendant acted under an attorney/client relationship in which Defendant undertook to represent Plaintiff.
. Defendant was required to exercise the same legal skill as a reasonably competent attorney and to use reasonable care in determining and implementing a strategy to be followed to achieve the Plaintiff s legal goals. As a fiduciary of Plaintiff, Defendant was obligated to treat all information relating to a Plaintiff s representation as confidential and to zealously represent the Plaintiffs interests, including the disclosure of any conflicts of interest that might impair the Defendant to ability to represent the Plaintiff.
In the course of handling the legal matter for the Plaintiff, Defendant negligently failed to act with the degree of competence generally possessed by Attorneys in the State who handle legal matters similar to Plaintiff s. Plaintiff paid Defendant a substantial amount of money for the sole purpose of representing Plaintiff in said legal matter.
Plaintiff avers that Defendants breached fiduciary duties to Plaintiff, in the following regard.
(a) By failing to explain to the Plaintiff the existence of a Conflict of Interest in representing Plaintiff while also representing Russell Bennett and KRA.

(b) By holding themselves out as the attorney for Plaintiff but representing the best interest of defendants
(d) By failing to release funds to Plaintiff upon the direction of the plaintiff that Plaintiff was legally entitled to receive.
(e) By committing conversion when releasing the Plaintiff's funds to KRA's agent, Ron Owens and Russell Bennett

III. STATEMENT OF CLAIM - *continued*,

(f)By conspiring to commit fraud when requiring the consent of KRA's agent, Ron Owens and Russell Bennett before releasing Plaintiff's funds to KRA's agent, Ron Owens

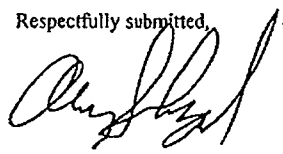
1 Defendant's fraudulent Conversion
Higgins/Bennett/Owens work together and discussed tactics to make sure they kept $500,000.00 out of our account, against my directions

As a direct and proximate result of fraudulent inducement, Plaintiff sustained actual damages in the amount of $19,000,000
WHEREFORE, PREMISES CONSIDERED, Plaintiffs hereby demand judgment of and from
the Defendant in the amount of in compensatory damages and punitive damages as the trier of fact may find, together with any further relief as this Court deems just and proper as well as any pre-judgment and post-judgment interests and all cost accrued herein.

As a direct and proximate result of defendant's negligence and/or malpractice and fraudulent inducement, Plaintiff sustained actual damages in the amount of $19,000,000.

WHEREFORE, PREMISES CONSIDERED, Plaintiffs hereby demand judgment of and from the Defendant in the amount of in compensatory damages and punitive damages as the trier of fact may find, together with any further relief as this Court deems just and proper as well as any pre-judgment and post-judgment interests and all cost accrued herein.

Respectfully submitted,



Plaintiff

STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	NINTH JUDICIAL CIRCUIT
ALAN SHEPPARD, Plaintiff, vs. WILLIAM O. HIGGINS, RUSSELL BENNETT, RONALD OWENS, CHARLES P. DARBY, LYNN MCCANTS, AND KIAWAH RESORT ASSOCIATES, L.P. Defendants.	C.A. No.: 2011-CP-10-4537 ANSWER OF DEFENDANTS RUSSELL BENNETT, RON OWENS, CHARLES P. DARBY AND KIAWAH RESORT ASSOCIATES, L.P.

FILED
2011 NOV 14 PM 12:09
JULIE J. ARMSTRONG
CLERK OF COURT

COME NOW defendants Russell Bennett ("Bennett"), Ron Owens ("Owens"), Charles P. Darby ("Darby"), and Kiawah Resort Associates, L.P.[1] ("KRA")(collectively, the "Defendants"), by and through their undersigned counsel, and hereby respond to the Complaint of plaintiff Alan Sheppard ("Plaintiff") as follows:

FOR A FIRST DEFENSE

Each and every allegation in the Complaint is hereby denied in the form of a general denial. Each allegation is therefore denied unless that specific allegation is identified and admitted unequivocally hereunder in this Answer.

FOR A SECOND DEFENSE

(In Response to Factual Allegations and Statement of Claim)

1. In response to the allegations on Page 1 of the Complaint, stating that Plaintiff is a resident of the State of South Carolina whose address is "462 Common Wealth Dr. Mount Pleasant, South Carolina 29466,"Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations and therefore deny the allegations.

[1] The proper identification of this defendant is "Kiawah Resort Associates, L.P."

2. In response to the allegations on Page 1 of the Complaint that Defendant William O. Higgins, Russell Bennett, Ronald Owens, Charles P. Darby, [and] Lynn McCants are "adult residents of the State of South Carolina," Defendants admit only these specific allegations and deny all other allegations in this Paragraph.

3. In response to the Paragraph in Plaintiff's Complaint that includes the allegation that "the cause of action which is the subject of this suit occurred and accrued in Charleston, South Carolina, in connection with property located on Detyens Lamb Lane in Mount Pleasant, South Carolina, hereinafter 'Legal Matter' and other real estate contracts," Defendants deny the allegations in this Paragraph. There is no current case or controversy between these parties. In further response, Defendants respond and admit only that there was a prior legal dispute (the "Prior Action") involving Plaintiff, KRA and Bennett. Relevant pleadings from the Prior Action are attached hereto as Exhibit A (Complaint in the Prior Action) and Exhibit B (Amended Answer and Counterclaims in the Prior Action). The claims and counterclaims in the Prior Action were resolved through a binding written settlement and a Stipulation of Dismissal with Prejudice, which are attached hereto as Exhibit C and Exhibit D. Plaintiff's Complaint should be dismissed, as all claims set forth therein have already been resolved conclusively and permanently.

4. Responding to the allegations contained in the Paragraph entitled "Additional Defendants," Defendants admit only that the individuals identified in the Paragraph have been named as purported Defendants in Plaintiff's Complaint. Defendants deny all remaining allegations in this Paragraph.

5. Responding to the allegations contained in all paragraphs appearing under the heading of "[Section] III. Statement of Claim" on three separate pages of the Complaint, Defendants admit only that Plaintiff utilized the services of Defendant William O. Higgins, Esq., and deny any and all remaining allegations within the "Statement of Claim" in their entirety. This denial includes all allegations appearing on the pages of the Complaint designated as Page 3, Page 4, and the additional page mistakenly designated as Page 3 upon which Plaintiff's signature also appears.

6. Defendants deny the allegations in the "WHEREFORE" clause of the Complaint and state that Plaintiff is not entitled to the relief requested in the "WHEREFORE" clause or otherwise.

FOR A THIRD DEFENSE
(Failure to State a Claim)

7. The Complaint fails to state a claim for which relief can be granted and therefore should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE
(Waiver)

8. Plaintiff's claims are barred by the doctrine of waiver.

FOR A FIFTH DEFENSE
(Release)

9. Plaintiff's claims are barred because Plaintiff voluntarily entered into a valid and binding release of these claims.

FOR A SIXTH DEFENSE
(Statute of Limitations)

10. Plaintiff's claims are barred by the applicable statute of limitations.

FOR A SEVENTH DEFENSE
(Estoppel)

11. Plaintiff's claims are barred by the doctrine of estoppel.

FOR AN EIGHTH DEFENSE
(Res Judicata – Stipulation of Dismissal with Prejudice)

12. Plaintiff's claims are barred as a result of the stipulation of dismissal with prejudice filed in the Prior Action in which Plaintiff asserted the same or similar claims.

FOR A NINTH DEFENSE
(Additional Defenses)

13. Defendants assert all of their additional affirmative defenses that may be revealed during the course of discovery in this action.

WHEREFORE, having fully answered the Complaint, Defendants respectfully pray that the Court dismiss the Complaint with prejudice and that Plaintiff recover nothing by reason of the Complaint, and

grant Defendants an award of the attorney's fees and costs that are incurred in defending against this improper, vexatious and meritless action, as well as such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Ellis R. Lesemann
Email:ellisl@hvlawsc.com
HARVEY & VALLINI, LLC
497 Bramson Court, Suite 201
Mount Pleasant, South Carolina 29464
Phone: (843) 388-8883
Fax: (843) 388-8884

ATTORNEYS FOR RUSSELL BENNETT, RONALD OWENS, CHARLES P. DARBY, AND KIAWAH RESORT ASSOCIATES, L.P.

November 10, 2011

Mount Pleasant, South Carolina

11-4537

CERTIFICATE OF SERVICE

I certify that a copy of the ANSWER OF DEFENDANTS RUSSELL BENNETT, RON OWENS, CHARLES P. DARBY AND KIAWAH RESORT ASSOCIATES, L.P. has been served upon the Plaintiff by U.S. Mail at the address below on November 10, 2011:

Alan Sheppard
462 Commonwealth Road
Mount Pleasant, SC 29466

Pro Se Plaintiff

HARVEY & VALLINI, LLC
497 Bramson Court, Suite 201
Mount Pleasant, South Carolina 29464
(843) 388-8883

FILED
2011 NOV 14 PM 12:09
JULIE J. ARMSTRONG
CLERK OF COURT

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
ALAN SHEPPARD,	)	C.A. No.: 2011-CP-10-4537
Plaintiff,	)	
vs.	)	**AMENDED ANSWER OF DEFENDANTS RUSSELL BENNETT, RON OWENS, CHARLES DARBY AND KIAWAH RESORT ASSOCIATES**
WILLIAM O. HIGGINS, RUSSELL BENNETT, RONALD OWENS, CHARLES P. DARBY, LYNN MCCANTS, AND KIAWAH RESORT ASSOCIATES, L.P.	)	
Defendants	)	

FILED
2011 NOV 21 P 12:09
CLERK OF COURT

COME NOW defendants Russell Bennett ("Bennett"), Ron Owens ("Owens"), Charles P. Darby ("Darby"), and Kiawah Resort Associates, L.P.[1] ("KRA") (collectively, the "Defendants"), by and through their undersigned counsel, and hereby submit their Amended Answer to the Complaint of plaintiff Alan Sheppard ("Plaintiff") as follows:

FOR A FIRST DEFENSE

Each allegation in the Complaint is denied unless that specific allegation is identified and admitted unequivocally hereunder in this Amended Answer.

FOR A SECOND DEFENSE
(Factual Allegations)

1. In response to the allegations on Page 1 of the Complaint, stating that Plaintiff is a resident of the State of South Carolina whose address is "462 Common Wealth Dr., Mount Pleasant, South Carolina 29466," Defendants are without sufficient knowledge or information to form a binding response or denial as to these allegations and therefore deny the allegations.

2 In response to the allegations on Page 1 of the Complaint that Defendant William O. Higgins, Russell Bennett, Ronald Owens, Charles P. Darby, [and] Lynn McCants are "adult residents of

[1] The proper identification of this defendant is "Kiawah Resort Associates, L.P."

the State of South Carolina," Defendants admit only this specific allegation and deny all other allegations in this Paragraph.

3. In response to the Paragraph in Plaintiff's Complaint that includes the allegation that "the cause of action which is the subject of this suit occurred and accrued in Charleston, South Carolina, in connection with property located on Detyens Lamb Lane in Mount Pleasant, South Carolina, hereinafter 'Legal Matter' and other real estate contracts," Defendants deny that there is a current case or controversy between these parties, but admit that the parties had a prior dispute in 2008 (the "Prior Action") relating to the same property, claims and subject matter as set forth in the Complaint. Relevant pleadings from the Prior Action are attached hereto as Exhibit A (Complaint in the Prior Action) and Exhibit B (Amended Answer and Counterclaims in the Prior Action). The claims and counterclaims in the Prior Action were resolved through a binding written settlement and a Stipulation of Dismissal with Prejudice, which are attached hereto as Exhibit C and Exhibit D. Plaintiff's Complaint should be dismissed, as all claims set forth therein have already been resolved conclusively and permanently.

4. Responding to the allegations contained in the Paragraph entitled "Additional Defendants," Defendants admit only that the individuals identified in the Paragraph have been named as purported Defendants in Plaintiff's Complaint and that Owens is an agent of KRA. Defendants further respond that Darby is an officer and agent of KRA. Defendants deny all remaining allegations in this Paragraph

5. Responding to the allegations contained in all paragraphs appearing under the heading of "[Section] III. Statement of Claim" on three separate pages of the Complaint, Defendants admit only that Plaintiff utilized the services of Defendant William O. Higgins, Esq., that earnest money was transferred to KRA with Plaintiff's knowledge and consent, and that Owens is an agent of KRA. Defendants further respond that Darby is an officer and agent of KRA. Defendants deny any and all remaining allegations within the "Statement of Claim" in their entirety. This denial includes all allegations appearing on the pages of the Complaint designated as Page 3, Page 4, and the additional page mistakenly designated as Page 3 upon which Plaintiff's signature also appears. As a further response, Defendants state that the

events relating to the transfer of the $500,000.00 in earnest money occurred in September 2006, as indicated by the documents attached hereto as Exhibit E (Settlement Agreement and Release with D.R. Horton, Inc.) and Exhibit F (E-mail dated September 18, 2006). Any claim on the part of Plaintiff relating to those events has already been released and dismissed with prejudice in the Prior Action, and is furthermore barred by the expiration of the applicable statute of limitations.

6. Defendants deny the allegations in the "WHEREFORE" clause of the Complaint and state that Plaintiff is not entitled to the relief requested in the "WHEREFORE" clause or otherwise.

FOR A THIRD DEFENSE
(Failure to State a Claim)

7. The Complaint fails to state a claim for which relief can be granted and therefore should be dismissed under Rule 12(b)(6) of the South Carolina Rules of Civil Procedure.

FOR A FOURTH DEFENSE
(Waiver)

8. Plaintiff's claims are barred by the doctrine of waiver.

FOR A FIFTH DEFENSE
(Release)

9. Plaintiff's claims are barred because Plaintiff voluntarily entered into a valid and binding release of these claims.

FOR A SIXTH DEFENSE
(Statute of Limitations)

10. Plaintiff's claims are barred by the applicable statute of limitations.

FOR A SEVENTH DEFENSE
(Estoppel)

11. Plaintiff's claims are barred by the doctrine of estoppel.

FOR AN EIGHTH DEFENSE
(Res Judicata – Stipulation of Dismissal)

12. Plaintiff's claims are barred as a result of the stipulation of dismissal with prejudice filed in the Prior Action in which Plaintiff asserted the same or similar claims.

FOR A NINTH DEFENSE
(Additional Defenses)

13. Defendants assert all of their additional affirmative defenses that may be revealed during the course of discovery in this action.

WHEREFORE, having fully answered the Complaint, Defendants respectfully pray that the Court dismiss the Complaint with prejudice and that Plaintiff recover nothing by reason of the Complaint, and grant Defendants an award of the attorney's fees and costs that are incurred in defending against this improper, vexatious, and meritless action, as well as such other and further relief as the Court may deem just and proper.

Respectfully submitted,

Ellis R. Lesemann
Email.ellisl@hvlawsc.com
HARVEY & VALLINI, LLC
497 Bramson Court, Suite 201
Mount Pleasant, South Carolina 29464
Phone: (843) 388-8883
Fax: (843) 388-8884

ATTORNEYS FOR RUSSELL BENNETT, RONALD OWENS, CHARLES P. DARBY, AND KIAWAH RESORT ASSOCIATES

November 18, 2011

Mount Pleasant, South Carolina

2011-CP-10-4537

CERTIFICATE OF SERVICE

I certify that a copy of the **AMENDED ANSWER OF DEFENDANTS RUSSELL BENNETT, RON OWENS, CHARLESP. DARBY AND KIAWAH RESORT ASSOCIATES** has been served upon the Plaintiff by U.S. Mail at the address below on November 18, 2011:

Alan Sheppard
462 Commonwealth Road
Mount Pleasant, SC 29466

Pro Se Plaintiff

John J. Pringle, Jr., Esq.
Ellis, Lawhorne & Sims, P.A.
P.O. Box 2285
Columbia, SC 29202

John Lynn McCants, Esq.
P.O. Box 2025
Mt. Pleasant, SC 29465

2011 NOV 21 PM 12:10
JULIE J. ARNOLD
CLERK OF COURT

HARVEY & VALLINI, LLC
497 Bramson Court, Suite 201
Mount Pleasant, South Carolina 29464
(843) 388-8883

FILED
2011 NOV 22 PM 2:46
JULIE J. ARMSTRONG
CLERK OF COURT
BY

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

ALAN SHEPPARD,) C.A. No.: 2011-CP-10-4537

Plaintiff,)

vs.) MOTION OF DEFENDANTS RUSSELL BENNETT, RON OWENS, CHARLES P. DARBY AND KIAWAH RESORT ASSOCIATES, L.P. FOR JUDGMENT ON THE PLEADINGS

WILLIAM O. HIGGINS, RUSSELL BENNETT, RONALD OWENS, CHARLES P. DARBY, LYNN MCCANTS, AND KIAWAH RESORT ASSOCIATES, L.P.

Defendants.)

COME NOW defendants Russell Bennett ("Bennett"), Ron Owens ("Owens"), Charles P. Darby ("Darby"), and Kiawah Resort Associates, L.P. ("KRA") (collectively, the "Defendants"), by and through their undersigned counsel, and file this Motion for Judgment on the Pleadings pursuant to Rule 12 (c) of the South Carolina Rules of Civil Procedure. The grounds for this motion are: (1) the Complaint is barred due to *res judicata*; (2) the Complaint is barred due to a prior mutual release of claims; (3) the Complaint is barred due to the applicable statute of limitations; and (4) the Complaint fails to state any claim for which relief can be granted against Defendants KRA or Darby.

LEGAL STANDARD

After the pleadings are closed, but within such time as not to delay the trial, any party may move for a judgment on the pleadings. Rule 12(c), SCRCP. The motion will be sustained only where the pleadings are so defective that, taking all the facts alleged in the pleadings as admitted, no cause of action or defense is stated. *Rosenthal v. Unarco Indus., Inc.*, 278 S.C. 420, 297 S.E.2d 638 (1982). All properly pleaded factual allegations are deemed admitted for purposes of considering the motion for judgment on the pleadings. *Baker Hosp. v. Firemans Fund Ins. Co.*, 314 S.C. 98, 441 S.E.2d 822 (1994). Under the South Carolina Rules of Civil Procedure, the court may consider exhibits to the pleadings in resolving this

Motion, as "[a] copy of any plat, photograph, diagram, document or other paper which is an exhibit to a pleading is a part thereof for all purposes if a copy is attached to such pleading." Rule 10(c), SCRCP.

SUMMARY OF UNCONTESTED FACTS

This is the second lawsuit in which Plaintiff has asserted identical claims against Defendants relating to the purchase and sale of real property on the Wando River in Berkeley County, South Carolina ("Wando River Property"). In 2008, Defendants KRA and Bennett were forced to file an action against Plaintiff in order to enforce a contract relating to the Wando River Property (the "Prior Action").[1] Plaintiff responded by asserting counterclaims for (1) interference with contractual relationship; (2) breach of fiduciary duty; (3) interference with contract; and (4) breach of the implied covenant of good faith and fair dealing, which included factual allegations relating to alleged interference with Plaintiff's relationship with his attorney and retention of earnest money.[2] A comparison of the Complaint with the prior counterclaims shows that both are based on the same facts and alleged injuries.

Plaintiff, KRA, and Bennett resolved the Prior Action through a Settlement and Release Agreement ("Settlement Agreement"), which allowed for the entity controlled by Plaintiff (Wando River, LLC) to sell the Wando River Property to a third party (Wando E, LLC).[3] Plaintiff signed the Settlement Agreement both in his individual capacity and as managing member of Wando River, LLC, as Plaintiff was a named party in the Prior Action. The Settlement Agreement included a broadly-worded, unrestricted mutual release of claims ("Mutual Release") as follows:

> Mutual Release of Claims. In consideration for the mutual promises and obligations hereunder, KRA, Bennett, Wando River, Sheppard, [and] Simmons, on behalf of themselves and their subsidiaries, affiliate entities, principals, shareholders, directors, officers, employees, representatives, members, managers, agents, heirs, successors, and assigns each hereby release and discharge each other and their respective subsidiaries, affiliate entities, principals, shareholders, directors, officers,

[1] *See* Exhibit A – Complaint in the Prior Action All exhibits attached to this Motion were attached to the Amended Answer submitted by Defendants.

[2] *See* Exhibit B – Amended Answer and Counterclaims filed by Plaintiff in the Prior Action.

[3] *See* Exhibit C – Settlement and Release Agreement relating to Prior Action

> employees, representatives, members, managers, agents, heirs, successors, and assigns from any and all claims or causes of action of any kind as they may have against one another including but not limited to all claims and counterclaims raised in this Action.

See Settlement Agreement, Exhibit C, at Section 6. KRA and Bennett were parties to the Settlement Agreement, with Darby signing the document on behalf of KRA as its authorized officer. As alleged in the Complaint, Defendant Owens is an agent of KRA. As agreed, the Mutual Release included not only the parties to the Settlement Agreement, but also their "subsidiaries, affiliate entities, principals, shareholders, directors, officers, employees, representatives, members, managers, agents, heirs, successors, and assigns." *Id.* (emphasis added).

Consistent with the terms of the Settlement Agreement, the parties concluded the Prior Action by filing of a Stipulation of Dismissal with Prejudice with the Berkeley County Court of Common Pleas on July 15, 2008.[4] Three years passed. Then, on June 27, 2011, Plaintiff violated the Settlement Agreement and Stipulation of Dismissal by filing the Complaint in an attempt to re-litigate the claims he settled, released, and dismissed with prejudice back in 2008. Defendants answered the Complaint and now file this Motion for Judgment on the Pleadings in order to obtain a dismissal of the Complaint in its entirety.

ARGUMENTS AND AUTHORITIES

I. THE COMPLAINT IS BARRED BY *RES JUDICATA*.

The Complaint is based on the same subject matter as were the counterclaims that Plaintiff asserted in the Prior Action. Each of those prior counterclaims were dismissed with prejudice in July 2008. Under South Carolina law, a dismissal with prejudice constitutes an adjudication on the merits and, operating as *res judicata*, precludes subsequent litigation to the same extent as if the action had been tried to a final adjudication. *See Nunnery v Brantley Constr Co., Inc.*, 289 S.C. 205, 209, 345 S.E.2d 740, 743 (Ct. App. 1986); *see also Nelson v. QHG of S C, Inc.*, 354 S.C. 290, 311 580 S.E.2d 171, 182 (Ct. App. 2003) (affirming grant of motion to dismiss on basis of *res judicata* for parties who were omitted from the

[4] *See* Exhibit D – Stipulation of Dismissal with Prejudice filed in Prior Action.

initial action but were related to the parties included), *aff'd in part and rev'd in part on other grounds*, 362 S.C. 421, 608 S.E.2d 855 (2005).

Res judicata applies to these facts and bars Plaintiff from pursuing his Complaint. To establish *res judicata*, Defendants must prove the following three elements: (1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue in the former suit. *See, e.g., Plum Creek Dev. Co v. City of Conway*, 334 S.C 30, 34, 512 S.E.2d 106, 109 (1999).

First, the parties in the two actions are the same. Plaintiff, KRA, and Bennett were named parties in the Prior Action, while Darby and Owens are officers or agents of KRA and are therefore considered "parties" for purposes of *res judicata*. Second, there is identity of subject matter between the two actions. Both the Prior Action and Plaintiff's Complaint relate specifically to the Wando River Property, allegations of interference with the sale of the Wando River Property, and allegations that Defendants should not have received the earnest money for the Wando River Property. Third, the entry of a Stipulation of Dismissal with Prejudice is specifically considered a prior "adjudication" of the issues under South Carolina law, satisfying the third element. *See, e.g., Nunnery*, 289 S.C. at 209 345 S.E.2d at 743. Based on the pleadings alone, it is clear that each of the three elements necessary to establish *res judicata* is present. Therefore, the Complaint should be dismissed.

II. THE COMPLAINT IS BARRED BY THE MUTUAL RELEASE CONTAINED WITHIN THE SETTLEMENT AGREEMENT

As indicated above, the Settlement Agreement included a broadly-worded Mutual Release, which was a component of the recited consideration. The Mutual Release was intended specifically to cover each Defendant, as indicated by its terms. Because the Complaint attempts to assert claims that were released by Plaintiff under the Mutual Release, the Complaint is barred and should be dismissed.

Under South Carolina law, a release is a contract. *See Hyman v. Ford Motor Co* , 142 F.Supp.2d 735 (D.S.C. 2001). In construing terms in contracts, this Court must first look at the language of the contract to determine the intentions of the parties. *C.A.N. Enterprises, Inc. v South Carolina Heath& Human Services Fin. Comm'n*, 296 S.C. 373, 377, 373 S.E.2d 584, 586 (1988). The language of the

Mutual Release, clearly stresses that the Mutual Release was intended as a voluntary and mutual waiver of all claims relating not only to the Wando River Property but also to any other subject matter. Through the Complaint, Plaintiff is attempting to re-file claims relating to the Wando River Property, which are squarely within the scope of the binding Mutual Release. Therefore, Plaintiff's Complaint should be dismissed.

III. THE COMPLAINT IS BARRED BY THE STATUTE OF LIMITATIONS

As indicated by the pleadings, the events relating to the $500,000 in earnest money that form the basis of the claims in the Complaint occurred during or prior to September 2006.[5] Plaintiff first asserted the claims relating to the earnest money in April 2008, before he settled and released the claims in June 2008. After three years passed, Plaintiff filed his Complaint on June 27, 2011. This filing comes nearly five years after the actual events relating to the earnest money issue occurred. Accordingly, Plaintiff did not commence this action until more than three years after the alleged claims accrued (notwithstanding the fact that the claims were previously settled and dismissed with prejudice). The applicable statute of limitations for the claim asserted in the Complaint against Defendants Owens and Bennett (conversion of the earnest money) is three years,[6] such that the statute of limitations for any such claim expired on September 18, 2009.

[5] *See* Exhibit E – Agreement between Wando River, LLC and D.R. Horton dated September 14, 2006 relating to the $500,000 00 in earnest money; *see also* Exhibit F – E-mail dated September 18, 2006 indicating that the transfer of the $500,000.00 to Defendant KRA had occurred as of that date.

[6] *See* S.C Code Ann. § 15-3-530(5).

IV. THE COMPLAINT FAILS TO STATE A CLAIM OF ANY KIND AGAINST DEFENDANTS KRA OR DARBY

Other than the inclusion of Darby in the caption and a reference to his place of residence, there are no factual allegations or claims of any kind asserted in the Complaint against Darby. Additionally, although there are references to KRA in the Complaint, no actual cause of action is asserted against KRA. For this reason, the Complaint should be dismissed as to KRA and Darby because the Complaint fails to state a claim for which relief could be granted against those parties.

CONCLUSION

WHEREFORE, having fully shown why the Court should dismiss the Complaint in its entirety, Defendants request that the Court grant their Motion for Judgment on the Pleadings, and also grant Defendants their attorney's fees and costs incurred in defending this improper action.

Respectfully submitted,

Ellis R. Lesemann
Email:ellisl@hvlawsc.com
HARVEY & VALLINI, LLC
497 Bramson Court, Suite 201
Mount Pleasant, South Carolina 29464
Phone: (843) 388-8883
Fax: (843) 388-8884

ATTORNEYS FOR RUSSELL BENNETT, RONALD OWENS, CHARLES P. DARBY, AND KIAWAH RESORT ASSOCIATES, L.P.

November 18, 2011

Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE 2011-CP-10-4537

I certify that a copy of the MOTION OF DEFENDANTS RUSSELL BENNETT, RON OWENS, CHARLES P. DARBY AND KIAWAH RESORT ASSOCIATES, L.P. FOR JUDGMENT ON THE PLEADINGS has been served upon Plaintiff by U.S. Mail at the address below on November 18, 2011:

Alan Sheppard
462 Commonwealth Road
Mount Pleasant, SC 29466

Pro Se Plaintiff

John J. Pringle, Jr., Esq.
Ellis, Lawhorne & Sims, P.A.
P.O. Box 2285
Columbia, SC 29202

John Lynn McCants, Esq.
P.O. Box 2025
Mt. Pleasant, SC 29465

FILED
2011 NOV 22 PM 2:46
JULIE M. ARMSTRONG
CLERK OF COURT
BY _____

HARVEY & VALLINI, LLC
497 Bramson Court, Suite 201
Mount Pleasant, South Carolina 29464
(843) 388-8883

EXHIBIT A

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT
Kiawah Resort Associates, L.P., and L. Russell Bennett, Plaintiffs vs. Wando River, LLC, Alan J. Sheppard and Julian Reed Simmons, III Defendants	CIVIL ACTION COVERSHEET 2008 - CP - 08 - 158

2008 FEB -4 PM
MARY P. GUI
CLERK OF COU
BERKELEY CO.
FILED

(Please Print)
Submitted By: Ellis R. Lesemann
Address: Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

SC Bar #: 15315
Telephone #: (843) 727-2650
Fax #: (843) 727-2680
Other:
E-mail: ellislesemann@parkerpoe.com

NOTE: The cover sheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this cover sheet must be served on the defendant(s) along with the Summons and Complaint.

DOCKETING INFORMATION *(Check all that apply)*

**If Action is Judgment/Settlement do not complete*

☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is exempt from ADR (certificate attached).

NATURE OF ACTION *(Check One Box Below)*

Contracts
- ☐ Construction (100)
- ☐ Debt Collection (110)
- ☐ Employment (120)
- ☐ General (130)
- ☐ Breach of Contract (140)
- ☐ Other (199)

Torts - Professional Malpractice
- ☐ Dental Malpractice (200)
- ☐ Legal Malpractice (210)
- ☐ Medical Malpractice (220)
- ☐ Notice / File Med Mal (230)
- ☐ Other (299)

Torts – Personal Injury
- ☐ Assault/Slander/Libel (300)
- ☐ Conversion (310)
- ☐ Motor Vehicle Accident (320)
- ☐ Premises Liability (330)
- ☐ Products Liability (340)
- ☐ Personal Injury (350)
- ☐ Wrongful Death (360)
- ☐ Other (399)

Real Property
- ☐ Claim & Delivery (400)
- ☐ Condemnation (410)
- ☐ Foreclosure (420)
- ☐ Mechanic's Lien (430)
- ☐ Partition (440)
- ☐ Possession (450)
- ☐ Building Code Violation (460)
- ☒ Other (499) Declaratory Judgment

Inmate Petitions
- ☐ PCR (500)
- ☐ Sexual Predator (510)
- ☐ Mandamus (520)
- ☐ Habeas Corpus (530)
- ☐ Other (599)

Judgments/Settlements
- ☐ Death Settlement (700)
- ☐ Foreign Judgment (710)
- ☐ Magistrate's Judgment (720)
- ☐ Minor Settlement (730)
- ☐ Transcript Judgment (740)
- ☐ Lis Pendens (750)
- ☐ Other (799)

Administrative Law/Relief
- ☐ Reinstate Driver's License (800)
- ☐ Judicial Review (810)
- ☐ Relief (820)
- ☐ Permanent Injunction (830)
- ☐ Forfeiture (840)
- ☐ Other (899)

Appeals
- ☐ Arbitration (900)
- ☐ Magistrate-Civil (910)
- ☐ Magistrate-Criminal (920)
- ☐ Municipal (930)
- ☐ Probate Court (940)
- ☐ SCDOT (950)
- ☐ Worker's Comp (960)
- ☐ Zoning Board (970)
- ☐ Administrative Law Judge (980)
- ☐ Public Service Commission (990)
- ☐ Employment Security Comm (991)
- ☐ Other (999)

Special/Complex/Other
- ☐ Environmental (600)
- ☐ Automobile Arb (610)
- ☐ Medical (620)
- ☐ Other (699)
- ☐ Pharmaceuticals (630)
- ☐ Unfair Trade Practices (640)
- ☐ Out of State Depositions (650)

Submitting Party Signature: Ellis R. Lesemann Date: February 4, 2008

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY
Florence, Horry, Lexington, Richland, Greenville and Anderson

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed..

2. The initial ADR conference must be held within 300 days after the filing of the action.

3. Pre-suit medical malpractice mediations required by S.C. Code § 15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)

4. Case are exempt from ADR only upon the following grounds:

    a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;

    b. Requests for temporary relief;

    c. Appeals;

    d. Post Conviction relief matters;

    e. Contempt of Court proceedings;

    f. Forfeiture proceedings brought by governmental entities;

    g. Mortgage foreclosures; and

    h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.

5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.

6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

Please Note: **You must comply with the Supreme Court Rules regarding ADR. Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT
KIAWAH RESORT ASSOCIATES, L.P., and L. Russell Bennett, Plaintiffs, vs. WANDO RIVER, LLC, ALAN J. SHEPPARD and JULIAN REED SIMMONS, III, Defendants.	)	Case No. 2008-CP-08-158 SUMMONS

FILED
2008 FEB -4 PM 1:42
MARY P. BROWN
CLERK OF COURT
BERKELEY COUNTY, SC

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the Complaint on the subscriber at his office in Charleston, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to appear and defend this action within the time aforesaid, judgment by default will be rendered against you for the relief demanded.

Ellis R. Lesemann
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
Phone: (843) 727-2650

ATTORNEYS FOR PLAINTIFFS

February 4, 2008
Charleston, South Carolina

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

KIAWAH RESORT ASSOCIATES, L.P. and L. RUSSELL BENNETT,	) Case No. 2008-CP-08-158
Plaintiffs,	)
vs.	) COMPLAINT
WANDO RIVER, LLC, ALAN J. SHEPPARD and JULIAN REED SIMMONS, III,	)
Defendants.	)

FILED
2008 FEB -4 PM 1:42
MARY P. BARNWELL
CLERK OF COURT
BERKELEY COUNTY, SC

The Plaintiffs Kiawah Resort Associates, L.P. and L. Russell Bennett bring this action for monetary damages, declaratory judgment, and equitable relief against the Defendants Wando River, LLC, Alan J. Sheppard and Julian Reed Simmons, III, both in their individual capacities and as members of Wando River, LLC, and states as follows:

PARTIES

1. Kiawah Resort Associates, L.P. ("KRA") is a limited partnership that is organized and existing under the laws of the State of Delaware. KRA has contractual and property rights that are enforceable within the State of South Carolina and incurred damages within the State of South Carolina.

2. L. Russell Bennett ("Bennett") is an individual who resides in the State of South Carolina. Bennett has contractual and property rights that are enforceable within the State of South Carolina.

3. Wando River, LLC ("Wando River") is a limited liability company organized and existing under the laws of the State of South Carolina. Wando River is the owner of two tracts of

real property located in Berkeley County, South Carolina ("Property"), which along with the contractual agreements between the parties, are the underlying subject matter of this action.

4. Alan J. Sheppard ("Sheppard") is a member of Wando River and is a resident of the State of South Carolina.

5. Julian Reed Simmons, III ("Simmons") is a member of Wando River and is a resident of the State of South Carolina.

6. Based on the subject matter of this action, the location of the Property, and the residency of the parties, this Court has jurisdiction in this action and venue is proper.

FACTUAL BACKGROUND

7. The parties entered into an Agreement dated August 25, 2004 (as amended, "Agreement"), as amended by that certain First Amendment to Agreement dated December 31, 2006 ("Amendment") relating to two tracts of land located in Berkeley County and currently owned by Wando River ("Property"). A true copy of the Agreement and Amendment are attached hereto as Exhibit A. Sheppard and Simmons are bound by this Agreement both as members of Wando River and in their individual capacities. The rights afforded to Plaintiffs in the Agreement include, among other things, the right to purchase the Property in the event that Defendants breach the Agreement.

8. In connection with the Agreement, Wando River and KRA also entered into a warrant (as amended, "Warrant") as amended by the Amendment, that provides for various rights and obligations of the parties. A true copy of the Warrant is attached hereto as Exhibit B. The rights afforded to Plaintiffs in the Warrant include the right to receive a membership interest in Wando River or the right to receive payment in lieu of that membership interest. The value of

the membership interest that would be awarded or paid to Plaintiffs is based directly upon the fair market value of the Property, as that term is defined and determined under the Warrant.

9. Defendants have breached the terms of the Agreement and the Warrant as well as the implied covenant of good faith and fair dealing underlying the Agreement and the Warrant.

10. This action has become necessary because Defendants have refused to perform their obligations under the Agreement and Warrant and are in default. In addition, Defendants are taking actions that directly violate and disregard pending rights, options, and interests that Plaintiffs have in the Property. Particularly, these actions include mortgaging the property without consent from Plaintiffs and attempting to sell the Property to a third party without notice to Plaintiffs or consent from Plaintiffs.

11. Plaintiffs have attempted to resolve these issues with Defendants, but have been met with delay and evasion while Defendants are simultaneously attempting to circumvent the rights and interests of Plaintiffs.

AS A FIRST CLAIM FOR RELIEF

Declaratory Judgment pursuant to S.C. Code § 15-53-20 et seq.

12. Plaintiffs reassert the facts and statements contained in the previous paragraphs and incorporates the same herein as if restated verbatim.

13. Under the circumstances of this case, this Court is authorized under South Carolina law to render declaratory judgment regarding the rights and obligations of the parties under the Agreement and Warrant. These rights and obligations specifically include pending rights and interests relating to the Property.

14. In some instances, Defendants have acknowledged certain rights on the part of Plaintiffs, but have refused to comply with them or have merely promised to comply at an unknown time in the future. In other instances, Defendants have appeared to dispute the

interpretation or application of certain rights on the part of Plaintiffs, although these rights are set forth in the plain terms of the applicable contractual documents and Defendants do not provide any explanation for the alleged dispute.

15. Defendants have been surreptitiously attempting to sell the Property while fraudulently attempting to mislead Plaintiffs that Defendants will comply with their obligations. As a result, the intervention of the Court through a declaratory judgment is necessary and proper.

16. The Court is empowered to make a declaration resolving these issues that will have the force and effect of a final judgment or decree and allow the necessary accounting and transaction(s) to be accomplished.

17. Upon information and belief, all necessary parties are joined in this action. Furthermore, upon information and belief, the parties to this action are the only parties in interest.

18. Plaintiffs request that this Court enter a declaratory judgment determining the rights and obligations of the parties under the Agreement and Warrant, based upon the facts and circumstances of this case, among such other and further relief as may be appropriate.

AS A SECOND CLAIM FOR RELIEF
Breach of Contract

19. Plaintiffs reassert the facts and statements contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

20. The Agreement and Warrant are enforceable contracts between and among the parties that were supported by mutual and valid consideration.

21. Defendants have breached the Agreement and Warrant by failing to pay amounts due to Plaintiffs, committing actions and inactions that are forbidden by these contractual documents, and attempting to circumvent the property interests held by Plaintiffs. Defendants

have also breached the implied covenant of good faith and fair dealing that is inherent in each of these contractual documents.

22. Plaintiffs have been damaged and continue to be damaged by the breaches of the Agreement and Warrant that have been committed and are being committed by Defendants.

23. As a result of the breaches, Plaintiffs are entitled to recover damages in an amount to be proven at trial for breach of contract and will be entitled to an award for attorney's fees and costs incurred in bringing this action as a prevailing party.

AS A THIRD CLAIM FOR RELIEF
Breach of Contract Accompanied by Fraudulent Act

24. Plaintiffs reassert the facts and statements contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

25. The Agreement and Warrant are enforceable contracts between and among the parties.

26. Defendants have feigned their intent to comply with these agreements while attempting to breach the agreements through the sale of the Property to a third party without notice to Plaintiffs or consent from Plaintiffs.

27. Plaintiffs have been damaged and continue to be damaged by the breaches of the agreements committed by Defendants, the feigned promises to comply with those agreements, and the fraudulent acts accompanying those breaches undertaken by Defendants. The circumstances have resulted in actual, special and consequential damages in an amount to be awarded at trial.

WHEREFORE, on the basis of these claims against Defendants, Plaintiffs respectfully pray that the Court enter a judgment in favor of Plaintiffs on these claims, providing for declaratory judgment regarding the rights and obligations of the parties and awarding Plaintiffs

their actual and consequential damages and attorney's fees and costs, as well as any such further relief as the Court deems just and proper.

Ellis R. Lesemann
PARKER, POE, ADAMS & BERNSTEIN L.L.P.
200 Meeting Street, Suite 301
Charleston, SC 29401
Phone: (843) 727-2650
Fax: (843) 727-2680

ATTORNEYS FOR PLAINTIFFS

February 4, 2007

Charleston, South Carolina

EXHIBIT B.

STATE OF SOUTH CAROLINA COUNTY OF BERKELEY KIAWAH RESORT ASSOCIATES, L.P. and L. RUSSELL BENNETT Plaintiff, vs. WANDO RIVER, LLC, ALAN J. SHEPPARD and JULIAN REED SIMMONS, III Defendants.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO.: 2008-CP-08-158 AMENDED ANSWER AND COUNTERCLAIM

The Defendants, Wando River, LLC, Alan J. Sheppard, and Julian Reed Simmons, III, answering the Complaint of the Plaintiffs herein would respectfully show unto this honorable Court as follows:

1. Each and every allegation contained in the Plaintiffs Complaint which is not hereinafter specifically admitted is hereby denied.
2. The Defendants do not have sufficient information to form an opinion as to the allegations contained in the first sentence of paragraph 1 of the Complaint. The remaining allegations of paragraph 1 are denied.
3. The Defendants do not have sufficient information to form an opinion as to the allegations contained in the first sentence of paragraph 2 of the Complaint. The remaining allegations of paragraph 2 are denied.
4. The allegations contained in paragraphs 3, 4, 5 and 6 of the Complaint are admitted.
5. The allegations contained in the first two sentences of paragraph 7 of the

Complaint are admitted. The remaining allegations of paragraph 7 of the Complaint are denied.

6. The allegations contained in the first two sentences of paragraph 8 of the Complaint are admitted. The remaining allegations of paragraph 8 of the Complaint require interpretation of the referenced documents and therefore reference to such documents is made for such interpretation, and such allegations are hereby denied.

7. The allegations contained in paragraphs 9, 10, and 11 of the Complaint are denied.

8. The allegations contained in the first sentences of paragraph 13 of the Complaint are admitted. The remaining allegations of paragraph 13 of the Complaint are denied.

9. The allegations contained in paragraphs 14 and 15 of the Complaint are denied.

10. The allegations contained in paragraphs 16 and 17 of the Complaint are admitted.

11. The allegations of paragraph 18 of the Complaint are a prayer for relief and as such require no response from the Defendants. To the extent a response is required, the allegations are denied.

12. The allegations contained in paragraphs 20, 21, 22, 23, 25, 26 and 27 of the Complaint are denied.

FURTHER ANSWERING THE COMPLAINT BY WAY OF AN AFFIRMATIVE DEFENSE THERETO, THE DEFENDANTS ALLEGE AS FOLLOWS:

1. The Agreement, as amended by the Amendment, was terminated on or about December 31, 2007, and therefore the Plaintiffs are not entitled to any relief thereunder.

2. The Plaintiffs have breached the contracts between the Plaintiffs and Defendants and are therefore barred from recovery.

FURTHER ANSWERING THE COMPLAINT AND BY WAY OF COUNTERCLAIM, THE DEFENDANTS ALLEGE AS FOLLOWS:

1. The Defendants adopt the jurisdictional allegations contained in Plaintiffs' Complaint by reference.

FOR A FIRST CAUSE OF ACTION
(Interference with Contractual Relationship)

1. The Defendant, Wando River, LLC, heretofore engaged the services of an attorney to represent Wando River, LLC in connection with certain legal matters, including a contract for the sale of real property in Berkeley County, South Carolina to D.R. Horton, Inc. (hereafter the "DR Horton Contract").

2. Eventually litigation was initiated by Wando River, LLC against D.R. Horton, Inc. related to the DR Horton Contract.

3. The litigation between Wando River, LLC against D.R. Horton, Inc. was settled and a Mutual Release and Settlement Agreement was executed by the parties to the litigation.

4. The settlement of the subject litigation called for the disbursement of earnest money to Wando River, LLC; such earnest money then being held by the attorney for Wando River, LLC, as escrow agent under the DR Horton Contract..

5. The Plaintiffs had actual knowledge of the matters surrounding the settlement of the litigation between Wando River, LLC and D.R. Horton, Inc., and the Plaintiffs knew that the attorney holding the earnest money in connection with the DR

Horton Contract was representing Wando River, LLC.

6. The Plaintiffs, individually and by and through its agents, initiated contact with the attorney representing the Defendant, Wando River, LLC, interfering with the disbursement of such earnest money to Wando River, LLC, preventing Wando River, LLC from having the use of such funds for the development and/or sale of the subject property.

7. The Plaintiffs contact with the attorney for Wando River, LLC and their conduct related thereto constitutes interference with the contractual relationship between Wando River, LLC and its attorney.

8. The Defendants have suffered monetary damages and continue to be damaged by the actions of the Plaintiffs.

9. As a result of such intentional interference, Defendants are entitled to recover damages in an amount to be proven at trial.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

1. The Plaintiffs, individually and though their agents, have participated with the Defendants in the marketing and development of the subject real property.

2. The Plaintiffs, individually and though their agents, have participated in multiple meetings with the Defendants and have offered advice and counsel to Defendants in connection with the marketing and development of the subject property.

3. The Plaintiffs have been given access to confidential information concerning the business of the Defendants, including financial information.

4. The interaction between the Defendants and Plaintiffs resulted in a special

relationship, in which the Defendants entrusted the Plaintiffs to act in good faith and with due regard to the best interests of the Defendants, and the Plaintiffs accepted and induced the confidence placed in them by the Defendants by continuing to be involved in the business of the Defendants and offering counsel and advice with regard to such business matters.

5. The Plaintiffs occupied a fiduciary relationship to the Defendants.

6. The Plaintiffs, individually and though their agents, have breached their fiduciary obligations to the Defendants, by working contrary to the bests interests of Defendants and not in good faith, resulting in monetary damages to the Defendants.

7. As a result of such breach of fiduciary duty, Defendants are entitled to recover damages in an amount to be proven at trial.

FOR A THIRD CAUSE OF ACTION
(Interference with Contract)

1. The Defendant, Wando River, LLC, entered into a Contract of Purchase and Sale with Edward J. Westbrook for the sale of the subject property.

2. The Plaintiffs subsequently filed a Lis Pendens against the subject property.

3. The filing of the said Lis Pendens has prevented the Defendant, Wando River, LLC, from closing on the sale of the subject property, resulting in monetary damages to the Defendants, which damages continue to accrue.

4. The actions of the Plaintiffs are an intentional interference with the contract between Wando River, LLC and Edward J. Westbrook, by which the Defendants have been damaged and continue to be damaged.

5. As a result of this interference with contract, the Defendants are entitled to recover damages in an amount to be proven at trial.

FOR A FOURTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)

1. The Plaintiffs have breached the implied covenant of good faith and fair dealing inherent in the Agreement and Warrant between the Plaintiffs and the Defendants.

2. The Defendants have been damaged and continue to be damaged by the actions of the Plaintiffs.

3. As a result of such conduct, Defendants are entitled to recover damages in an amount to be proven at trial for breach of contract and as a prevailing party will be entitled to an award of attorney's fees and costs in prosecuting this action.

WHEREFORE, having fully answered the Complaint, the Defendants respectfully pray that the Court award the Defendants their attorneys fees and costs in this action, that the Court enter declaratory judgment regarding the rights and obligations of the parties as requested in the Plaintiffs' Complaint, that the Defendants be awarded judgment against the Plaintiffs for actual, general, special and punitive damages, and for such other and further relief as the Court deems just and proper.

CISA & DODDS, LLP

Robert S. Dodds
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
(843) 881-6530

Attorneys for the Defendants

April 4, 2008
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY)	CASE NO.: 2008-CP-08-156
)	
KIAWAH RESORT ASSOCIATES,) L.P. and L. RUSSELL BENNETT)	
)	
Plaintiff,)	CERTIFICATE OF MAILING
)	
vs.)	
)	
WANDO RIVER, LLC, ALAN J.) SHEPPARD and JULIAN REED) SIMMONS, III)	
)	
Defendants.)	

PERSONALLY APPEARED before me, Karen Hollings, Administrative Assistant to Robert S. Dodds, attorney for the Defendants, who, being first duly sworn, deposes and says that on the 4th day of April, 2008, she mailed, by prepaid first class United States mail, a copy of the Amended Answer and Counterclaim, as well as a copy of the within Certificate of Mailing relative to the above captioned action, to the below listed opposing counsel:

Ellis R. Lesemann, Esquire
Parker, Poe, Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401

Karen Hollings

SWORN to before me this
4th day of April, 2008.

NOTARY PUBLIC FOR SOUTH CAROLINA
My commission expires: 3-17-2013

EXHIBIT C

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (this "Agreement") is made this 26th day of June, 2008 by and among KIAWAH RESORT ASSOCIATES, L.P. ("KRA") and L. RUSSELL BENNETT ("Bennett"), (collectively the "Plaintiffs"), WANDO RIVER, LLC ("Wando River"), ALAN SHEPPARD ("Sheppard"), and JULIAN REED SIMMONS, III ("Simmons"), (collectively the "Defendants"), WANDO E, LLC ("Buyer") and J. LYNN McCANTS, ESQ. ("Closing Attorney").

WHEREAS, Plaintiffs and Defendants are engaged in litigation regarding their respective rights, interests, and contractual obligations relating to certain real property approximating 23.682 acres located in Berkeley County, South Carolina (the "Property"), and the Buyer also has pending interests in the Property in the form of a recorded mortgage secured by the Property and a contract to purchase the Property from Wando River; and

WHEREAS, the Parties wish to allow Wando River to close and sell the Property to Buyer, resolve the dispute upon certain terms and conditions, withdraw the lis pendens on the Property, enter a mutual release of claims, and dismiss the pending litigation with prejudice;

NOW, THEREFORE, in consideration of the premises, the covenants and agreements herein, it is agreed as follows:

1. Identification of Closing Attorney. The Parties confirm that J. Lynn McCants, Esq. shall serve as the Closing Attorney, shall handle the Closing, and shall cause the stipulated disbursements to be made as set forth in this Agreement. It is agreed, however, that the Closing Attorney represents Buyer only and does not represent any other party to this Agreement.

2. Withdrawal of Lis Pendens and Waiver of Interest by Plaintiffs. Within 24 hours of receipt of a fully-executed original of this Agreement, Plaintiffs agree to withdraw the lis pendens that was filed relating to the Property. Plaintiffs further agree that they hereby waive and will not claim any further right or interest in the Property provided that this Agreement is fully performed, the Closing occurs, and the required disbursements are received by KRA and Bennett.

3. Closing of Sale and Payment of Funds. Wando River and Buyer will proceed to a closing of the sale of the Property at a mutually convenient time, but no later than June 30, 2008. At the closing, the Closing Attorney shall disburse to KRA by wire transfer the sum of $1,200,000.00 (One Million Two Hundred Thousand Dollars and no/100s). Furthermore, at the Closing, the Closing Attorney shall disburse to Bennett the sum of $400,000.00 (Four Hundred Thousand Dollars and no/100s).

   It is confirmed by Plaintiffs and Defendants that these funds represent the following compromise payments: (1) a compromise payment of $400,000.00 for the Guaranty Fee claimed by KRA and Bennett; and (2) a compromise payment of $1,200,000.00 of the Put Price claimed by KRA and Bennett.

4. Disbursement for Portion of Appraisal Fee Owed by Wando River. The Closing Attorney shall make an additional disbursement from the closing proceeds by wire transfer in the amount of $1,200.00 payable to KRA to cover Wando River's 50% share of the cost of the appraisal ($2,400.00) performed by Paul K. Moore & Associates in January 2008 in accordance with the provisions in Section 7)(c)(iii) of the Warrant dated August 25, 2004.

5. Use of Balance in Existing Escrow Account for Payment of Fees Due to Moore & Van Allen, PLLC. The Parties confirm that the remaining funds ($2,760.57) in the pre-existing escrow account held at Carolina First Bank in the name of Wando River will be disbursed in partial payment of the amount due ($3,819.00) from South Carolina Bank & Trust ("SCBT") to Moore & Van Allen, PLLC for professional services rendered to SCBT relating to the re-financing of the Property requested by Wando River and prepared by SCBT and its counsel, but that was never consummated by Wando River. KRA and Bennett will pay the remaining balance ($1,058.43) of this invoice.

6. Mutual Release of Claims. In consideration for the mutual promises and obligations hereunder, KRA, Bennett, Wando River, Sheppard, Simmons on behalf of themselves and their subsidiaries, affiliate entities, principals, shareholders, directors, officers, employees, representatives, members, managers, agents, heirs, successors, and assigns each hereby release and discharge each other and their respective subsidiaries, affiliate entities, principals, shareholders, directors, officers, employees, representatives, members, managers, agents, heirs, successors, and assigns from any and all claims or causes of action of any kind as they may have against one another including but not limited to all claims or counterclaims raised in this Action.

Furthermore, in exchange for the promises and obligations of KRA and Bennett hereunder, Buyer agrees to waive and release any claims that it has or may have had against KRA or Bennett and KRA and Bennett agree to waive and release any claims it has or may have had against Buyer. All parties confirm that this Agreement does not modify or affect the mutual rights or obligations of Wando River or Buyer under the separate contract for the sale of the Property under which those parties will proceed to Closing.

Plaintiffs and Defendants will memorialize the dismissal of the pending litigation and the release of the claims and counterclaims by way of a Stipulation of Dismissal with Prejudice. Plaintiffs confirm that the amounts to be paid hereunder are accepted in complete satisfaction of any amounts due or claimed to be due to KRA or Bennett from Wando River, Sheppard, or Simmons.

7. Miscellaneous Provisions.

(a) Prior Agreements. If this Agreement is fully performed, it shall supersede all prior agreements between any Plaintiff(s) and any Defendant(s) relating to

Wando River, the Property, or any other aspect of the subject matter herein. This Agreement is intended to memorialize a compromise enforcement of prior agreements between Plaintiffs and Defendants and to fully resolve and discharge all rights and obligations among Plaintiffs and Defendants. However, as stated above, this Agreement does not modify or supersede the contract for the sale of the Property existing between Buyer and Wando River.

(b) Amendments. This Agreement may not be modified or amended except by an instrument in writing signed by an authorized officer of each party hereto.

(c) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

(d) Governing Law. This agreement, including all matters of construction, validity and performance, shall be governed by and construed in accordance with the laws of the state of South Carolina, without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the state of South Carolina applicable hereto.

(e) Assignment. This Agreement may not be assigned by any party hereto without the prior written consent of the other parties.

(g) Binding Nature; Third-Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors (whether by operation of law or otherwise) and permitted assigns. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

(h) Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of this Agreement or of any other term hereof, which shall remain in full force and effect, for so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party hereto.

(i) Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Settlement and Release Agreement to be executed by their duly authorized representatives as of the date above written.

KIAWAH RESORT ASSOCIATES, L.P.
By: D&W Investments, Inc., its general partner

Witness: _____

By: _____
Name: Charles P. Darby, III
Title: Chief Executive Officer

L. RUSSELL BENNETT

Witness: _____

_____

WANDO RIVER, LLC

Witness: _____

By: _____
Name: _____
Title: _____

ALAN SHEPPARD

Witness: _____

_____

JULIAN REED SIMMONS, III

Witness: _____

_____

J. LYNN McCANTS, ESQ.

Witness: _____

_____

WANDO E, LLC

Witness: _____

By: _____
Name: Edward J Westbrook
Title: Member

PPAB 1442437v1

EXHIBIT D

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
KIAWAH RESORT ASSOCIATES, L.P. and L. RUSSELL BENNETT, Plaintiffs, vs. WANDO RIVER, LLC, ALAN J. SHEPPARD and JULIAN REED SIMMONS, III, Defendants.	)	Case No. 2008-CP-08-158 **STIPULATION OF DISMISSAL WITH PREJUDICE**

COME NOW the parties, by and through their undersigned counsel, and stipulate to the dismissal of all claims and counterclaims asserted in this action *with prejudice* pursuant to Rule 41(a)(1)(B) of the South Carolina Rules of Civil Procedure.

IT IS SO STIPULATED.

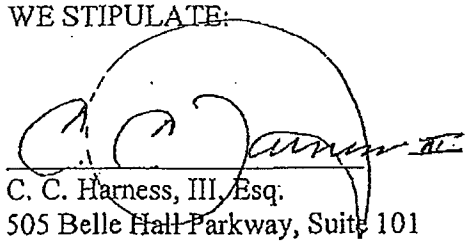
2008 JUL 15 PM 1:59
CLERK OF COURT
BERKELEY COUNTY, SC

WE STIPULATE:

Ellis R. Lesemann, Esq.
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650

Attorneys for Plaintiffs

WE STIPULATE:



C. C. Harness, III, Esq.
505 Belle Hall Parkway, Suite 101
Mt. Pleasant, SC 29464
(843) 856-2627

Attorneys for Defendants

June 25, 2008

Charleston, South Carolina

EXHIBIT E

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

MUTUAL RELEASE AND
SETTLEMENT AGREEMENT

KNOW ALL MEN BY THESE PRESENTS:

That for and in consideration of Five Hundred Thousand Dollars ($500,000.00), to be paid out of the Seven Hundred Fifty Thousand Dollars ($750,000.00) in earnest money held by the escrow agent, William O. Higgins, Esquire, Ellis Lawhorne & Sims, P.A. and other valuable consideration paid to the undersigned Wando River, LLC, (hereinafter referred to as "Releasor") hereby agrees to fully and forever release and discharge and hold harmless D.R. Horton, Inc., as well as its parents, agents, employees, successors and assigns, and all others, directly or indirectly liable, from any and all claims, demands, actions and causes of actions, damages, and liabilities of any kind whatsoever, in law and in equity, known or unknown, which the undersigned Releasor now has or may hereafter have, including but not limited to those claims arising out of the Contract of Sale dated July 28, 2005 ("Contract") for property in Berkeley County, South Carolina, all matters covered by the lawsuit pending in the United States District Court for the District of South Carolina Charleston Division, Case No.: 2:06-CV-02320-PMD (the "Litigation"), and any and all claims which could have been brought by Wando River LLC against D.R. Horton, Inc., in said Ligitation.

Releasor agrees to indemnify and hold harmless D.R. Horton, Inc, against any loss or expense, including reasonable attorney's fees, resulting from any further claim, demand or action that may be brought by the Releasor or a party claiming rights through the Releasor arising out of the Contract dated July 28, 2005, or the Lawsuit as described above.

D.R. Horton agrees to indemnify and hold harmless Releasor against any loss or expense, including reasonable attorney's fees, resulting from any further claim, demand or action that may be brought by D.R. Horton or a party claiming rights through D.R. Horton arising out of the Contract dated July 28, 2005, or the lawsuit as described above.

It is expressly understood and agreed that in return for the above-referenced consideration, Releasor agrees to dismiss with prejudice all claims asserted in the civil action filed on its behalf now pending in the United States District Court for the District of South Carolina Charleston Division, Case No.: 2:06-CV-02320-PMD. Likewise, D.R. Horton agrees to dismiss with prejudice all counterclaims asserted, or that could have been asserted, in the pending litigation.

This Release constitutes the full and complete understanding among the parties as to the matters contained herein. All prior or contemporaneous representations, negotiations, understandings, or agreements are merged herein.

The undersigned further declare and represent that no promise or inducement or agreement not herein expressed has been made to the undersigned and that this Release contains the entire agreement between the parties hereto.

This Release is an accord and satisfaction of all prior obligations and claims between the Parties. This Release is executed voluntarily and both parties have read and understand its contents.

It is further understood and agreed that this Release is a full compromise of a disputed claim, both as to the question of liability and as to the nature and extent of damages, and that the payment is not to be construed as an admission of liability, but instead liability is expressly denied by the parties so released.

By the signatures below, Wando River, LLC and D.R. Horton, Inc. represent that they have discussed this settlement with counsel and agrees to the terms herein, which are contractual and not a mere recital.

Both parties expressly agree that they will execute the necessary documents to accomplish the distribution of the escrow funds per the terms of the Escrow Agreement in the Contract. It is further understood and agreed the remaining Two Hundred and Fifty Thousand Dollars ($250,000.00) of earnest money described above will be returned to D.R. Horton.

Both parties agree upon execution of this document the escrow agent is authorized to distribute the escrow funds per the terms of this Agreement. Furthermore, upon distribution, the escrow agent is released from his duties and/or responsibilities as escrow agent.

IN WITNESS WHEREOF, the undersigned has executed this Release on the 14th day of September, 2006.

Emily Bivens
Witness

Wando River, LLC
Its: M. Manager

9-14-06
Date

Cynthia L. Rich
Witness

D.R. Horton, Inc
Its: Attorney

Sept. 15, 2006
Date

ATTORNEYS' CERTIFICATE

As attorney for Wando River, LLC, I have explained the meaning of this Release to it and have recommended the acceptance of its terms and conditions.

Clayton B. McCullough, Esquire

As attorney for D.R. Horton, Inc., I have explained the meaning of this Release to it and have recommended the acceptance of its terms and conditions.

Michael M. Shetterly, Esquire

4355124 1

EXHIBIT F

Ellis R. Lesemann

From: Donna Frye [dfrye@ellislawhorne com]
Sent: Monday, September 18, 2006 10.44 AM
To: russellbennett@bellsouth.net; Ron Owens; alshep2000@yahoo com
Cc: Bill Higgins
Subject: Wando River, LLC-Escrow

Gentlemen.
Per Bill, rather than wiring the funds, an interbank transfer has been made in the amount of $500,000.00 from our Escrow Account to the Kiawah Capital, LLC Escrow Account. The funds should be in the account at this time. Have a great day!

Donna G Frye, PLS (dfrye@ellislawhorne.com)
Paralegal to William O. Higgins, Esquire
Ellis, Lawhorne & Sims, P.A.
1501 Main Street, 5th Floor (29201)
Post Office Box 2285
Columbia, South Carolina 29202
803-254-4190
803-343-1221 (Direct)
803-779-4749 (Fax)

HARVEY & VALLINI, LLC

ATTORNEYS AND COUNSELORS AT LAW
497 BRAMSON COURT, SUITE 201
MT PLEASANT, SOUTH CAROLINA 29464-5224

TELEPHONE (843) 388-8883
FACSIMILE (843) 388-8884

WEBSITE WWW HVLAWSC COM

STEVEN E HARVEY
DANIEL J VALLINI
ELLIS R LESEMANN
JARED D SMITH
MATTHEW D SULLIVAN
J PAMELA PRICE

KAREN S LOVE *

CHRISTOPHER M HARVEY ** (PA, NJ only)
EMERSON (TRIPP) WILES, III **

* Special Counsel
** Of Counsel

OFFICES
COLUMBIA, SOUTH CAROLINA
LAKE CAROLINA, SOUTH CAROLINA
LEXINGTON, SOUTH CAROLINA
MT PLEASANT, SOUTH CAROLINA
SUMMERVILLE, SOUTH CAROLINA

November 18, 2011

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street
Charleston, SC 29401

Re: Alan Sheppard vs. William O. Higgins, et al.
Case No.: 2011-CP-10-4537

Dear Ms. Armstrong:

Please find enclosed the original and one copy of the Motion Cover Sheet and Motion of Defendants Russell Bennett, Ron Owens, Charles P. Darby and Kiawah Resort Associates, L.P. for Judgment on the Pleadings in the above-referenced matter. Also enclosed is our check in the amount of $25.00 for the filing fee.

Please file the original and return to me the file-stamped copy in the enclosed self-addressed prepaid stamped envelope.

With best regards,

Ellis R. Lesemann

ERL:clv
Enclosures

Cc: Alan Sheppard
John J. Pringle, Jr., Esq.
J. Lynn McCants, Esq.

Sheppard, Alan Overview

Prepared for Circuit Court Charleston SC
April 25,.2012

FILED
2012 SEP 24 PM 4:12
JULIE J. ARMSTRONG
CLERK OF COURT

The Closing culmination of fraud at the bottom

For THE CIRCUIT COURT
IN CHARLESTON SOUTH CAROLINA

Alan Sheppard,	)	C/A No. 2011CP1004537
Plaintiff,	)	
V.	)	
William O. Higgins, Ronald C Owens	)	
Russell Bennett, Charles P Darby	)	Dated 04/25/12
Lynn McCants		
Defendants.	)	

At the time of the culmination of impropriorities leading up to the sale of the property in which the guarantor and their counsel took increasing interest, I had begun to see the constant threats of the full remedy of Default look more and more like reality. As the guarantors intention to use their position as guarantors as a means for Collection of extensions of credit by extortionate means, a forced bankruptcy was in the near future. The Members of Wando River LLC Property was foreclosed on after the guarantors action done in furtherance of conspiracy mentioned below in Number 2 that are the deprived rights or privilege that should be afforded me as a citizen of the United States,

(7)An extortionate means is any means which involves the use, or an express or implicit threat of use, of violence or other criminal means to cause harm to the person, reputation, or property of any person.

The amount of Cash that was actually taken was $500,000.00 the first time and over $2,800,000.00 the second time. Total of $3,800,000.00 plus

It is the withholding and ultimate conversion of the escrow money by our lawyer that is at the base of this call for action. But even worst is the effect

this transfer of funds had on the ownership of my group's llc. This shift of ownership was the foundation of our guarantor's obtaining all ($2,800,000.00) the funds from our property by false pretenses.

I. **Rule 9. Pleading Special Matters declaration of the legal rights of the plaintiff in a particular situation**

(b) FRAUD OR MISTAKE; CONDITIONS OF MIND. In alleging fraud or mistake, a party must state with particularity the circumstances constituting fraud or mistake. Malice, intent, knowledge, and other conditions of a person's mind may be alleged generally.

(c) CONDITIONS PRECEDENT. In pleading conditions precedent, it suffices to allege generally that all conditions precedent have occurred or been performed. But when denying that a condition precedent has occurred or been performed, a party must do so with particularity Ellis VS. Davidson, They have done this before

(g) SPECIAL DAMAGES. If an item of special damage is claimed, it must be specifically stated.

Regarding fraud or mistake, and conditions of mind

To fully understand how the fraud unfolded you have to understand the events around a sand mind that 4 lawyers came to me and asked me to be the managing member of because of my work ethic and honesty. The project included approximately 3000 acres of riverfront property in Colleton County that had a small mine for sand on it for $3.8 million. I was brought in to manage all the business and financing for the project. After completing the due diligence that included a mineral appraisal, I was pleasantly surprised to find that the quantity and quality of sand would be valued at today's dollars of $45 million and $185 million based on 20 year projections and removing 70% of the sand. Since it was early on in the Wando River project and the closing with DR Horton was expected in the next 2 to 3 months I went to the same guarantors to check their interest on working with us on the sand mine. After reading the mineral appraisal and looking at the development potential of the riverfront property the guarantors agreed to finance the sand project. In order to meet the bank's requirement for cash down payment and friend had already agreed to place $500,000 as the

down payment to work with my group as a partner. I shared this information with the guarantors who quickly noted his African-American heritage. Everything seemed to go well right up to the week before closing with a phone call from the guarantors notified me that they did not have the funds to close on the loan. Surprised this happened due to the value I contacted the 4 lawyer partners and informed them that I would need to use my backup financer in light of the current events. They requested I come to their office the following day for an important meeting. In the meeting I was told that someone had gone to the closing attorney's office and placed $3.8 million in escrow noting that they could close on the sand project if Mr. Sheppard's group had any problems closing the loan. In addition I was notified that a contract that was put together by the brother of the guarantor on the Wando River project. After hearing all this I let 4 lawyers know that I had secured the closing funds from a backup source. At the closing for the sand mine all the lawyers for both parties gathered early and were suspecting my group to be sued due to not having funds. When my representative showed up with the funds the sellers attorney got up and left. There was an upset in the room and after several hours everyone left. Later I would get a call from Wando River guarantor's brother who would offer me and my four partners 100,000 each to let them close on the property. I told him it was out of my hands and could have been handled better earlier. One hour later another call from the guarantor's brother with an offer of 250,000 each. He informed me that his group had all the funds and lawyers that would be needed to keep this property. Again it was my hands and call was over. In the following weeks there would be a conference or arbitration where all the groups interested in the property would show up to make a good faith offer to close the property deal. Guarantor's brother and their companies were nowhere to be found.

In the weeks following this event guarantors would visit my bank and request financial status on Wando River and Alan Sheppard personal finances. From this point on I realized it's not my bank. The terms for all of my loans came into question in a series of meetings geared around my ability to meet my financial requirements. From this point on I experienced several problems associated with loans personally and for Wando River. I was contacted by the bank that had the loan on the Wando River project and asked to come in for a meeting regarding our loan. Somehow when the guarantors took the 500,000 and placed it in their account they did not pay the payments on our loan from September 2006 until February 2007. When I showed up to meeting the guarantors had already been there. I sat down in the vice president of commercial financing gave me an ultimatum of paid the note down or I would need to take my business elsewhere. At that he let me know the meeting was over. He then invited the guarantors to stay as he walked me out of the room. Later in the year this same bank scheduled a closing for an equity loan on my home to provide me with funds to get through the end of the year. From this one closing the bank acquired signatures somehow that they used to foreclose my 50 acre farm by placing not one but two mortgages and default on it. This again was a series of events that no bankruptcy lawyer could fathom and none would work with me to file a plan.

Sheppard, Alan Overview

Prepared for Circuit Court Charleston SC

April 25,.2012

The pleading conditions precedent, I referenced Ellis versus Davidson In the guarantors of done this before.

Specifically guarantor Rusty Bennett was cited under The Fiduciary Obligations and section 14:3 the attorney – client relationship and nonclients.

Also under Chapter 14 The Fiduciary Obligations in general that enables a client fully reveals confidences and to repose I'm hesitating trust in the attorney's ability to represent the client's interest diligently and competently

Also chapter 8 section 3 duties – the attorney-client relationship – formation

Chapter 8 sec. 13 Negligence

in addition to these obligations there is also a host of other improprieties relating the unauthorized practice of law. Before I had any idea that Mr. Bennett and then excused from the South Carolina bar he constantly made changes to contracts between the guarantors and I as well as consulting with buyers of Wando River LLC that would ultimately terminate the contract. At one point scheduling a meeting at his law firm the Bennett and Wigger. Constantly insisting one reviewing all of our documents to save money insisting there's no need for an attorney.

I find it troubling that the Ellis versus Davidson case seems to have settled somewhere around August 23, 2004 and that Mr. Bennett found himself listed as a guarantor with KRA on August 24, 2004.

Motive

When it comes to motive our main guarantor whose family business owns the hundred or more acres across the river also bought small boat yard caddy corner from Wando River LLC's property. Once the guarantors took 500,000 escrow money one of the first things they did is hired another sister company in the family to redo all of our drawings with their concept of our property. They even spent our money to do it. I'm not the smartest businessman of world but I can't tell you I would not spend $20,000 to times if I did not have to. This is just another clear picture of what their intentions are or were.

II. Status of Income Clarified

After arguing with Guarantors, 1,,KRA(Charles Darby & agent, Ron Owens) and 2, Russell Bennett regarding constructive receipt on the income for the $500,000.00 and the tax liabilities, I had to pay the taxes on the $500,000.00 that I never received

III. 1343. Civil rights and elective franchise
M Under Article IVI of the Constitution
(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;.

Sheppard, Alan Overview

Prepared for Circuit Court Charleston SC

April 25,.2012

As this case was prepared to be taken to Civil court, every lawyer we approached would welcome us to their office . When confronted with the cold facts that were so damming of the defendants, every lawyer wanted nothing to do with this, criminal activity. It was at this point that I came down with cancer of the Kidneys. As time on the legal malpractice statue was coming to an end, It was recommended by numerous top lawyers to file prose and to further ask to have the case moved to the Master in Equity. After this was accepted , I was trying to recuperate from my illness. A couple days before the trial, the Master in Equity recused himself after holding the case for 6 months or more. The case was also thrown back into general sessions. It during this time that the lawyer who has been by my side since day one of all of this action passes away from cancer as well, Mr. CC Harness III. The trouble here is that I had my LLC on the papers and no Attorney for myself. In the middle of my bankruptcy preparation and a physical mental imbalance from the cancer medications issues, my bankruptcy lawyer pleaded with his sister to help me with the suit that is now pending in general sessions versus dropping the llc and going prose and asking the judge to make a ruling on the cases behalf. With a short time line, she is trying to understand the complexities of dealing with a case that is way above most lawyers level of practice. While I try to bring her up to speed after I have been in the hospital for two weeks. I am trying to work to make some money prior to our date in court, October 20,2010. After specific travel to make it to our court date from out of town, I arrive to find the defense has filed a continuance the day before at 2:30 PM. After arriving home at 7-8pm I get a call to inform me of this which no one asked my consent. As the case is being bullied around and pushed off, I am trying to plead my case to have it heard by a special judge due to the malicious intention of the group towards me and the LLC I put together.. It is during this time in that a meeting with defendants Trentholm Walker and Clayton McCollough Atty. that we are releasing them from the case completely and that further more I am attempting to proceed to a Special Judge or MIE . With the discovery of William Higgins actual involvement with the guarantors', my only goal was to get the facts in front of any MIE , Judge, Jury or Officer of the court. An opportunity yet to be given to me.

Mr. Higgins withheld $500,000.00 forfeited contract money from Wando River LLC and ultimately deposited it against Wando Rivers instructions into Kiawah Capitals account. After four attempts to demand that the money go into Wando River LLC account, Mr Higgins turned to two individuals, that are not members of Wando River LLC, for wiring instructions. This act breached the confidentiality he had given his informed consent to the lawyers facilitating the settlement of Wando Rivers' escrowed monies two days prior. Ron Owens (KRA) and Russell Bennett are guarantors on the bank note and placed Mr. Higgins as Escrow Agent (without our Consent) on the contract for the sale of Wando River LLC's property. It wasn't till after the detailed misuse of the Escrowed $500,000.00 was finally given to us that we realized the relationship between Mr. Higgins and Mr. Bennett. Mr Higgins has been Mr. Bennett's lawyer for 10 to 15 years and we knew nothing of this.

According to Rule 407, ROPC, In the nature of law practice, conflicting responsibilities are encountered. Virtually all difficult ethical problems arise from conflict between a lawyer's responsibilities to clients, to the legal system and to the lawyer's own interest in remaining an ethical person while earning a satisfactory living. The Rules of Professional Conduct often prescribe terms for resolving such conflicts. Within the framework of these Rules, however, many difficult issues of professional discretion can arise. Such issues must be resolved through the exercise of sensitive professional and moral judgment guided by the basic principles underlying the Rules. These principles include the lawyer's obligation zealously to protect and pursue a client's legitimate interests, within the bounds of the law, while maintaining a professional, courteous and civil attitude toward all persons involved in the legal system.

Not one of these options was ever spoke of to Me or my group much less written.

Now according to the provisions of *Rule 407, 4.1 (A) (B)*, Mr. Higgins did make a false statement of material fact to lawyers for Wando River during consultation with Mr. Higgins while obtaining informed consent regarding the Depository Institution and the potential conflict. The conflict was brought about by threats from the guarantors on our loan. In a meeting with the guarantors approximately 2 weeks before funds were to be released, the guarantors were making new demands on my groups' llc regarding the % of ownership in the new amended loan agreement that was to expire at the end of the year. We were currently in the 1ST. week of September and found it odd that the guarantors scheduled a meeting to discuss this at this time but, went forward for good course. After guarantors explained their amendment, one of them asked what we were going to do with the funds from the terminated contract. I gave them a typical list of items included in a real estate project ie; interest, town fees, engineers…etc.. The guarantors expressed their dislike in one group of our engineers and then said that they will take care of this specific bill with some letters from Mr. Bennett(one of the guarantors). I declined and at that point both guarantors said that we should put the money in their account and they will take care of paying our bills. I declined again and said my partner won't go for this anyway. The guarantors said they would take care of my partner and scheduled a meeting for the next day to inform my partner as to their request for the escrow money. I left and gathered my partner of Wando River llc to discuss the events of the day. Upon a vote of all members, it was agreed that under no circumstance was I to let them have escrow money. The following day my partner and I arrived at the meeting. After listening to the guarantors request for the escrow monies, My partner let them know that our group is more than capable of managing our business and declines their offer. My partner begins telling the guarantors the direction I was going to proceed with when he is interrupted by the guarantor's threat. "Let me tell you what you're going to do, You're going to put that money in our (Guarantors) account or you're going to have a hard time keeping the property and the money. You got it?" We both got up and told them we got it.

We then gathered the Wando River llc group and it was decided it was in our best interest to provide the law firm, (PTE&W) that we hired to settle the release, a full disclosure of the matter and record everything for the partners verification.

In the full disclosure were the details that were significant to the future of Wando River llc business. 1, Financial standings with loan in default by week's end 9-15-06. **2,** The numerous Conflicts of Interest up to date with our guarantors. **3,** Numerous threats of "The full Remedy of Default" on property and funds that belong to the llc from guarantors. **4,** Plans for development to proceed with a new loan we have in place contingent on paying down loan with escrow money. **5,** Update to the status of current guarantors whose % would remain constant and details that explained. **6,** A simple request of confidentiality of our own business interest in remaining ethical while earning a satisfactory living. Most important in this meeting was Wando Rivers llc's newest and final item as terms of signing the settlement & release. The law firm would consult with Bill Higgins and provide the same full disclosure under strict confidentiality and get his informed consent specifically regarding directions for deposit of the $500,000.00 due to the threats we had received regarding possession of escrow funds from the guarantors Ron Owens, and Rusty Bennett the week of September 4th. 2006.

Now due to the substantial significance the instructions to Mr. Higgins has on Wando River llc., the members ask me to meet with PTE&W on September 12th 2006 for the specific reason of confirming that they have consulted Mr. Higgins regarding his informed consent and directions for the deposit of funds into the specific account. Mr. McCullough from PTE&W facilitates the meeting and immediately gets Mr. Higgins on the conference call where all the issues in the matter of full disclosure are addressed with Mr Higgins who gives an affirmative response to each request to his informed consent and request for confidentiality. Mr. McCullough addresses the release terms for the escrowed funds, and the deposit instructions along with confronting him on the guarantor's demands for the escrow funds. Mr. Higgins who **KNOWS** ,after being told by Mr. Bennett during the very first

meeting with Mr. Bennett, Mr. Owens, Mr. Walker , Mr. McCullough and myself that Alan Sheppard is the managing member of Wando River LLC of which Mr. Owens and Mr. Bennett are not members, said **"there would be no reason at all that I would do anything other than what I am instructed and there is no reason at all for Alan to be concerned about receipt of the $500,000.00."** Mr. McCullough then asks if that works for me and I said, "That works for me"

To this day I have never seen Bill Higgins at any meetings or other places

According to Rule, 407 Rules of Professional Conduct; **RULE 8 , PROOF**

Charges of misconduct or incapacity shall be established by clear and convincing evidence, and the burden of proof of the charges shall be on the disciplinary counsel. The burden of proof in proceedings seeking reinstatement following disbarment, suspension or transfer to lawyer incapacity inactive status is on the lawyer by clear and convincing evidence.

On September 13th. I arrived at PTE&W to sign the release. I called Mr. Higgins office to ask how long before the funds would be wired and he gave me a short response that just sounded wrong. Especially after all I have gone through to secure it. I asked Mr Higgins to send me an email as I was having trouble hearing him. When I returned to my office, there was an email notifying me that Mr Higgins would need common consent of the guarantors prior to the release of the funds.

According to Rule, 407 Rules of Professional Conduct, Mr Higgins has to disclose

RULE 1.9: DUTIES TO FORMER CLIENTS ** *never disclosed*

RULE 4.1: TRUTHFULNESS 1N STATEMENTS TO OTHERS

In the course of representing a client a lawyer shall not knowingly:

(a) make a false statement of material fact or law to a third person; or

(b) fail to disclose a material fact when disclosure is necessary to avoid assisting a criminal or fraudulent act by a client, unless disclosure is prohibited by Rule 1.6.

Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

I went way beyond the requirements of the code of law to make sure I did not commit any infractions that would leave me or my group open to any wrongful conduct.

Crime or Fraud by Client

Statements of Fact

[3] This Rule refers to statements of fact. Whether a particular statement should be regarded as one of fact can depend on the circumstances. Under generally accepted conventions in negotiation, certain types of statements ordinarily are not taken as statements of material fact. Estimates of price or value placed on the subject of a transaction and a party's intentions as to an acceptable settlement of a claim are ordinarily in this category, and so is the existence of an undisclosed principal except where nondisclosure of the principal would constitute fraud. Lawyers should be mindful of their obligations under applicable law to avoid criminal and tortious misrepresentation.

RULE 7

GROUNDS FOR DISCIPLINE; SANCTIONS IMPOSED; DEFERRED DISCIPLINE AGREEMENT

(a) Grounds for Discipline. *It shall be a ground for discipline for a lawyer to:*

(1) violate or attempt to violate the Rules of Professional Conduct, Rule 407, SCACR, or any other rules of this jurisdiction regarding professional conduct of lawyers;

(5) engage in conduct tending to pollute the administration of justice

(6) violate the oath of office taken to practice law

RULE 1.6: CONFIDENTIALITY OF INFORMATION

Authorized Disclosure

. In some situations, for example, a lawyer may be impliedly authorized to admit a fact that cannot properly be disputed or to make a disclosure that facilitates a satisfactory conclusion to a matter.

Disclosure Adverse to Client

[7] Although the public interest is usually best served by a strict rule requiring lawyers to preserve the confidentiality of information relating to the representation of their clients, the confidentiality rule is subject to limited exceptions.

Acting Competently to Preserve Confidentiality

[17] A lawyer must act competently to safeguard information relating to the representation of a client against inadvertent or unauthorized disclosure by the lawyer or other persons who are participating in the representation of the client or who are subject to the lawyer's supervision.

RULE 1.7: CONFLICT OF INTEREST: CURRENT CLIENTS

Identifying Conflicts of Interest: Directly Adverse

[6] Loyalty to a current client prohibits undertaking representation directly adverse to that client without that client's informed consent. Thus, absent consent, a lawyer may not act as an advocate in one matter against a person the lawyer represents in some other matter, even when the matters are wholly unrelated. The client as to whom the representation is directly adverse is likely to feel betrayed, and the resulting damage to the client-lawyer relationship is likely to impair the lawyer's ability to represent the client effectively. In addition, the client on whose behalf the adverse representation is undertaken reasonably may fear that the lawyer will pursue that client's case less effectively out of deference to the other client, i.e., that the representation may be materially limited by the lawyer's interest in retaining the current client. Similarly, a directly adverse conflict may arise when a lawyer is required to cross-examine a client who appears as a witness in a lawsuit involving another client, as when the testimony will be damaging to the client who is represented in the lawsuit. On the other hand, simultaneous representation in unrelated matters of clients whose interests are only economically adverse, such as representation of competing economic enterprises in unrelated litigation, does not ordinarily constitute a conflict of interest and thus may not require consent of the respective clients.

Lawyer's Responsibilities to Former Clients. Who Knew?? Never Disclosed

Informed Consent

[17] Under some circumstances it may be impossible to make the disclosure necessary to obtain consent. For example, when the lawyer represents different clients in related matters and one of the clients refuses to consent to the disclosure necessary to permit the other client to make an informed decision, the lawyer cannot properly ask the latter to consent. In some cases the alternative to common representation can be that each party may have to obtain separate representation with the possibility of incurring additional costs. These costs, along with the benefits of securing separate representation, are factors that may be considered by the affected client in determining whether common representation is in the client's interests.

***Rule 1.0(o)** (writing includes electronic transmission). If it is not feasible to obtain or transmit the writing at the time the client gives informed consent, then the lawyer must obtain or transmit it within a reasonable time thereafter. See Rule 1.0(b). The requirement of a writing does not supplant the need in most cases for the lawyer to talk with the client, to explain the risks and advantages, if any, of representation burdened with a conflict of interest, as well as reasonably available alternatives, and to afford the client a reasonable opportunity to consider the risks and alternatives and to raise questions and concerns. The better practice is to include within any writing the risks, advantages and alternatives discussed as a matter of full disclosure. Rather, the writing is required in order to impress upon clients the seriousness of the decision the client is being asked to make and to avoid disputes or ambiguities that might later occur in the absence of a writing.*

Never got a hint of a disclosure or the following consideration

Special Considerations in Common Representation

[29] As to the duty of confidentiality, continued common representation will almost certainly be inadequate if one client asks the lawyer not to disclose to the other client information relevant to the common representation. This is so because the lawyer has an equal duty of loyalty to each client, and each client has the right to be informed of anything bearing on the representation that might affect that client's interests and the

right to expect that the lawyer will use that information to that client's benefit. See Rule 1.4. The lawyer should, at the outset of the common representation and as part of the process of obtaining each client's informed consent, advise each client that information will be shared and that the lawyer will have to withdraw if one client decides that some matter material to the representation should be kept from the other. In limited circumstances, it may be appropriate for the lawyer to proceed with the representation when the clients have agreed, after being properly informed, that the lawyer will keep certain information confidential. For example, the lawyer may reasonably conclude that failure to disclose one client's trade secrets to another client will not adversely affect representation involving a joint venture between the clients and agree to keep that information confidential with the informed consent of both clients.

RULE 1.15: SAFEKEEPING PROPERTY

[4] Paragraph (e) also recognizes that third parties may have lawful claims against specific funds or other property in a lawyer's custody, such as a client's creditor who has a lien on funds recovered in a personal injury action. A lawyer may have a duty under applicable law to protect such third-party claims against wrongful interference by the client. In such cases, when the third-party claim is not frivolous under applicable law, the lawyer must refuse to surrender the property to the client until the claims are resolved. A lawyer should not unilaterally assume to arbitrate a dispute between the client and the third party, but, when there are substantial grounds for dispute as to the person entitled to the funds, the lawyer may file an action to have a court resolve the dispute.

Rule 8.4 Misconduct

Maintaining The Integrity Of The Profession,

It is professional misconduct for a lawyer to:

(a) violate or attempt to violate the Rules of Professional Conduct, knowingly assist or induce another to do so, or do so through the acts of another;

(b) commit a criminal act that reflects adversely on the lawyer's honesty, trustworthiness or fitness as a lawyer in other respects;

(c) engage in conduct involving dishonesty, fraud, deceit or misrepresentation;

(d) engage in conduct that is prejudicial to the administration of justice;

(e) state or imply an ability to influence improperly a government agency or official or to achieve results by means that violate the Rules of Professional Conduct or other law;

Rule 1.7 of the South Carolina Rules of Professional Conduct speaks to conflicts of interest in the representation of multiple current clients. The rule states:

(a) Except as provided in paragraph (b), a lawyer shall not represent a client if the representation involves a concurrent conflict of interest. A concurrent conflict of interest exists if:

(1) the representation of one client will be directly adverse to another client; or

(2) there is a significant risk that the representation of one or more clients will be materially limited by the lawyer's responsibilities to another client, a former client or a third person or by a personal interest of the lawyer.

(b) Notwithstanding the existence of a concurrent conflict of interest under paragraph (a), a lawyer may represent a client if:

(1) the lawyer reasonably believes that the lawyer will be able to provide competent and diligent representation to each affected client;

(2) the representation is not prohibited by law;

(3) the representation does not involve the assertion of a claim by one client against another client represented by the lawyer in the same litigation or other proceeding before a tribunal; and

(4) each affected client gives informed consent, confirmed in writing.

Note that the lawyer must determine who he or she represents and get their informed consent to the multiple representation in writing.

Sheppard, Alan Overview

Prepared for Circuit Court Charleston SC
April 25,.2012

The following is <u>William O. Higgins Resume;</u>

Bill Higgins is a member of the Business, Real Estate and Finance Practice Group. In addition to his Juris Doctor, Bill earned an LLM degree in Taxation from New York University School of Law, receiving a comprehensive foundation in tax law including real estate, partnerships, and income tax. Over the past ten years, he has been lead developer counsel for the acquisition, financing, development, or rehabilitation of dozens of projects in the multi-family, assisted living, convenience store and retail areas. He is actively engaged in the tax-deferred real estate exchange area, serving as taxpayers' counsel, qualified intermediary, and exchange accommodation titleholder for reverse exchanges.

Bill provides experienced legal counsel on:

- *Commercial real estate transactions*
- *Tax-deferred exchanges of real estate*
- *Business transactions, including entity formation and the acquisition and disposition of businesses and assets*
- *Business tax planning*
- *Legal ethics*
- *Lawyer misconduct*

*Active in the South Carolina Bar, Bill has served as (1)**Chair of the Professional Responsibility Committee** and the (2)**Ethics 2000 subcommittee**. He was a member of the (4)**Task Force on Multi-Disciplinary Practice**, and serves on the **Real Estate Practices Section Council (Chairman, 2010-11)** and the (5)**Ethics Advisory Opinion Committee**. He is a frequent lecturer on legal ethics and lawyer misconduct,*

Sheppard, Alan Overview

Prepared for Circuit Court Charleston SC
April 25,.2012

Section 1031 tax-deferred exchanges of real estate, and other real estate, tax, and business matters. References follow;

Practice Areas

- *Economic Development Incentives*
- *Planning and Operation for Business Entities*
- *Real Estate Acquisitions, Finance and Development*
- *Structuring and Formation of Business Entities*
- *Tax Planning for Commercial Transactions*
- *Tax Planning for Real Estate Transactions*
- *Legal Ethics and Lawyer Misconduct*

Education

- *Presbyterian College, 1982, B.S. summa cum laude*
- *University of South Carolina School of Law, 1984, J.D., SC Law Review and Order of Wig and Robe*
- *New York University School of Law, 1998, LL.M. Taxation*

Memberships & Admissions

- *Member, South Carolina Bar*
- *Member, Richland County Bar Association*

Selected, 2007-2011 Best Lawyers in America

With all the credentials, Mr. Higgins has there is no excuse for the harm he has inflicted by taking escrow deposit instructions from a previous and current client after the matter of full disclosure by a third party law firm, PTEW, The actions are the definition of Public Corruption. Conversion and conspiracy to defraud property and/ or money from sale of property is based on these three elements: (1) (Higgins/Bennett/Owens) together; (2) for the purpose of injuring the plaintiff ($500,000.00); (3) which causes the plaintiff special damage($500,000.00, Taxes paid on the $500,000.00 as income, The Development loan, Wando Outpost and its income for years to come.

William Higgins undertook to provide legal services for my group and held himself out as competent in the area of law dealing with the legal matter for which we retained the services of his firm. Both Higgins and I acted under an attorney/client relationship in which Higgins undertook to represent me.

Higgins was required to exercise the same legal skill as a reasonably competent attorney and to use reasonable care in determining and implementing a strategy to be followed to achieve our legal goals. As a fiduciary of Wando River llc, Higgins was obligated to treat all information relating to a Wando River llc's representation as confidential and to zealously represent the llc's interests, including the disclosure of any conflicts of interest that might impair Higgins ability to represent Wando River llc.

In the course of handling the legal matter for the Wando River llc, Higgins negligently failed to act with the degree of competence generally possessed by Attorneys in the State who handle legal matters similar to Wando River llc's. Wando River llc paid Higgins a substantial amount of money for the sole purpose of representing Wando River llc in said legal matter.

Wando River llc avers that Higgins breached fiduciary duties to Wando River llc, in the following regard:

(a) By failing to explain to the Wando River llc the existence of a Conflict of Interest in representing Wando River llc while also representing Russell Bennett and KRA.

(b) By holding themselves out as the attorney for Wando River llc but representing the best interest of defendants.

(d) By failing to release funds to Wando River llc upon the direction of the Wando River llc that Wando River llc was legally entitled to receive.

(e) By committing conversion when releasing the Wando River llc's funds to KRA's agent, Ron Owens and Russell Bennett.

(f)By conspiring to commit fraud when requiring the consent of KRA's agent, Ron Owens and Russell Bennett before releasing Wando River llc's funds to KRA's agent, Ron Owens.

1 Fraud and Conversion

Higgins/Bennett/Owens/Darby work together and discussed tactics to make sure they kept $500,000.00 out of our account, against my directions. It is the guarantors placement of Mr. Higgins on the DR Horton contract without Wando Rivers consent that placed him in a position that he could be counseled by two other lawyers to secure Wando River LLC escrow funds and it is in this position that Mr. Higgins assured me that I could sign the release without concern for the guarantors threats to take the escrow funds. He would certainly follow my instructions regarding depository instruction.

My group had finally put everything together and crossed every T and Dotted every I. Wando River llc loan is approved for $6.2 Million on our

own accord contingent on the $500,000 used to pay down the capital. The agreements for the engineering group to complete all phases of the development are on signed on my desk right beside the stack of reservation agreements accounting for 70% of the property sales, the guarantor fees that will be due are accounted for and the quote to build the marina that includes a 50% discount if we begin within 90 days. The developer fees reinstated and all my work has finally come together but for the hanus change of heart, within the hour of signing, with the ink still wet on the said release for the $500,000.00 escrow funds that Mr. Higgins would decline to release and immediately inform the guarantor that the funds are here and request their wiring instruction against my directions and ultimately hold the funds until Wando River is in default on loan payment, has no funds and has just released DR Horton from a very liable lawsuit for screwing up and running off our new buyer. To add insult to injury, after I have my CPA and my lawyer Mr Dodds prepare responses that I send to guarantors regarding the constructive receipt of the $500,000 escrow funds that included Wando Rivers 40% tax liability due on the ordinary income designation and make some really nasty calls to Mr. Higgins for obivious reason, Mr Higgins sends numerous emails to guarantors and I along with lots of calls to force me to reply to the emails insisting on consent. After a really ugly conversation with the friendly lender, It came down to lose it all (Property, our original investment, opportunity to sue DR Horton, chance to hold lawyers accountable for going against deposit instruction) or reply. I replied,"Wire funds according to Rons instructions". And even worst, after all the problems coming down the pipe with release of escrow funds, I contacted the bank to make sure they knew exactly what account the funds were designated for. The Guarantors called and emailed the bank and changed the wiring instructions by trumping my instruction.

Duress In South Carolina, duress of goods, under circumstances of great hardship, will avoid a contract. 2 Bay R. 211 Bay, R. 470. But see Hardin, R. 605; 2 Gallis. R. 337.

To support the duress argument

The Escrow statement tells the story. Look at the first months (Aug. 04 to Dec. 04) where Reed and Alan were being provided developer fees of $5,000 each. The developer fee was to keep Reed and Alan from having any financial problems while fully invested in Wando River llc Project. (A cushion if you will.)

Beginning 2005, Guarantors provide updated terms for development loan that now includes transfer of Commercial property, reversal of Interest in project (70/ 30 to 30/70 ownership%) and several other items as condition to proceed with development. Wando River group tries negotiating for original terms and look for back up guarantor. Wando River Declines terms.

- Guarantors terminate developer fees of $5k for Reed and Alan the following week
- Guarantors hire Design Works to have redundant drawings made. Design Works is owned by same family group as Guarantor KRA, and they pay $10,000 out of Wando River account.
- Appraisal for $8,9 million from Carolina First shows $5.8 million equity in raw land.
- With no agreement on terms for development, Guarantors freeze activity at bank and Wando River forced to have capital call to pay interest as original funds diminish.
- DR Horton makes offer on property as capital call is being gathered by Wando River
- Even with contract for $12.5 million and appraisal Guarantors refuse interest being drawn against property and force capital call in Aug 05.
- Interest paid and proceed with DR Horton until contract terminated 3-2006
- Wando river forced to make capital call again in Aug 2006 with $750,000 in escrow and a backup contract for 12.5 million in an LOI.

- Guarantors refuse to release tax money from escrow even after instruction from Wando River CPA Regarding Constructive receipt
- Guarantors pay development fees that are of their origin and withdraw guarantor fees without any request from Wando River llc
- Guarantors never pay bills to contractors hired by Wando River for development that had been submitted.

In support of actual undue influence

Prior to finding out that I had cancer I'd been under the care of the local doctor who had been running test and trying to find out what was wrong with me in where the pain is coming from. During that time that all the escrow money taking and the guarantors were making their new plans I was being heavily medicated to a point where I wouldn't even drive. I believe the guarantors overreached their authority knowing I was susceptible and found opportunity to just take what they wanted. They did what they could to keep us from talking with joint venture groups and other banks. The only time they would entertain another bank is when their banker from the original bank transferred to a new bank. This is when the guarantors filled out loan forms in Wando River LLC's name and paid for a new appraisal as well as loan fees. And lastly this port actual undue influence why would I do my best work with family and friends money and at the end of the day give the proceeds to the people who took the original 500,000 from us and did everything they could to squash over 15 contracts with most in excess of $12 million and spend every bit of the 500,000 that they took from September 2006 as the closing that was supposed to happen in first week of January 2008 and that they had prevented by the inappropriate placement of the lispenden till June 28, 2008. That this is as suspicious of a transaction as it can get.

At the end of the day when I finally came through the hospital stays and got back on my feet and, got some help from a new friend to sort out what had happened to me and my LLC, I found myself steering down the barrel of the FRAUD GUN that started on Aug 24 2004 and culminated on June 28, 2008. It was sometime in May of 2011 that a clear picture came into focus almost 3 years from the closing thanks to the guarantors kindly extending closing 3 times from the 25th. Of June 2008 till the 28th. Of June where the guarantors and their counsel would make several attempts to calculate a value to have all the funds wired to their accounts leaving Wando River llc to be run off like a lost dog.

The Fifth and Fourteenth Amendments of the United States Constitution limit the power of the federal and state governments to discriminate. 1343,Article IVI of th e Constitution, Redress.

I have to remind the court that I was not notified about the hearing today Wednesday 4 25 2012 and worked from 7pm on the 24th. untill 7:50 am on the morning of. I ask the court to take that into consideration when the quality and brevity of my Pretrial brief was prepared .

A false representation of a matter of fact—whether by words or by conduct, by false or misleading allegations, or by concealment of what should have been disclosed—that deceives and is intended to deceive another so that the individual will act upon it to her or his legal injury.

Fraud is commonly understood as dishonesty calculated for advantage. **A person who is dishonest may be called a fraud.** In the U.S. legal system, fraud is a specific offense with certain features.

Fraud is most common in the buying or selling of property, including real estate, Personal Property, and intangible property, such as stocks, bonds, and copyrights. State and federal statutes criminalize fraud, but not all cases rise to the level of criminality. Prosecutors have discretion in determining which cases to pursue. Victims may also seek redress in civil court.

Because of the actions taken against Wando River LLC by the Guarantors who stepped right up and stated I fraudulently tried to sell OUR Property, I have suffered the affects of a FRAUD. Something I have worked my whole life to **Not** Be. In addition to the actual damages in the amount of $19,000,000.00 that has been taken from the Guarantors Proforma that was used in December 2004 to determine the terms for the development loan, I have lost my business after a large contract that I was to be paid $48,000.00 times 486 units as well as 8 jobs that compensation ranged between $120,000 to$ 240,000

I pray that the court will help me in my journey into Redress and Recission

I can attest to the statements above that all are true .

In the utmost respect of the law

I am respectfully,

Alan J Sheppard

July 24, 2011

The Guarantors used a warrant to take escrow funds and ownership perceived through the warrant to take all the money from the Wando River llc

SECTION 16-13-40. Stealing of bonds and the like. [SC ST SEC 16-13-40]

(A) It is unlawful for a person to steal or take by robbery a bond, warrant, bill, or promissory note for the payment or securing the payment of money belonging to another.

Timeline for formation of Wando River LLC with agreements, amendments and contracts that follow;

- March 10, 2004 Reed Simmons and I enter into contract to buy Wando property for $2,500,000.00 with Mike Bennett and Hank Hofford owners of Bennett & Hofford and signed by

all parties by march 22, 2004 (Dodds and Hennessey, Mr. Larry Dodds is Atty. For Reed and I)/ (Buist Moore Smythe McGee PA, Mr.Foster Gailliard, Atty for Bennett and Hofford) **(Contract and/or LOI included)**

- March 23, 2004 Dodge Hindman, agent at Beach Company, puts contract together between
  - Alan Sheppard and Reed Simmons (property contracted to us for 2.5milion)
  - Eric ____?.Dba The great Salt company
  - The amount of $5,800,000.00 with $10,000.00 earnest money that is nonrefundable in 30 days(Held by Beach Company) **(Contract and/or LOI included)**
- May 18, 2004 "Addendum One" Extension for The Great Salt Company for non-Refundable $25,000.00 is executed by Dodge Hindman of Beach Company (Held by Beach Company
  - See contract for exact $ and dates **(Contract and/or LOI included)**
- May 22, 2004 "Addendum Two" Extension to close Contract for "The Great Salt Company" is granted for 60 day and $35,000.00 is now nonrefundable**(Contract and/or LOI included)**
- In order to approve "Addendum Two", Bennett & Hofford demand Reed Simmons and I Sign agreement to share all profit($3.3million) 50/50 for Contract of "The Great Salt Company" signed 3 23 04
- June2004, Beach Company notifies Bennett & Hofford that Contract for "The Great Salt Company" is terminated. Money in Escrow with Beach Company has disappeared and Reed and I are told we are simply shit out of luck.
- July 2004, I get preliminary approval for Dock. I also call Reed and send him to get contract put back together. He comes back with a price of $3,500,000.00 and 30 day close. **(Contract and/or LOI included)**
- Aug. 24 2004 Wando River LLC and Wando River Equity LLC are formed. Investor Guarantor agreement has a surprise addition of Russell Bennett as 25% Guarantor. Close on property
- May 2005, Contract for $12,000,000.00 with Palmetto land group**(Contract and/or LOI included)**
- Palmetto land group terminates 30 days later
- June 2005, Contract for $10,000,000.00 with Avtex Partners, (My good friend hank works for Tex Smalls and put it together. **(Contract and/or LOI included)**
- End of June 2005, , Contract for $10,000,000.00 with Avtex Partners is terminated thanks to rusty
- July 2005, Contract for $12,500,000.00 with DR Horton signed**(Contract and/or LOI included)**
- March 15 2006 terminated
- March 22, 2006, Contract for $12,000,000.00 with LaCasa never signed because Ron and Rusty said they were not legitimate. **(Contract and/or LOI included)**
- March 27, 2006 John Weiland Homes bring offer in writing from Jack Owens, (yes, Ron Owens Brother) for $10,150,000.00**(Contract and/or LOI included)**
- May, 2006, First week, Dunes West makes a verbal offer along with Crescent Resources and both begin writing contracts
- May 31, 2006 Crescent Resources signs contract for $12,500,000.00**(Contract and/or LOI included)**

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- Crescent Resources terminates right around September 2006 due to DR Horton threats
- Thanksgiving 2006, Josh Hulen presents a Joint Venture to Wando River to put up property and they will carry note and build out the whole development. Wando River gets 51%.
- Thanksgiving 2006, Calls from John Darby, Pres. at Beach Company and brother of Wando river LLC loan guarantor, Charles(Buddy) Darby, Offers $5,000,000.00**(Email of contact included)**
- December 2006, Walter Barton, Realtor for Brentwood Holmes put together a Joint Venture that would ultimately be worth$ 15 to $20 million to Wando River LLC. Includes going vertical. **(Contract and/or LOI included)**
- December 10th 2006 (approx. date) Billie Attaway has agreed to guarantee bank note and gets approval from his bank for approximately $6.500,000.00. in order to proceed to develop property. **(Contract and/or LOI included)**
- December 20th 2006 (approx. date) Billie Attaway invites me to lunch. Billie goes into a big confidential disclosure and informs me that "I cannot guarantee note" that "someone has contacted me" and told him he "would be sued if he gets involved for any reason." He tell me "even more so that I am going to be sued by my guarantors either way and they are going to take all the money."
- December 31 2006 Note is called and we must sign amendment to agreement with guarantor to get bank to extend note of $3,150,000.00 till Dec. 31, 2007. Changes include; **1**, Increase in % when sold by 5%. **2**, A new section 11 in in original Agreement. **3**, prior to any distribution to partners, KRA and bennet get the guarantee fee. **4**, "Joint Venture must be acceptable" 5, Wando River has to supply personal tax document for members.
- Jan 15,(?) 2007 Signed amendment with KRA Bennet
- February 2007, Hank Hofford and Mike Bennett put an offer of $5,500,000.00 to buy property and then hire Reed and I to work for them and develop it. Very unethical offer and I say No. **(Contract and/or LOI included)**
- April 2007 Cotton Harness gets Contract with Southeast Marine Group put together for $8,000,000.00**(Contract and/or LOI included)**
- Southeast Marine Group finds conflict and not heard from.
- May 2007, Cotton Harness puts together meeting at property with Lucorp LLC, Louis Morino is a long time business associate of Mr. Harness. Mr. Morino likes the property very much and after seeing the appraisal for $8,900,000.00 Agrees to pay $8,000,000.00 for the property. Mr. harness recommends we put the sale behind us and move on down the road. **(Contract and/or LOI included)**
- May 4, 2007. Contract with Lucorp LLC, Louis Morino shows up on fax with price of $5,500,000.00**(Contract and/or LOI included)**
- May 5 2007. Mr. Harness contacts Mr. Morino who tells him that he has been threatened by Hank Hofford and that Mike Bennett and his brother have had the property tied up for several years and are closing on it for 5.5 mil. Mr. Harness is extremely upset and finds out more that he can't tell me.

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- Jan to May, 2007, I interview Realtors to sell property and select Charlie Moore. Guarantors disagree and select Seaboard Commercial Properties to Sell Wando River and one of guarantor's properties. (Seaboard Doc included)
- August 2007, $10,000,000.00 contract presented by Camelot Signature Development llc(**Contract and/or LOI included)**
- October 17 2007, Pope and land Enterprises knows about our end of year note being called and offers $5,750,000.00**(Contract and/or LOI included)**
- October2007, Ed Westbrook meets with me and says he can close property by end of year for $5,750,000.00
- Thanksgiving 2007, Josh Hulen presents a Joint Venture to Wando River thru Broker this time or possibly $7,000,000.00 as is.. **(Contract and/or LOI included)**
- November 19m2007, Patty Smith has a client interested in property for excess of $12,000,000.00 but is informed we can't sign a contract to go past December 31 2007 as we will be in default of loan**(Contract and/or LOI included)**
- November 20(?), 2007, John Roach from Crescent Resources contacts me and is interested in the property. He tells me that Tom Webb, President at Crescent(Also Mr. Ways**(PRES of The Beach Company)** friend who needed approval from Mr. Way first time around to purchase) would be interested but atty a significantly lower price. $7,000,000.00 and can close very soon but not by end of year with two holidays. The Amendment #2 to allow Wando River to continue on with KRA and Bennett is unacceptable by Wando River LLC members(in the book) is way too much to accept and John roach says call if something changes.
- December 19, 2007, Entered contract to sell Property to Ed Westbrook for $5,750,000.00 contingent on closing deal first week of 2008 with loan paid off December 2007
- December 28 2007, Sign closing documents and pay note off at Carolina First.
- Jan 2, 2008 Notice of Default shows up from KRA and Bennett
- Jan 7(?) 2008 I go to get copy of payment receipt from Carolina First. Official date of payoff is notated on bank register as December 31. Wando River note was up on the 30th. I went right over to Robert Dodds and got the person's name who accepted deposit. I then went to bank and got Brian Kornarens to sign document stating note was paid on the 28th.
- Mon Jan 8th. Is beginning of the second week in 2008. Buyer and I had agreed to finalize closing this week. At some point during this week, Guarantors and/or their lawyers contact buyer and tell him that I am attempting to sell property without notifying guarantors and further that I am not the actual owner. I told buyer that this is not true and forwarded him the two emails that I sent to guarantors to notify them and included the guarantor's replies where they acknowledged Wando River LLC's intentions to sell. Since buyer has been given this story, he ask to see the llc papers. I send complete set of Documents to buyer and my lawyer contacts him to follow-up. Buyer finally calls at the beginning of the following week and has scheduled closing for the following week. The LisPendens show up on my front door 2 or 3 days after buyer called me to schedule the closing.

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Timeline of Escrow loss with Higgins and PTE&W -Pratt-Thomas, Epting and Walker

- 3-15-06 DRH terminates contract
- Crescent Terminates 7-28-06
- 9-1-06 I told Clay McCullough the concerns regarding timing and distribution and to Wando River correct acct. He said he will take care settlement doc's and Higgins has the money to release to us Wando River
- 9-5-06 informed Clay that we expect the money for the end of the week in Wando Rivers acct if I am going to sign this thing
- 9-12-06 talked again to Clay regarding what is going on with deposit of Escrowed funds
- 9-13-06 I called Bill Higgins and inform him on Wando River LLC intensions and instructions as to the deposit acct information. He said something and added he will confirm in an email
- 9-13-06 After talking to Bill Higgins regarding the deposit instructions that has Ron and Rusty cc, I called Clay and told him if Wando Riv. Does not get our money then why sign release. And tell him to have our money released to Wando River, The members.
- 9-14-06 explained to Guarantor what Wando River intentions to deposit while he replies to Higgins his email request for escrow funds with KRA acct number
- I called Higgins back and inform him that our atty told me to let you know our members have voted on it and we request it be deposit in our acct. as well as the fact that he is our atty. And he replied that Rusty had engaged him.
- Talked to members and our original atty., Robert regarding our options and had to take into consideration having payment in by 9-15 to keep us out of default on Wando River LLC property Although we have been push us in a corner ,Higgins will be held liable for his actions and we will try to hang on to as much interest on the property as possible, Sell it as soon as possible and go back on Higgins to hold him responsible for a successful 19 million Development but for Bill Higgins depositing in an acct other than ours

- 9-15-06 Money gets released and still does not make our acct and show up in theirs Monday the 18th.
- The deposit is held till the 18TH because Rusty Bennett would not sign it and let us go into default status just because he could.

The Closing, Culmination of Fraud

The closing that TOOK PLACE on June 28, 2008 was the final act under direst that Wando River had to deal with. It was at this point that KRA/Bennett culminated their acts of fraud. From intervening in the deposit of $500,000.00 escrow money to holding the Wando river property at bay until they finally threatened the balance of the original investment money with a les pen dins. KRA/Bennett held the property from January till June 2008 while formulating their version of the financial numbers. After Wando River accept KRA/Bennett's' proposal to close prior to June, KRA/Bennett again refused to close due to the fact that there was between 200,000 and 300,000 above Wando Rivers' original investment. ONLY when KRA/Bennett knew for sure that Wando River walked away with $0.00 did they agree to close. The last act was their fraudulent statements showing the property at $8+ million dollars and demanding the funds while we are under direst due to our preparation to sue Higgins, Trentholm and Clay , KRA and Bennett. Under Direst we had to sign the closing release in order to get just our Original money back and keep Bill Higgins name off the release. KRA/Bennett did everything they could to keep all the money so we couldn't sue(We are Broke) and get every member of the crooks on their Release prior to closing. There is no more proof than the release. It shows exactly who was working together. Why aren't Trentholm and Clay on the release???

Remember, KRA/Bennett had our money and property tied up until final closing June 28, 2008. We could not look into anything that caused trouble because of the negotiations under direst up till closing

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Original suit was brought about because it was believed that Trentholm Clay and Higgins did not do what they said they would and billed me for (mal-Practice). It was not until Trentholm told me and Lawyers;, Dawes Cook, Amy Campbell, that Trentholm did in fact give Higgins prearranged directions on the deposit of the $500,000.00. It is at this time that the realization that Higgins went against the direction of Wando Rivers' and Trentholm Walker as lawyer for Wando River late in 2010.

I should have known about the fraud but did not see it until the release of Trentholm & Clay late in 2010 where they confirmed their duties to give Higgins full disclosure and get his informed consent regarding deposit instructions

Items of events that tainted closing

- Early in
- Lis pendins and the 3 offers from KRA/ Bennet that are ultimately rejected due to funds being above the original investment by Wando River, which is unacceptable to KRA /Benet. It is the discovery methods and operating outside KRA/ Benet legal authority in the filings that is the basis of this suit
- Scheduled time for closing (1ST 2 weeks of 2008 at latest since Buyer has family Christmas travel. After numerous meetings with Robert Dodds, (Wando Rivers' lawyer) and Buyer, between 1ST. of Nov. to 28th. Of Dec. 28 to complete paperwork for closing.
- Last quarter of 2007, RO/RB have prearranged meetings with Chris Clausen (banker Previously closed original loan) and complete a loan application for Wando River.
- Last quarter of 2007, RO/RB have continually put their amended Guarantor Agreement in front of me to sign. It has 3 major changing factors to the ownership of Wando River llc's property.
-
- After telling KRA/Benet that Wando River has financing taking care of, KRA/Benet constantly continue to force our hand to closing this loan
- Dec. 18th. 2007 , full disclosure to guarantors regarding sale of property
- Loan is paid off on Dec 28th. 2007
- LM expressing the issues regarding easements on Wando River Property that needs to be physically looked over at Berkeley Court house.
- AJS goes to Berk. County and picks up best available copies of easements from clerk and delivers them same day to LM .

SECTION 15-3-530. Three years.

Within three years:

(7) any action for relief on the ground of fraud in cases which prior to the adoption of the Code of Civil Procedure in 1870 were solely cognizable by the court of chancery, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

SECTION 15-3-535. Limitation on actions commenced under Section 15-3-530(5). [SC ST SEC 15-3-535]

Except as to actions initiated under Section 15-3-545, all actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.

The release signed at Closing with all the names of people involved in questionable action

(1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in Section 15-3-520;

(2) an action upon a liability created by statute other than a penalty or forfeiture;

(3) an action for trespass upon or damage to real property;

(4) an action for taking, detaining, or injuring any goods or chattels including an action for the specific recovery of personal property;

(5) an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law, and those provided for in Section 15-3-545;

(6) an action under Sections 15-51-10 to 15-51-60 for death by wrongful act, the period to begin to run upon the death of the person on account of whose death the action is brought;

(7) any action for relief on the ground of fraud in cases which prior to the adoption of the Code of Civil Procedure in 1870 were solely cognizable by the court of chancery, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

(8) an action on any policy of insurance, either fire or life, whereby any person or property, resident or situate in this State, may be or may have been insured, or for or on account of any loss arising under the policy, any clause, condition, or limitation contained in the policy to the contrary notwithstanding; and

(9) an action against directors or stockholders of a monied corporation or a banking association to recover a penalty or forfeiture imposed or to enforce a liability created by law, the cause of action in the

case not considered to have accrued until the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached or the liability was created, unless otherwise provided in the law under which the corporation is organized.

Cumulative effect

SECTION 16-13-260. Obtaining property under false tokens or letters. [SC ST SEC 16-13-260]

A person who falsely and deceitfully obtains or gets into his hands or possession any money, goods, chattels, jewels, or other things of another person by color and means of any false token or counterfeit letter made in another person's name is guilty of a:

SECTION 16-13-210. Embezzlement of public funds. [SC ST SEC 16-13-210]

(A) It is unlawful for an officer or other person charged with the safekeeping, transfer, and disbursement of public funds to embezzle these funds.

SECTION 16-13-220: Embezzlement of public funds; presumption on proof of failure to account for receipts.[SC ST SEC 16-13-220]

In trials under § 16-13-210, upon production of evidence tending to prove that any such officer or other person has received public funds and failed to account for the funds as required by law; it is permissible to infer that the funds received and unaccounted for have been fraudulently appropriated by the officer or person.

SECTION 16-13-230. Breach of trust with fraudulent intent. [SC ST SEC 16-13-230]

(A) A person committing a breach of trust with a fraudulent intention or a person who hires or counsels another person to commit a breach of trust with a fraudulent intention is guilty of larceny.

SECTION 16-13-240. Obtaining signature or property by false pretenses. [SC ST SEC 16-13-240]

A person who by false pretense or representation obtains the signature of a person to a written instrument or obtains from another person any chattel, money, valuable security, or other property, real or personal, with intent to cheat and defraud a person of that property is guilty of a:

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SECTION 16-13-250. Effect when obtaining signature or property by false pretenses amounts to larceny. [SC ST SEC 16-13-250] Lynn McCants

If upon the trial of any person indicted for a misdemeanor under the provisions of § 16-13-240 it shall be proved that he obtained the property in such a manner as to amount in law to larceny he shall not, by reason thereof, be entitled to be acquitted of such misdemeanor. No person tried for such misdemeanor shall be liable to be afterwards prosecuted for larceny upon the same facts.

SECTION 16-13-260. Obtaining property under false tokens or letters. [SC ST SEC 16-13-260] Lynn McCants

A person who falsely and deceitfully obtains or gets into his hands or possession any money, goods, chattels, jewels, or other things of another person by color and means of any false token or counterfeit letter made in another person's name is guilty of a:

IV. *MOTIONS TO DISMISS FOR FAILURE TO STATE A CLAIM*

1. "In common with most of the courts of this country we have held that a real estate `broker is a fiduciary.' *Silverman v. Kogok*, 239 Md. 71, 76, 210 A.2d 375 (1965). In his dealings with his employer he `is bound to act *in good faith* and to make disclosures of matters that are material and might affect the action of his employer in the premises.' *Coppage v. Howard*, 127 Md. 512, 523, 96 A. 642 (1916). [Heading 3 - Section

2. *Sufficient facts to state a cause of action on which relief could be granted*

"In common with most of the courts of this country we have held that a real estate `broker is a fiduciary.' *Silverman v. Kogok*, 239 Md. 71, 76, 210 A.2d 375 (1965). In his dealings with his employer he `is bound to act *in good faith* and to make disclosures of matters that are material and might affect the action of his employer in the premises.' *Coppage v. Howard*, 127 Md. 512, 523, 96 A. 642 (1916). [Heading

3 – *In determining a motion to dismiss*

[*In determining a motion to dismiss pursuant to Fed.R.Civ.P. 73*73 12(b)(6) is "necessarily a limited one."* Hamilton Chapter of Alpha Delta Phi, Inc. v. Hamilton College, 128 F.3d 59, 62 (2d Cir.1997). *A complaint should not be dismissed for failure to state a claim "unless it appears beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief."* Padavan v. United States, 82 F.3d 23, 26 (2d Cir.1996) *(quoting* Hughes v. Rowe, 449 U.S. 5, 10, 101 S.Ct. 173, 66 L.Ed.2d 163 (1980)*). The issue is not whether the plaintiff will ultimately prevail, but whether it is entitled to offer evidence in support of its claims. See* Wright v. Ernst

& Young LLP, 152 F.3d 169, 173 (2d Cir.1998), *cert. denied,* ___ U.S. ___, 119 S.Ct. 870, 142 L.Ed.2d 772 (1999); Hamilton College, 128 F.3d at 62. *In assessing the legal sufficiency of a claim, the Court may consider not only the facts alleged in the complaint, but also any document attached as an exhibit or incorporated by reference, and any matters of which judicial notice may be taken. See Fed.R.Civ.P. 10(c);* Hertz Corp. v. City of New York, 1 F.3d 121, 125 (2d Cir.1993); Cortec Indus., Inc. v. Sum Holding L.P., 949 F.2d 42, 47 (2d Cir.1991). *All wellpleaded factual allegations will be accepted as true and all reasonable inferences must be drawn in favor of the plaintiff. See* Wright, 152 F.3d at 173. *However, "if the allegations of a complaint are contradicted by documents made a part thereof, the document controls."* Sazerac Co. v. Falk, 861 F.Supp. 253, 257 (S.D.N.Y.1994) *(citing* Feick v. Fleener, 653 F.2d 69, 75 n. 4 (2d Cir.1981)).

2.

Fraud, Inter Alia

V. *DOLO MALO PACTUMSE NON SERVATUUUM.*

-An agreement induced by fraud is not valid.

Regarding the Fourth Defence, the Fifth Defense, the Seventh Defense, the Eighth Defense and the Ninth Defense

It is clear upon the examination of the documents that the defendants references that the guarantors and their Counsel utilize a Mass of Judicial Created Actions in an attempt to overburden and intimidate the opposing parties

Specifically regarding Wando River and KRAlp And Bennett(The Guarantors)

- The Waiver in the fourth defense was enacted fraudulently
  - A. The Investor Agreement states in section 4.2 that this agreement shall terminate at such time as the investors liability on the guaranty ends.
  - B. The investors liability on the guaranty ended 12 28 2007
  - C. The Guarantors filed their case on 2-4-2008
  - D. The guarantors knew the the terms on the Investor Agreement per their 2nd amendment that we refused to sign and ultimately sold the property. Its that bad and is attached as an exhibit. It included among other things that Wando River "Waive any Jury Trial" in the future....
  - E. This defense was enacted while Wando River LLC was under Duress

- The Fifth defense was enacted fraudulently
  - A. The Settlement and Release was a product of the Guarantors case filed on 2-4-2008 and falls under section 4.2 Investor Agreement
  - B. A Release is voidable absent of Consideration

1. The actions by the guarantors on and around closing pilfered all the proceeds leaving Wando River llc in a deficit that provided no funds to validate the Release.
   a) The same can be said for the Release pertaining to the escrow funds misapproiated from DR Horton Contract
   b) This defense was enacted while Wando River LLC was under Duress

- **Seventh Defense was enacted fraudulently**
  A. Estopple is also a product of the Guarantors case filed on 2-4-2008 and falls under section 4.2 Investor Agreement
  B. This defense was enacted while Wando River LLC was under Duress
- **Eighth Defense was enacted fraudulently**
  A. The Res Judica is a product of the Guarantors case filed on 2-4-2008 and falls under section 4.2 Investor Agreement
  B. This defense was enacted while Wando River LLC was under Duress
- **Ninth Defense was enacted fraudulently**
  A. The additional Defences are a product of the Guarantors case filed on 2-4-2008 and falls under section 4.2 Investor Agreement
  B. This defense was enacted while Wando River LLC was under Duress
  C.

A judicially created defense to transactions that have been imposed upon weak and vulnerable persons that allows the transactions to be set aside.

Virtually any act of persuasion that over-comes the free will and judgment of another, including exhortations, importunings, insinuations, flattery, trickery, and deception, may amount to undue influence. Undue influence differs from duress, which consists of the intentional use of force, or threat of force, to coerce another into a grossly unfair transaction. Blackmail, Extortion, bad faith threats of criminal prosecution, and oppressive Abuse of Process are classic examples of duress.

A. Fraus est Celare Fraudem

-It is a Fraud to Conceal a Fraud

defendant promised to keep the plaintiff in good financial standing with the developer fee for both developing partners, to respect the company's independence, and to provide a loan guarantee in exchange for an thirty to forty percent share of the company.the defendant's efforts to undermine the plaintiff and exploit the company evinced intentional fraud.] Heineman v. S & S Machinery Corp., 750 F.Supp. 1179 (E.D.N.Y.1990),

the choice of repudiating the contract or ratifying it and suing for damages to redress the injury inflicted by the false representation under it. Telma v. Gingell, *157 Md. 411, 146 A. 221. They have chosen the latter. Ratification of the contract, however, does not deprive the injured parties of redress for fraud practiced upon them in its inception.* Levin v. Hurwitz, *148 Md. 249, 254, 129 A. 218.* [

In *Bachrach v. United Cooperative*, 181 Md. 315, 29 A.2d 822 (1943), the Court of Appeals defined "fraud," as the term is used in equity, to

"... include[s] all acts, omissions and concealments which involve a breach of legal or equitable duty, trust or confidence justly reposed. ..."

B. Tortious interference

Under New York law, an action for tortious interference with (or inducement to breach)[95] contract must be commenced within three years from its accrual. *See* Norris v. Grosvenor Marketing Ltd., 803 F.2d 1281, 1287 (2d Cir.1986) (citing N.Y.C.P.L.R. § 214(4)); *Meridien Int'l Bank Ltd. v. Gov't of the Republic of Liberia*, 23 F.Supp.2d 439, 451-52 (S.D.N.Y.1998). Tenneco ultimately conceded (and correctly so) that a claim for tortious interference accrues on the date on which the plaintiff sustains an injury from the breach, not on the date when the defendant "interfered" with the contract. *See* Kronos, 81 N.Y.2d at 94-6, 612 N.E.2d at 291-93, 595 N.Y.S.2d at 933-35 (damages are required element of claim for tortious interference, therefore, claim does not accrue until plaintiff suffers injury resulting from induced breach).

VI. [Duress]

A. Duress

. In South Carolina, duress of goods, under circumstances of great hardship, will avoid a contract. 2 Bay R. 211 Bay, R. 470. But see Hardin, R. 605; 2 Gallis. R. 337.

B. [Heading 2 - Subpart]

[By alleging in its Cross-Claim that Trigen has breached the Three-Party Agreement, Delasa has challenged the validity of the Release. Based on the facts alleged in 76*76 its Cross-Claim, a jury could find that the Release is voidable due to economic duress. *See* Blumenthal v. Tener, 227 A.D.2d 183, 184, 642 N.Y.S.2d 26 (1st Dep't 1996) (where plaintiffs executed documents in midst of real estate development project when defendants/co-venturers opted not to go forward with project, leaving plaintiffs in precarious position, there was genuine issue of fact as to whether documents were executed under economic duress); *see also* Nicholas v. NYNEX, Inc., 929 F.Supp. 727, 732 (S.D.N.Y.1996) (agreement voidable on ground of economic duress if obtained: (1) by means of wrongful threat precluding exercise of free will; (2) under press of financial circumstances; and (3) where circumstances permitted no other alternative).]

1. Third claim for Relief

#26-12-18-07-12-19-07 Notice to sell and Meet commitment to pay off loan by 12-31-07 with KRA/Bennet reply and Acknowledgement

Alan,

Thank you for your note below. We are happy to discuss these matters with you further, but are concerned that at this late date it will not be possible to complete the refinancing before Dec. 30. As we and our lawyer have noted to you and Mr. Dodds numerous times over the past month, we had hoped to complete the refinancing by now as all of our necessary signatories will not be available after this week. As such, we'd suggest that you instruct Mr. Dodds to make every effort to close the refinancing this week. If you think that it would be helpful, we are available for a call with both of our lawyers today or tomorrow to discuss any remaining issues.

To your point below, we feel that the provisions you have deleted in the draft Second Amendment to Agreement are reasonable given your request for additional credit support from the Investors and we cannot move forward without such protections. Also, noting the current time pressure, we would suggest that we discuss any potential sales of the property after the refinancing has closed. We look forward to your response.

Ronald C. Owens
14 North Adger's Wharf
Charleston, SC 29401

(O) 843-722-1506
(C) 843-224-7876

Ron_Owens@KiawahIsland.com

-----Original Message-----
From: Alan Sheppard [mailto:alshep2000@yahoo.com]
Sent: Tuesday, December 18, 2007 12:42 PM
To: Ron Owens
Subject: Agreement

Ron,

This was going to Buddy but I will let you deal with it.

I have been chasing down Robert to have this agreement done and have found that the lawyer for your group would not accept changes and said that your group would deal with Alan and take care of everything. I just pried this out of Robert. Robert was asked by our group to confirm that the agreement was exactly what we had agreed upon up front. Ron also said that we would be renegotiating our agreement in June which we are prepared for. My group has now come to the point that we are prepared to sell the property at a price that gives you the maximum under your warrant and get our money back. That under 6 million. This sucks the most for me as I have the most tied up in it and have several buyers that have spent several months looking at it in the 12 million dollar range. We would rather move forward with you as agreed but understand that does not seem to be an option.

Robert is prepared to close and meet our 12-30 deadline with either group. Please let him know.

Merry Christmas

Alan Sheppard

Phone #843-224-9169
Fax #843-884-8131

12-19-07 Westbrook notice to proceed with confidentiality

Hey Alan

I have spoken to Robert Dodds and he is supposed to call you to confirm details and prepare papers for Friday signing. I have also started the process of arranging the "down payment" transfer before the end of the year. To avoid any problem with your bank getting it late, I will shoot to have the transfer take place on Dec 28th. Can you or Robert get me wiring instructions before this Friday so I can arrange that before I leave? Robert thought he could have draft papers ready to review by tomorrow. You should be sure to have everything reviewed by Cotton or another lawyer in whom you have confidence since you have apparently had a few bad experiences. Hope this one goes well for both of us.

Ed

Never signed *

SECOND AMENDMENT TO AGREEMENT

This is the Second Amendment (this "Second Amendment") to that certain Agreement dated August 25, 2004 (as amended or modified, the "Investor Agreement") among and between, on the one hand, Kiawah Resort Associates, L.P. ("KRA") and L. Russell Bennett ("Bennett" and, together with KRA, the "Investors") and, on the other hand, Wando River, LLC (the "Company"), Alan J. Sheppard ("Sheppard"), and Julian Reed Simmons, III ("Simmons"). The effective date of this Second Amendment is _____, 2007. Except as otherwise provided herein, capitalized terms used herein shall have the same meaning as in the Investor Agreement.

BACKGROUND

A. The Investor Agreement provides for, among other things, guarantees by KRA and Bennett of the Loan for the development of the Property.

B. The Company, Sheppard, and Simmons desire to refinance the Loan with a $3,535,000 loan (the "New Loan") from South Carolina Bank and Trust Company, N.A. (the "New Lender") on the terms outlined in that certain Loan Commitment dated October 18, 2007 from the New Lender.

C. The New Lender requires that seventy-five percent (75%) of the New Loan be guaranteed by KRA and that twenty-five percent (25%) of the New Loan be guaranteed by Bennett (the "New Guaranty").

D. The Investors have agreed to provide the New Guaranty under the terms and conditions set forth herein.

NOW THEREFORE for valuable consideration, and intending to be legally bound, the parties agree to amend the Investor Agreement as follows:

This communication may be attorney-client privileged or otherwise confidential. If you are not the intended recipient, please delete this message and notify the sender of this error.

Exhibit A , Amendment 2 to Investors Agreement

1. References to the "Lender", the "Loan", and the "Guaranty" in the Investor Agreement shall hereafter be deemed to refer to the "New Lender", the "New Loan", and the "New Guaranty", each as defined in this Second Amendment, respectively.

2. The Investors shall execute and deliver to the New Lender at closing of the New Loan the New Guaranty in the form attached hereto at Exhibit A.

3. Commencing on date of the closing of the New Loan, the guarantee fee set forth in Section 2.1.2 of the Investor Agreement shall accrue at a rate of seven and one half percent (7.5%) per annum.

3. The remaining funds in the Escrow, including those funds received from DR Horton relating to its efforts to purchase the Property, shall be used to pay interest on the New Loan and any other amounts owed to the New Lender, prior to the draw of additional funds under the New Loan for the payment of such amounts.

4. Section 2.3 of the Investor Agreement shall be deleted in its entirety and the following shall be substituted in lieu thereof:

"2.3 No distributions shall be made by the Company to its members until all amounts due Investors have been fully paid, unless otherwise approved by Investors."

5. Section 4.2 of the Investor Agreement shall be deleted in its entirety and the following shall be substituted in lieu thereof:

"4.2 This Agreement shall terminate at such time as the Investors' liability on the New Guaranty ends and all payments due under this Agreement and the Warrant have been made."

6. Section 5.1.8 of the Investor Agreement shall be deleted in its entirety and the following shall be substituted in lieu thereof:

"5.1.8 The Company shall not make any distributions, payments, loans or advances to any member or related party except for distributions permitted pursuant to Section 2.3 hereof."

7. The following is added to the end of Section 6.1 of the Investor Agreement as a new Section 6.1.7:

"6.1.7 The failure of the Company to make any payment under the Warrant when due."

8. Sheppard, Simmons, and the Company shall cause the sale of the Property to a third party on or before June 30, 2008 on terms approved in writing by the Investors in advance in their sole discretion. Failure to do so shall immediately constitute a Default under the Investor Agreement without any requirement for notice or further action by the Investors notwithstanding anything in the Investment Agreement to the contrary. Upon receipt of the terms and conditions of any such sale proposed by Sheppard, Simmons, and/or the Company, either or both of the Investors (individually or collectively, the "Purchasing Investor") may exercise the right of first refusal that is hereby granted to them and elect to purchase the Property on those same terms and conditions by delivering written notice to Sheppard, Simmons, and the Company within fifteen (15) days of receipt of written notice of such terms and conditions. Closing documentation shall be prepared by the Investors' counsel.

9. The following Sections are added to the Investor Agreement as new Sections 10.6, 10.7, and 10.8, respectively:

"10.6 Governing Law and Amendments. This Agreement shall be construed and enforced under the laws of the State of South Carolina applicable to contracts to be wholly performed in such State. No amendment or modification hereof shall be effective except in a writing executed by each of the parties hereto.

10.7. Time is of the Essence. Time is of the essence with respect to performance of the obligations of the parties hereunder.

10.8 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY

HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION."

10. The Company shall pay to the Investors upon the execution of this Second Amendment an additional commitment fee in the amount of $3,850.00.

11. The parties hereto confirm that, other than the original commitment fee set forth in Section 2.1.1 of the Investor Agreement, which was paid at execution of the First Amendment, and the additional commitment fee to be paid in accordance with Section 10 of this Second Amendment, all amounts due to the Investors under the Investor Agreement and the Warrant have not been paid and remain outstanding.

12. Except as amended herein, the Investor Agreement shall remain in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

KIAWAH RESORT ASSOCIATES, L.P.

By: D & W Investments, Inc.
Its: General Partner

By: _____
Charles P. Darby, III
Its: President

TWD INVESTMENTS, LLC

By: _____
Charles P. Darby, III
Its: Manager

_____
L. Russell Bennett, individually

WANDO RIVER, LLC

_____
By: Alan J. Sheppard
Its: Manager

_____
Alan J. Sheppard, individually

_____
Julian Reed Simmons, III, individually

STATE OF SOUTH CAROLINA	FILED	IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON	2013 FEB -5 PM 4:3	NINTH JUDICIAL CIRCUIT
ALAN SHEPPARD,	JULIE J. ARMSTRONG CLERK OF COURT	C.A. No.: 2011-CP-10-4537
Plaintiff,	BY	
vs.		MOTION FOR ATTORNEYS' FEES AND COSTS AGAINST PLAINTIFF ALAN SHEPPARD PURSUANT TO THE SOUTH CAROLINA CIVIL FRIVOLOUS PROCEEDINGS SANCTIONS ACT
WILLIAM O. HIGGINS, RUSSELL BENNETT, RONALD OWENS, CHARLES P. DARBY, LYNN MCCANTS, AND KIAWAH RESORT ASSOCIATES, L.P.		
Defendants.		

COME NOW the Defendants Russell Bennett ("Bennett"), Ron Owens ("Owens"), Charles P. Darby ("Darby"), and Kiawah Resort Associates, L.P. ("KRA") (collectively, the "Defendants"), by and through their undersigned counsel, and hereby file this Motion for Attorneys' Fees and Costs Against Plaintiff Alan Sheppard pursuant to the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code § 15-36-10 ("Frivolous Proceedings Act" or the "Act"). The grounds for this Motion are that Plaintiff violated the Act by re-filing a set of claims that had already been released, settled, and dismissed with prejudice, causing Defendants to incur fees, costs, burdens, and inconvenience as a result of frivolous claims that have no existence or validity. An award of sanctions is necessary and proper to address Plaintiff's intentional pursuit of unwarranted claims and to deter further conduct of this kind.

LEGAL STANDARD

"The determination of whether attorney's fees should be awarded under the Frivolous Proceedings Act is treated as one in equity." *Hanahan v. Simpson*, 326 S.C. 140, 156, 485 S.E.2d 903, 912 (1997). In reviewing the award in issue, this Court may take its own view of the

preponderance of the evidence." *Id.* As set forth under the Frivolous Proceedings Act, the Court may issue sanctions against pro se litigants based on the following standards:

> (1) An attorney, party, or pro se litigant shall be sanctioned for a frivolous claim or defense if the court finds the attorney, party, or pro se litigant failed to comply with one of the following conditions:
>
> (a) a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law;
>
> (b) a reasonable attorney in the same circumstances would believe that his procurement, initiation, continuation, or defense of the civil suit was intended merely to harass or injure the other party; or
>
> (c) a reasonable attorney in the same circumstances would believe that the case or defense was frivolous as not reasonably founded in fact or was interposed merely for delay, or was merely brought for a purpose other than securing proper discovery, joinder of proposed parties, or adjudication of the claim or defense upon which the proceedings are based.
>
> (2) Unless the court finds by a preponderance of the evidence that an attorney, party, or pro se litigant engaged in advancing a frivolous claim or defense, the attorney, party, or pro se litigant shall not be sanctioned.

S.C. Code § 15-36-10(C). Defendants have filed this Motion within 10 days of receipt of written notice dismissing Plaintiff's claims under Rule 12(c), SCRCP, so the Motion is both ripe and timely. *See, e.g., Pitman v. Republic Leasing Co.*, 351 S.C. 429, 431, 570 S.E.2d 187, 189 (Ct. App. 2002) ("because a trial judge retains jurisdiction pursuant to Rule 59(e), SCRCP, to alter or amend a judgment within ten days of its issuance, a motion for sanctions would be timely if filed within ten days of judgment").

SUMMARY OF FACTS

Defendants seek sanctions because Plaintiff has filed and pursued the exact same claims in a second lawsuit after the claims were already settled and dismissed in a prior lawsuit. The

first lawsuit ("Prior Action") was resolved through a binding release and settlement agreement, personally signed by Plaintiff, as well as a Stipulation of Dismissal with Prejudice. Approximately three years later, Plaintiff re-filed the same claims in this Action. As a result, and for the reasons set forth more fully below, Plaintiff's claims in this Action were plainly frivolous.

On February 4, 2008, Defendants KRA and Bennett initiated the First Action. Plaintiff asserted counterclaims against KRA and Bennett for: (1) interference with contractual relationship; (2) breach of fiduciary duty; (3) interference with contract; and (4) breach of the implied covenant of good faith and fair dealing, which included factual allegations relating to alleged interference with Plaintiff's relationship with his attorney and retention of earnest money.[1] As noted above, Plaintiff, KRA, and Bennett resolved the Prior Action through a Settlement and Release Agreement, which allowed for the entity controlled by Plaintiff (Wando River, LLC) to sell the Wando River Property to a third party (Wando E, LLC). Plaintiff signed the Settlement and Release Agreement both in his individual capacity and as managing member of Wando River, LLC, as Plaintiff was a named party in the Prior Action.

The Settlement Agreement included a broadly-worded, unrestricted mutual release of claims ("Mutual Release") as follows:

> Mutual Release of Claims. In consideration for the mutual promises and obligations hereunder, KRA, Bennett, Wando River, Sheppard, [and] Simmons, on behalf of themselves and their subsidiaries, affiliate entities, principals, shareholders, directors, officers, employees, representatives, members, managers, agents, heirs, successors, and assigns each hereby release and discharge each other and their respective subsidiaries, affiliate entities, principals, shareholders, directors, officers, employees, representatives, members, managers, agents, heirs, successors, and assigns from any and all claims or causes of action of any kind as

[1] A review of the Complaint filed in this Action makes clear that Plaintiff has refiled the same claims, complaining of alleged interference with his attorney/client relationship, loss of earnest money, interference with the contract to sell the Wando River property, and the other allegations made by Plaintiff in the counterclaims asserted in the First Action.

they may have against one another including but not limited to all claims and counterclaims raised in this Action.

KRA and Bennett were parties to the Settlement and Release Agreement, with Darby signing the document on behalf of KRA as its authorized officer. As alleged in the Complaint, Defendant Owens is an agent of KRA. As agreed, the Mutual Release included not only the parties to the Settlement Agreement, but also their "subsidiaries, affiliate entities, principals, shareholders, directors, officers, employees, representatives, members, managers, agents, heirs, successors, and assigns." *Id.* (emphasis added). Consistent with the terms of the Settlement Agreement, the parties concluded the Prior Action by filing a Stipulation of Dismissal with Prejudice with the Berkeley County Court of Common Pleas on July 15, 2008.

On June 27, 2011, Plaintiff filed a lawsuit ("Complaint") in which Plaintiff asserted the same claims against Defendants relating to the purchase and sale of real property on the Wando River in Berkeley County, South Carolina ("Wando River Property"). This Court has already ruled that "the Prior Action, including the Counterclaims, was based on the same facts and alleged injuries as set forth in the current Complaint." *See* January 28, 2013 Order at ¶ 8. For this reason, Defendants filed a Motion for Judgment on the Pleadings in this Action, on the basis that the claims were barred by res judicata, the mutual release in the Settlement Agreement, and the statute of limitations. This Court has found that Plaintiff's Complaint in this Action was barred by *res judicata*, the mutual release in the prior Settlement Agreement, and the statute of limitations, dismissing all claims against Defendants. *See* January 28, 2013 Order at ¶¶ 9-16. Having obtained dismissal of frivolous claims that never should have been brought, Defendants now file this Motion against Plaintiff.

ARGUMENT

A. THE COURT SHOULD AWARD SANCTIONS AS A REASONABLE PRO SE LITIGANT IN THE SAME CIRCUMSTANCES WOULD HAVE BELIEVED THAT PLAINTIFF'S CLAIMS WERE UNWARRANTED AND THAT NO GOOD FAITH OR REASONABLE ARGUMENT EXISTED FOR THE EXTENSION, MODIFICATION, OR REVERSAL OF EXISTING LAW.

Under the Frivolous Proceedings Act, any person who takes part in the procurement, initiation, continuation, or defense of any civil proceeding is subject to being assessed for payment of all or a portion of the attorney's fees and court costs of the if a reasonable attorney in the same circumstances would believe that under the facts, his claim or defense was clearly not warranted under existing law and that a good faith or reasonable argument did not exist for the extension, modification, or reversal of existing law. *See* S.C. Code Ann. § 15-36-10.

It is undisputed that Plaintiff initiated this Action by filing the Complaint on June 27, 2011, in which he asserted the same claims against Defendants as were asserted in the Prior Action that was resolved three years earlier. It is also undisputed that Defendants' Motion for Judgment on the Pleadings was granted by the Court on January 25, 2013 on the basis that Plaintiff was attempting to re-litigate claims that were already resolved, settled, adjudicated, and dismissed with prejudice. Significantly, the reasons for dismissing the claims were so clear that the case did not reach the summary judgment stage, much less a trial on the merits. The claims were clearly barred, as Plaintiff knows because Plaintiff signed the Settlement Agreement that included the mutual release. The Settlement Agreement released and discharged any and all claims or causes of action "of any kind" against Defendants. In turn, Plaintiff's counsel signed and filed a Stipulation of Dismissal, as was required under the terms of the Settlement Agreement. By taking those actions, Plaintiff permanently concluded and resolved the claims in exchange for the consideration provided to him under the Settlement Agreement.

As a result, Plaintiff cannot have reasonably believed that he retained the rights to sue Defendants for the exact same claims that he already knowingly released and dismissed with prejudice. Plaintiff received valuable consideration in the settlement of the Prior Action, which included the ability to close a desired land transaction that Defendants otherwise had the ability to prevent. The claims were frivolous, and any reasonable litigant would have recognized this. A reasonable litigant would have recognized that the purposed intent of re-filing claims that are not valid was solely to injure and harass Defendants. Therefore, an award of sanctions is proper.

Defendant has spent considerable time in defending the action brought by Plaintiff, including procuring the dismissal of the lawsuit through a Motion for Judgment on the Pleadings. The parties also were required to administer the case and conduct trial preparations when the case appeared on the jury trial roster, even though the claims were frivolous. Defendants request attorneys' fees and costs in the amount of $10,500.89 be awarded to them in the form of a judgment against Plaintiff. Defendants believe the Court will deem the fees reasonable and necessary in defending the action brought by Plaintiff. Defendants request is supported by the Affidavit of Attorneys' Fees, attached hereto as Exhibit A; as well as the itemized billing statements, attached hereto as Exhibit B.

B. DEFENDANTS ARE ENTITLED TO AN AWARD OF SANCTIONS IN LIGHT OF THE ADDITIONAL FACTORS LISTED IN THE FRIVOLOUS SANCTIONS ACT.

In addition to the required elements discussed above, the Act also sets forth a list of factors that the Court should consider in determining whether a pro se litigant has violated the Frivolous Sanctions Act:

> In determining if an attorney, party, or a pro se litigant has violated the provisions of this section, the court shall take into account:
>
> (1) the number of parties;

(2) the complexity of the claims and defenses;

(3) the length of time available to the attorney, party, or pro se litigant to investigate and conduct discovery for alleged violations of the provisions of subsection (A)(4);

(4) information disclosed or undisclosed to the attorney, party, or pro se litigant through discovery and adequate investigation;

(5) previous violations of the provisions of this section;

(6) the response, if any, of the attorney, party, or pro se litigant to the allegation that he violated the provisions of this section; and

(7) other factors the court considers just, equitable, or appropriate under the circumstances.

S.C. Code § 15-36-10(E). Applying these factors, Plaintiff sued six defendants, causing six defendants expense, burden and inconvenience, as opposed to a single party. Notably, Plaintiff's frivolous claims against all six defendants were dismissed on Rule 12 motions. The reasons for dismissal of Plaintiff's claims were not complex, but rather were plain and obvious: A litigant cannot settle and dismiss claims with prejudice and then re-file and attempt to litigate the claim again. Any reasonable litigant would recognize this, but Plaintiff proceeded nonetheless.

Regarding the third and fourth factors, no discovery was conducted in the action relating to the reasons why the claims are frivolous because no discovery on that issue was necessary. The Settlement Agreement and Stipulation of Dismissal speak for themselves. The binding terms of those documents cannot be varied by deposition testimony or other parol evidence.. Furthermore, while Defendants are not personally aware of prior violations of the Act by Plaintiff, Plaintiff has committed multiple violations of the Act in this Action. The claims against Defendants Darby, Owens, Bennett, and KRA violate the Act, as do the claims against Defendant Higgins, which were previously litigated and dismissed. In terms of the Plaintiff's response, the sixth factor, undersigned counsel believes that the response will only provide

further evidence of Plaintiff's obsession with his dismissed claims, which resulted in the dismissed claims being re-filed.

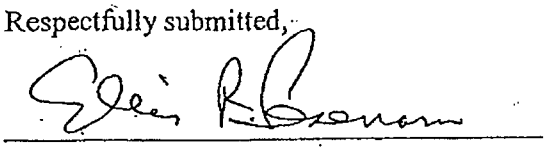
In light of the relevant factors, there is no question that claims were improper and frivolous. However, what is uncertain is whether Plaintiff will cease his behavior, as he is already filing additional groundless motions regarding the dismissal of his claims. An award of sanctions, along with an order directing Plaintiff not to re-file the dismissed claims, is necessary and proper to see that Plaintiff's behavior be brought to a halt when he faces consequences for his actions.

CONCLUSION

WHEREFORE, Defendants respectfully request the Court grant their Motion for Attorneys' Fees and Costs Against Plaintiff Alan Sheppard Pursuant to the South Carolina Civil Frivolous Proceedings Act, and issue the following relief: (1) an award of the fees and expenses in the amount of $10,500.89 incurred by Defendants in the defense of this Action; and (2) an order directing Plaintiff to cease and desist from filing any claims against Defendants relating to Wando River, LLC, the property formerly owned by Wando River, LLC, or the prior dealings between Plaintiff, Wando River, LLC and Defendants, enforceable under the full contempt powers of the Court.

[Signature page to follow]

Respectfully submitted,



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Mount Pleasant, South Carolina 29464
Phone: (843) 388-8883
Fax: (843) 388-8884

Attorneys for Russell Bennett, Ronald Owens, Charles P. Darby, and Kiawah Resort Associates, L.P.

February 5, 2013
Mount Pleasant, South Carolina

CERTIFICATE OF SERVICE

I hereby certify that I have this date, mailed, postage prepaid, a true and correct copy of the **Motion for Attorneys' Fees and Costs Against Plaintiff Alan Sheppard Pursuant to the South Carolina Civil Frivolous Proceedings Sanctions Act** to the following counsel of record:

Alan Sheppard
462 Commonwealth Road
Mount Pleasant, SC 29466
Pro Se Plaintiff

John J. Pringle, Jr., Esquire
Ellis, Lawhorne & Sims, P.A.
Post Office Box 2285
Columbia, SC 29202
Attorney for Defendant William O. Higgins

J. Lynn McCants, Esquire
J. Lynn McCants, LLC
782 Johnnie Dodds Blvd., Suite A
Mt. Pleasant, SC 29464
Pro Se Defendant

FILED
2013 FEB -5 PM 4:31
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

By: _____
Alden J. Stair

This 5TH day of February, 2013
Mount Pleasant, South Carolina

EXHIBIT A

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	NINTH JUDICIAL CIRCUIT
ALAN SHEPPARD,	)	C.A. No.: 2011-CP-10-4537
	)	
Plaintiff,	)	
	)	
vs.	)	AFFIDAVIT OF
	)	ELLIS R. LESEMANN, ESQ.
WILLIAM O. HIGGINS, RUSSELL BENNETT,	)	FOR ATTORNEYS' FEES AND
RONALD OWENS, CHARLES P. DARBY,	)	COSTS
LYNN MCCANTS, AND KIAWAH RESORT	)	
ASSOCIATES, L.P.	)	
	)	
Defendants.	)	
	)	

PERSONALL APPEARED BEFORE ME, Ellis R. Lesemann, Esq. who being first duly sworn, deposes and states as follows:

1. I am a lawyer with the law firm of Harvey & Vallini, LLC ("Harvey & Vallini"). I have been practicing law for 14 (fourteen) years. Since March 2012, Amanda M. Blundy, Esq. and I have served as counsel for the Defendants, Russell Bennett ("Bennett"), Ron Owens ("Owens"), Charles P. Darby ("Darby"), and Kiawah Resort Associates, L.P. ("KRA") (collectively, the "Defendants") in the above-captioned action.

2. In preparing this Affidavit, I have conducted a thorough review of the file and billing information. I have reviewed each time entry to ensure reasonableness, accuracy and lack of duplication.

3. My hourly rate for this file was $250/hour, and Ms. Blundy's rate was $225/hour, and I believe these rates to be reasonable and comparable to the rates charged by other attorneys with similar experience for similar legal services in the Charleston area, and likely lower than the rates customarily charged by other attorneys.

4. Accordingly, the undersigned notifies the Court that Defendants have incurred $10,500.89 in attorneys' fees and costs in pursing this matter. Of this amount, $10,441.50 is attorneys' fees and $59.39 is expenses. All attorneys' fees and costs are itemized on Invoice No. 176, Invoice No. 402, and Invoice No. 631, which are attached hereto as Exhibit B.

5. Defendants ask that these fees and expenses be included in the default judgment awarded by the Court.

FURTHER AFFIANT SAYETH NOT.

Ellis R. Lesemann, Esq.

SWORN to and subscribed before me
this 5th day of February, 2013

Notary Public for the State of South Carolina
My commission expires: 2/04/2018

EXHIBIT B

HARVEY & VALLINI, LLC
ATTORNEYS AND COUNSELORS AT LAW

P.O. Box 1107
Lexington, SC 29071
Phone: 803-212-1010

INVOICE

Invoice # 176
Date: 12/29/2011
Due Upon Receipt

Kiawah Resort Associates, L.P.
Attn: Robert L. Brooke, Esq.
12 N. Adgers Wharf
Charleston, SC 29401

1779.002

Alan Sheppard v. KRA et al.

Type	Date	Description	Quantity	Rate	Total
Service	11/01/2011	Analysis/Strategy: Review of Complaint; analysis of grounds for dismissal; confer with Mr. McCants regarding background of case	0.50	$250.00	$125.00
Service	11/03/2011	Prepare Documents/Pleadings: Prepare Answer and Affirmative Defenses; select and assemble exhibits that will support upcoming dispositive motion	2.50	$250.00	$625.00
Service	11/04/2011	Legal Research: Locate and transmit affidavits of service to Mr. Brooke	0.30	$250.00	$75.00
Service	11/08/2011	Prepare Documents/Pleadings: Review and incorporate revisions suggested by Mr. Brooke for Answer and Affirmative Defenses	0.30	$250.00	$75.00
Service	11/09/2011	Analysis/Strategy: Finalize Answer and prepare for filing and service; prepare correspondence to clerk of court and Alan Sheppard	0.40	$295.00	$118.00
Expense	11/10/2011	Reimbursable expense: Postage for service and filing of Answer	1.00	$6.64	$6.64
Service	11/15/2011	Legal Research: Research regarding binding effect of prior settlement and res judicata effect of prior dismissal with prejudice	0.80	$250.00	$200.00
Service	11/15/2011	Analysis/Strategy: Confer with Mr. Brooke regarding strategy of preparing Amended Answer to provide additional support for Motion for Judgment on the Pleadings	0.30	$250.00	$75.00
Service	11/16/2011	Prepare Documents/Pleadings: Prepare Motion for Judgment on the Pleadings	4.20	$250.00	$1,050.00

Service	11/17/2011	Prepare Documents/Pleadings: Prepare Motion for Judgment on the Pleadings; legal research of issues raised in Motion; confer with Mr. Brooke regarding status and strategy	4.10	$250.00	$1,025.00
Service	11/17/2011	Prepare Documents/Pleadings: Prepare Amended Answer	0.70	$250.00	$175.00
Expense	11/18/2011	Reimbursable expense: Filing Fee for Motion for Judgment on Pleadings	1.00	$25.00	$25.00
Expense	11/18/2011	Reimbursable expense: Postage for sending packages to Court	1.00	$27.75	$27.75
Service	11/18/2011	Prepare Documents/Pleadings: Prepare and finalize Amended Answer, Motion for Judgment on the Pleadings, and related documents; file and serve pleadings	1.50	$250.00	$375.00

Total	**$3,977.39**
Payment (01/25/2012)	**-$3,977.39**
Balance Owing	**$0.00**

Please make all amounts payable to: Harvey & Vallini LLC, Attention Accounting Department, P.O. Box 1107, Lexington, SC 29071

HARVEY & VALLINI, LLC
ATTORNEYS AND COUNSELORS AT LAW

P.O. Box 1107
Lexington, SC 29071
Phone: 803-212-1010

INVOICE

Invoice # 402
Date: 05/19/2012
Due Upon Receipt

Kiawah Resort Associates, L.P.
Attn: Robert L. Brooke, Esq.
12 N. Adgers Wharf
Charleston, SC 29401

1779.002

Alan Sheppard v. KRA et al.

Type	Date	Description	Quantity	Rate	Total
Service	03/14/2012	CLV: prepare notice of hearing and letter to court regarding filing same	0.30	$95.00	$28.50
Service	04/24/2012	ERL: Prepare for hearing on Motion for Judgment on the Pleadings	2.10	$250.00	$525.00
Service	04/25/2012	ERL: Attend and conduct hearing on Motion for Judgment on the Pleadings seeking dismissal of entire action; confer with Mr. Brooke regarding status	2.90	$250.00	$725.00
				Total	**$1,278.50**

Please make all amounts payable to: Harvey & Vallini LLC, Attention Accounting Department, P.O. Box 1107, Lexington, SC 29071

HARVEY & VALLINI, LLC
ATTORNEYS AND COUNSELORS AT LAW

P.O. Box 1107
Lexington, SC 29071
Phone: 803-212-1010

INVOICE

Invoice # 631
Date: 01/30/2013
Due Upon Receipt

Kiawah Resort Associates, L.P.
Attn: Robert L. Brooke, Esq.
12 N. Adgers Wharf
Charleston, SC 29401

1779.002

Alan Sheppard v. KRA et al.

Type	Date	Description	Quantity	Rate	Total
Service	08/06/2012	AMB: Detailed evaluation of pleadings including grounds for Defendants' Motions and Dismissal by Judge McDonald	0.70	$225.00	$157.50
Service	08/06/2012	AMB: Initial preparation of proposed order to dismiss Complaint	0.70	$225.00	$157.50
Service	09/07/2012	ERL: Tasks and conferences to insure that case is removed from roster until such time as dispositive motions are resolved; confer with Mr. Brooke regarding status	0.40	$250.00	$100.00
Service	09/10/2012	ERL: Confer with court personnel regarding status of case and motions.	0.30	$250.00	$75.00
Service	09/10/2012	ERL: Confer with counsel for co-defendant regarding status and pending motions	0.30	$250.00	$75.00
Service	09/10/2012	ERL: Confer with Mr. Brooke regarding status and strategy	0.30	$250.00	$75.00
Service	09/10/2012	ERL: Tasks and analysis regarding trial readiness of case	0.50	$250.00	$125.00
Service	09/11/2012	AMB: Detailed evaluation of pleadings, motions and file materials to assess discovery to be conducted, arguments for motion for status conference and further defense action to be conducted	1.50	$225.00	$337.50
Service	10/12/2012	ERL: Review of correspondence from court reflecting letter ruling; confer with Mr. Brooke regarding success in obtaining dismissal of case on Rule 12 motion	0.40	$250.00	$100.00

Service	10/16/2012	AMB: Preparation of proposed order as requested by Judge McDonald including detailed findings of fact and conclusions of law	2.60	$225.00	$585.00
Service	10/17/2012	ERL: Prepare and revise proposed order dismissing claims; transmit to Mr. Brooke and confer with Mr. Brooke	1.50	$250.00	$375.00
Service	10/22/2012	ERL: Finalize order and transmit to Alan Sheppard in accordance with Judge's instructions	0.40	$250.00	$100.00
Service	10/23/2012	ERL: Prepare correspondence and submit proposed order dismissing case to Plaintiff Alan Sheppard	0.30	$250.00	$75.00
Service	10/24/2012	ERL: Review submissions by Plaintiff Alan Sheppard in opposition to Motion for Judgment on the Pleadings	0.40	$250.00	$100.00
Service	10/29/2012	ERL: Submit proposed order to Judge McDonald in order to finalize dismissal of case	0.30	$250.00	$75.00
Service	11/02/2012	AMB: Detailed evaluation of strategy and applicable law in preparing motion for frivolous proceeding	1.00	$225.00	$225.00
Service	11/07/2012	AMB: Begin preparation of Motion for Sanctions under South Carolina Frivolous Proceedings Act	1.80	$225.00	$405.00
Service	11/07/2012	AMB: Review of cases relating to frivolous proceedings motions against pro se plaintiffs under the South Carolina Frivolous Proceedings Act	0.80	$225.00	$180.00
Service	11/08/2012	ERL: Confer with Mr. Brooke regarding Motion for Sanctions	0.30	$250.00	$75.00
Service	01/18/2013	ERL: Confer with Court regarding status of orders	0.20	$250.00	$50.00
Service	01/28/2013	ERL: Tasks and conferences regarding entry of order granting Motion for Judgment on the Pleadings	0.30	$250.00	$75.00
Service	01/28/2013	AMB: Research regarding South Carolina Frivolous Proceedings Act and application to case at bar; prepare first draft of Motion for Sanctions	0.80	$225.00	$180.00
Service	01/28/2013	AMB: Preparation of argument in support of Motion for Sanctions pursuant to South Carolina Frivolous Civil Proceedings Act	2.80	$225.00	$630.00
Service	01/28/2013	AJS: Prepare exhibits for inclusion with Motion for Sanctions; prepare detailed Affidavit of Attorney's Fees	0.80	$125.00	$100.00
Service	01/29/2013	ERL: Prepare Motion for Sanctions	2.10	$250.00	$525.00
Service	01/30/2013	ERL: Prepare Motion for Sanctions	0.90	$250.00	$225.00
Service	01/30/2013	AJS: Draft correspondence to Charleston County Clerk of Court filing Motion for Sanctions; edit, finalize and prepare same for filing and service	0.50	$125.00	$62.50
				Total	**$5,245.00**

Please make all amounts payable to: Harvey & Vallini LLC, Attention Accounting Department, P.O. Box 1107, Lexington, SC 29071

For THE CIRCUIT COURT
IN CHARLESTON SOUTH CAROLINA

FILED
2012 NOV -2 PM 4:56
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Alan Sheppard,	)	C/A No. 2011CP1004537
Plaintiff,	)	
V.	)	
William O. Higgins, Ronald C Owens	)	
Russell Bennett, Charles P Darby	)	REPLY TO MOTION TO DISMISS
Lynn McCants		AND
Defendants.		SUPPORTING MEMORANDUM
		Affidavit
	)	

The complaint should state, in a short and plain written manner, the facts constituting the cause of action, as I did in the complaint filed on the Court. It simply stated Fraud and Public Corruption.

In true form Mr. Bennett and Mr. Darby attempt control of Justice with the *affirmative legal claiming* practice that they utilize in just about all walks of life to take what they want with an "Untouchable Attitude" If all they would have done was take the money I earned in this project, this process would have never gotten this far. As Wando River LLC's members navigated the terms of Law Suits based on complete falsities the desire to walk away and give Mr. Bennett and Mr. Darby the funds gains ground. Wando River LLC had agreed on going to closing with the terms Mr Leseman noted in his letter on 02-28-08 (Attachment) to simply honor the commitment to sell the Property to the Buyer and for me as Managing Member to insure my group, that included family and close friends, that they would get their money back. Approximately $800,000 that Wando River LLC's members had to come out of pocket to make this project happen(Includes Down Payment, Capital Calls etc.). All in support of the work they knew I consistently produced. I might have even been able to laugh about it but for the accusations from Mr. Bennett and Mr. Darby that Alan Sheppard "Fraudulently" tried to sell their property without properly notifying them.

"A judgment may be set aside on the ground of fraud only if the fraud is 'extrinsic' and not 'intrinsic.'" Hogy, 339 S.C. at 431, 529 S.E.2d at 717. Extrinsic fraud is "'fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.'" Id. at 431, 529 S.E.2d at 717-18 (quoting Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). "[R]elief is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action." Chewning v. Ford Motor Co., 354 S.C. 72, 82, 579 S.E.2d 605, 610 (2003).

Intrinsic fraud is fraud which was presented and considered at trial. Chewning, 354 S.C. at 81, 579 S.E.2d at 610. "It is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud." Id.

In October 2007 a buyer steps up to purchase the property. The new terms of closing are "Close by years end and the buyer offers to meet these terms at a $5,750,000 price. The buyer also give Wando River LLC the option to entertain other buyers at a higher price as well as an option to go on and develop the property on our own if we are able to get acceptable terms. Genuine terms of a First Class.

Mid-way through December 2007 arrangement are made to proceed with closing and my group, (Constantly striving to do the right thing) decides to give Mr. Darby, KRA and Mr. Bennett an option to purchase the property at $6million in response to an offer they had made to Wando River LLC early in 2007 and 2006. The offer is harshly rejected and we are instructed to sign the terms (Attachment D) that relinquish ownership and more important sign bank documents (Attachment K) or we are going to face some more of their creative ownership program under the "Full Remedy of Default". Up till this day in December there were 3 occasions where the full remedy of default was pressed upon us.

1) July 2nd 2005 to meet Mr. Bennett and Mr. Darby threat of having to lend Wando River LLC(WRLLC) money to cover interest payment for the month between when we signed the contract with DRH and when WRLLC ran out of cash.

2) August 2nd 2006 to avoid Mr. Bennett and Mr. Darby's threat of having to lend Wando River LLC(WRLLC) money to cover interest payment for the month between when we signed the contract with Crescent Resources and when WRLLC ran out of cash after DR Horton Terminates their contract.

3) September 15th 2006 as the full capabilities of KRA's, Bennett's and Darby's reach across the line actually goes as the $500,000 in our escrow account is withheld 4 months (Attachment B) until I have no other reasonable alternative but to sign the 1st amended terms in Jan 2007 giving Mr. Bennett and Mr. Darby as much as 45% interest in the sale of Wando River LLC's property

Having had enough, Wando River LLC insistently declines and notifies Mr. Darby, KRA and Mr. Bennett on December 18th that Wando River LLC has entered a contract to sell our property and will meet our obligations under the agreements, closing the mortgage out by the end of 2007. [I must note that Wando River LLC also agreed to proceed to the bank and with the terms that we had agreed upon in a meeting of all the parties in October 2007.] In response to Wando River LLC's notice to sell, Mr. Owens and Mr. Darby send two emails (Attachment C) acknowledging the sale. In one they demand that we co-operate with the bank closing as well as come to KRA office to sign the amended agreements (Attachment D). Consistently disregarding any of Wando River LLC's actions or wishes in a total conflict of the fiduciary position Mr. Owens, Mr. Bennett, Mr. Darby and KRA have signed on (Attachment A) to take part as.

After paying the loan off on Friday December 28 2007(Attachment L) as Wando River LLC had informed Mr. Owens, Mr. Bennett and Mr. Darby we would do, a "Notice of Default" filed by on behalf of Mr. Bennett, Mr. Darby and KRA would show up first of the week claiming that Wando River LLC had defaulted on our loan by not paying off the loan prior to December 31,2007. A complete falsity (Attachment M) that Mr. Owens, Mr. Bennett, Mr. Darby and KRA were clearly aware of as the "Notice of Default" refers to the letter from Mr. Dodd's in Paragraph #2 as "We are in receipt of the letter dated December 28th 2007, delivered to them on my behalf". Here again, in the true "Untouchable Attitude" Mr. Bennett, Mr. Darby utilize their security blanket, another *affirmative legal claim,* fraudulently misleading the court in determining issues thus inducing the court to find for their party when they are actually perpetrating the fraud.

Fraud and the Release

Dolo malo pactumse non servatuuum. An agreement induced by fraud is not valid.

Buyer back in Charleston to complete sale only to find that there is influence on Mr. McCants to move closing further out till the end of January.

Buyers' lawyer, Lynn McCants is contacted by guarantors and their counsel and told that Mr. Sheppard is selling property unlawfully without noticing guarantors. Mr. McCants holds up closing for two weeks while I have to work triple overtime to provide buyer all of Wando River LLC's Articles of Incorporation, Deed, references as well as assure Mr. Buyer that I have not acted in any way fraudulently. In that one statement the individuals claiming to be Guarantors have successfully disgraced my reputation so much so that I now feel like a fraud. Maybe it's because my credit cards are all gone or my wife and two children's phones as well as mine have been disconnected, the Dr's office that I have been going to since I was 10 yrs old has asked me to go somewhere else because of non-payment and complications brought on by the side effects of cancer,. So after crushing my credit because of the defendants "Untouchable Attitude". Their constant *fraudulently misleading of the court in determining issues thus inducing the court to find for their party when they are actually perpetrating the fraud.* I have lost every material thing I have ever worked for including my ability to die with pride due to the lapse in all my life insurance policies in excess of 2.5 million dollars. I've sold my collections left to me by my father to put food on the table. Once prize possessions now just memories. But now as my children turned teenagers this year I see in their eye that they are starting to see that something's wrong. Wrong on the very basics of life where, if you're brought up right, you are mentally branded with a sense of right or wrong. You never have to think twice about it. However, when someone brought up like that gets falsely tarred and feathered, you can only pretend to be playing chicken with your kids for so long before even they can see that people or companies who have still sought me out for my expertise in Business Development, where I have focused my strength on the environmental conservation. Even THEN, they pick up and leave without a sound once the home foreclosure notice comes out in the paper or after a visit to my home where a couple basic repairs that need funds to fix sort of stand out enough to warrant a little better investigation that financially show a young man well in route to turning 50 on Nov 12 this year before 2005 got here and the wonderful Kiawah group and friend stepped into help finance a simply unquestionable winner of a waterfront project where the only place to put a marina on the Wando River would cost me everything I own.

Considered to be the Upper Class of Charleston SC

Jet(s) and 150' yachts and private islands and they utilize their security blanket to take a couple million from people they grew up with.

Pardon me for getting in the way. I will be here until I clear my name. So with that;

With the Closing of this project scheduled for the middle of third week in 2008, the LisPendens would just happen to show up the day before closing at Mr. Sheppard's home.

You would think that KRA, Mr. Bennett, Mr. Darby would have filed a law suit for fraud if I truly sold their property as they stated "Fraudulently without notification" to understand their actions you have to follow the documents that will show as a matter of law that when Wando River LLC paid off the loan at Carolina First on the 28th, the "Investor Agreement" Section 4.2 states that:

"4.2 This Agreement shall terminate at such time as the Investors' liability on the New Guaranty ends and all payments due under this Agreement and the Warrant have been made."

I would respectfully ask that the court to take the proper actions for this and the other actions articulated here. SECTION 15-17-20., 241. Conspiracy against rights, **SECTION 15-3-530. Three years, Fraud and all the actions the court see fit under.**

Rule 12(b), SCRMC provides that on motion and upon terms that are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons: (1) mistake, inadvertence, surprise, or excusable neglect; (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 19; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void

Which Mr. Bennett, Mr. Darby knew certainly as their final (Attachment O) *2008 Amendment to the Agreement* was written around section 4.2 being deleted in its entirety. But Mr. Bennett, Mr. Darby did not file a suit for Fraud, they simply filed a Lis Pendens acting Fraudulently as if they still had a contractual interest. Thus allowing them to force their terms on Wando River LLC. The law suit that was filed in February 2008 falls under the same fraudulent terms. KRA, Mr. Bennett, Mr. Darby had no standing at all to file the suits under any legal statues, as a matter of law. Here again, in the true "Untouchable Attitude" Mr. Bennett, Mr. Darby again utilize their security blanket, *affirmative legal claim, in their letter dated 02-28-08* (Attachment O)The defendant are simply fishing for issues to place in their Settlement and Release as they falsely state to go to arbitration with no real intention. After we agree to the terms and an Arbitration mediator along with a complete statement of the issues, they refuse to go to arbitration or honor their settlement breakdown in light of the facts. Recklessly allowing them to do a Hit and Run without having to look back, much less caring to.

Cases on record and attached affidavit (Exhibit 6) clearly show patterns that resemble a several law book I read regarding RICO and The Sherman Act are noted a little further below in detail. However in (Attachment O)

> Please respond to the four issues listed above at your first convenience. In the meantime, I will initiate the preparation of a written escrow agreement that will incorporate the necessary stipulations and we will continue to give this matter prompt attention.

Then after the issues are identified for Mr Bennett and Mr Darby's Controlling Affirmative actions the real intentions come out that have no intention of any arbitration. And again in true form, the falsities in one paragraph are numerous in a letter from Mr. Darby (Attachment P) dated April 10 2008 and pasted below false statements; neither I nor Mr. Dodd's approved any of the following;

1) at the instruction of your attorney we obtained an independent appraisal.. **False**
2) During this process there was no mention of the fact you had a contract **False** (3)as we indicated in the email Mr Bennett Mr Owens and Mr Darby replied to twice.
3) We were never given a chance to pay this group **False**

closing there is $100,000.00 in addition to original capital and the guarantors refused to close again. With the final release already signed by guarantors and I, Mr. Bennett, Mr. Darby will not let the property close again on the 27th. due to excess funds of Wando River LLC's cash contribution. On the 27th Mr. Bennett, Mr. Darby refuse to close again unless they get all profit. If the closing is to extend any further, the interest and proceeds deducted exceed original closing escrow of $700,000.00.on the 28ih. June 2008

On the 28th, Wando River LLC group has had enough. They want their money back. Close it and get ^#^* money out of it and begin suit on Mr. Higgins and other two lawyer for his unethical handling of escrow money.(Not Fraud or Public Corruption and extremely different)

Closing finally occurred on June 28, 2008 at a price of 5.75 million after numerous attempts. All the terms that I as Managing Member for Wando River LLC agreed to and signed for are simply thrown aside by Mr. Bennett and Mr. Darby. They simply take 110% of proceeds and leave all the documents to be taken care of when I get back. The laws according to Bennett and Darby. He who has the cash rules.

Wando River LLC's members would be sent home with out getting their cash back from a deal that Mr. Bennett, Mr. Darby and KRA never put one cent into or help in any way what so ever with the exception of running off 22 signed contracts with the majority over ten million and most for 12 or 12.5 million (Attachment E).

Fraud by its nature not discoverable in the exercise of reasonable diligence at the time of its occurrence and the following defines the fraud

After I presented a letter from Carolina First to Mr. Bennett, Mr. Darby and KRA regarding the loan payoff that clearly terminated the agreements between Mr. Bennett, Mr. Darby ,KRA and Wando River LLC, We realized that the defendants had some issues that were causing them significant aggravation that had something to do with the loan documents they have filled out at SCB&T. When the defendants filed the law suit in Feb 2008, Wando River LLC, our lawyer and other counsel involved found the defendants would not yield to any discussions on the matter of law.

Fraud by its nature not discoverable in the exercise of reasonable diligence at the time of its occurrence and in this case it was late discovery of events like the one above that made no sense and became an ongoing process coming to light month after month. In a naive manner I continued to stand up to the stern business practices of Mr. Bennett and Mr. Darby. It was after the threat from Mr Bennett and Mr. Owens after Mr. Darby stepped into our meeting in August 2006 to inform all three of us he wants escrow funds secured. After telling them that their plan is not going to be acceptable to our group much less Reed Simmons, my development partner. Both Mr Bennett and Mr. Owens said "F*** Reed bring him in here and we'll take care of him". I told Reed and we went in the same week to meet with Mr Bennett and Mr. Owens as the threats came out (Supported in Affidavit, Exhibit A) just as I had told Mr. Simmons. After the events of this meeting my group would have me engage TW,s Law Firm, who was already negotiating the release of the escrow funds, and inform Mr. W of all the details of what has transpired. In light of the current events Mr W would contact Mr Higgins, (Attachment H). Wando River LLC's escrow agent and give him a full disclosure of the threats and explain the LLC's structure of ownership along with providing Mr. Higgins with Wando River llc's confidential business that included our loan with Wachovia Bank (Supported in Affidavit, Exhibit B) and the conditions of the loan which included paying down the principle of the note by the $500,000.00 set to be released after signing the release between Wando River LLC and D R Horton. Without Mr. Higgins

As you know, we have completed all of the necessary steps to exercise our put rights under the warrant. At the instruction of your attorney, we obtained an independent appraisal of the property by a neutral appraiser in order to verify the exact amount due to us. During this process, there was no mention of the fact that you had a contract on the property and were pushing towards an expedited closing at a substantially discounted price. On the contrary, we received assurances that you would uphold your obligations and pay us what we are owed. We took you at your word.

Being denied arbitration and the right to be heard, give a clear question of whether Charleston County does have jurisdiction over KRA Bennett and Darby. They simply use their own rule book and avoid it constantly.

The game comes to your attention when they have used the same tactic in prior case

2011CP1008315 LONG GROVE PROPERTY OWNERS ASSOCIATION INC , PLAINTIFF, ET AL

VS

BEACH COMPANY THE , DEFENDANT, ET AL

50. Numerous times over the years, Claimants have repeatedly requested to be provided with a full set of executed documents related to KRA LP and the KRA LP Related Entities. Respondents, although repeatedly agreeing to provide such information, have never done so. In response to Respondents' refusal to participate in mediation, Plaintiffs again

12

Requesting their victims information for the formation of the issue when they have zero intentions of actually arbitrating anything what so ever much less as this suit claims open a book in good faith. Fraudulently misleading the court in determining issues thus inducing the court to find for their party when they are actually perpetrating the fraud.

Again, A complete falsity that Mr. Owens, Mr. Bennett, Mr. Darby and KRA were clearly aware of. *Fraudulently misleading the court in determining issues thus inducing the court to find for their party when they are actually perpetrating the fraud.*

The guarantors make an offer to Wando River LLC stating, place 1 million in escrow and the guarantors get the remainder of proceeds. Wando River LLC agrees. Closing was scheduled June 25, 2008(HUD Statement (Attachment R). Approx. the day before the 25,th the guarantors noticed that Wando River LLC was getting around 300,000.00 in addition to the capital of 700,000.00 that was originally paid down with in Aug 2004. The Guarantors refused to attend closing . Guarantors make second offer to close on the 26th , and after I contact and consult my group, all disbursements are agreed upon at which point I would sign the release dated June 26th and leave town for a business trip out of the country as all parties were made aware. In this

informed consent regarding the ownership and the direction for deposit, Wando River LLC will just proceed with the actions against DR Horton.

As significant as the funds were to Wando River LLC, the morning of signing the release I was instructed to confirm the deposit instructions and get a second informed consent from Mr. Higgins prior to signing the release between Wando River LLC and D R Horton. Without as much as a little delay Mr W had Mr McC, his associate, get Mr. Higgins on the phone (Attachment F, and H) to confirm his consent. Which Mr Higgins did and I would sign the release between Wando River LLC and D R Horton. After leaving Mr. W's office I headed back to Mt Pleasant to meet with some members of Wando River LLC and called Mr. Higgins office to see what time the funds were to be transferred. With the ink still wet, Mr. Higgins would tell me that he is going to have to get consent from Mr Bennett and Mr. Darby prior to releasing the funds.(Attachment I) and followed with an email that confirmed the Breach / Breach of trust with fraudulent intent, value $10,000 or more SC Statue 29-01-0050. The effects of these wrongful acts on Wando River LLC were several fold as capital calls would force us to pay interest payments out of Wando River LLC's members pockets in the amount of $23,000 that are already strained from two earlier payments and the ceasing of the managing member and development fees in December 2004. However it was the withholding of the $500,000 until Wando River LLC was in default on our loan with Carolina First bank that found our LLC financially distress and caused by the wrongful actions and threats by Mr. Bennett and Mr. Darby. After I contacted the bank and lawyer for Wando River LLC to attempt to have funds wired into Wando River LLC account at Carolina First, Mr. Owens would cancel my email and send instructions (Attachment J). to Mr. Higgins and Carolina First Bank that he asserted trumped any prior deposit instructions with new wire instructions into Governors Cay's account, an account used by Klawah Resort Associates (KRA's) that is at the center of a lawsuit by Carolina First Bank (now TD Bank) in Charleston County **2011CP1004173**. If Mr Bennett, Mr. Owens and Mr Darby's have not already fraudulently interfered bad enough?

After the illegal conversion of Wando River LLC's $500,000 into their account, they would only pay fees they listed as fees for themselves. They would not pay any invoices for work completed by Wando River LLC contractors. As Mr. Bennett would say "They are not getting to our money, I'll send them some letters". They took it upon themselves not to pay the loan payments for 4 months (Attachment B) leaving Wando River in default status at Carolina First. When I attended a meeting to renew Wando River LLC's loan at Carolina First in the last quarter of 2007, bank VP Mike Rose would deny our loan unless we pay down the note by $500,000 to $1,000,000 in cash which is now impossible since Mr. Owens, Mr. Bennett and Mr. Darby had now spent the majority of the funds on their idea of "approved Funds" (2) leaving Wando River LLC's invoices for "the letters" Mr. Bennett would again send letters instead of sending payment for invoices. Wando River LLC is now absence of any reasonable alternative to the terms presented by KRA, Mr. Owens, Mr. Bennett and Mr. Darby. Terms(Attachment D) in the form of a note (Attachment D). that they filled out in their name with their address and essentially assumed ownership and control of Wando River LLC.

With terms unacceptable to Wando River LLC and funds now diminished to a critical point, our group is now facing the likelihood of a complete hostile takeover regardless of what legal precautions we take. Up to this point in October 2007 Wando River LLC has had over a 20 signed contracts (Attachment E) that have been terminated by the buyer with some sort of Torturous Interference by Mr Bennett, Mr. Owens and Mr Darby. In addition to misappropriation of the funds Wando River llc has now had to pay tax on the $500,000 as its recorded as ordinary income. It is now time to protect our original investment and other cash of Wando

River LLC has had to utilize in maintaining ownership of our asset. This is now exceeding $700,000.00 and represents significant money for Wando River LLC Members. This final act found Wando River LLC leaving closing without any consideration at all. **No money or anything validating the release.**

The Closing, Culmination of Fraud and the Release

The closing that TOOK PLACE on June 28, 2008 was the final act under duress that Wando River had to deal with. It was at this point that KRA/Bennett culminated their acts of fraud. From the first time Mr. Owens, Mr. Bennett, Mr. Darby found out about the marina permit within days of closing the acquisition and development loan for Wando River LLC on 08-24-04 with Terms that included a developers fee of $5,000 each for Mr Simmons and I to protect us from financial hardships while focusing on this incredible project. The Following months Mr. Owens, Mr. Bennett, Mr. Darby were calculating the value in Wando River LLC's property at approx $19 million. It was after this realization that Mr. Owens, Mr. Bennett, Mr. Darby would prepare terms (Attachment Q) for Wando River LLC development loan with significant changes. The number one problem was that Mr. Bennett, Mr. Darby would get the commercial property as a "Portion of their Compensation", and this was not negotiable. As soon as the members of Wando River LLC got together to discuss this, the question came up about why we were negotiating development terms on a loan that we had already negotiated and closed on? Regardless of the position that Mr. Bennett, Mr. Darby believed they were in, the members of Wando River LLC was prepared to stand fast on our commercial property. Right as we had scheduled a meeting to inform Mr. Bennett, Mr. Darby , the contract for $12,500,000 showed up and we stood down.

It was during the contract negeotiations that Mr. Bennett, Mr. Owens began editing contracts, stating that "you don't need to pay a lawyer to do a spell check for you" and "we'll take care of this." During one of these edits Mr Higgins name would be inserted as the escrow agent. It was discovered the day I was going to sign contract with buyer. After Mr Dodds verified Mr Higgins position on the SC Bar, we both were convinced there was nothing bad that could come from this gentleman ,who is the past chair of the SC Bar, Real Estate Ethics Advisory Committee, being in this position if it made Darby and Bennett feel at ease. Everything was fine right up till Mr Higgins' intervening in the deposit of $500,000.00 escrow money plus interfering in one more contract. Then after that performance late in September 2006, Mr Higgins would not be allowed to be involved in anything to do with Wando River LLC. These two incidents are the only things that Mr. Higgins had to do with Wando River LLC and myself as Managing Member. All the references to Mr. Higgins have to do with the late discovery of facts that were tied to him in some way.

"A judgment may be set aside on the ground of fraud only if the fraud is 'extrinsic' and not 'intrinsic.'" Hagy, 339 S.C. at 431, 529 S.E.2d at 717. Extrinsic fraud is "'fraud that induces a person not to present a case or deprives a person of the opportunity to be heard.'" Id. at 431, 529 S.E.2d at 717-18 (quoting Hilton Head Ctr. of S.C., Inc. v. Pub. Serv. Comm'n, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)). "[R]elief is granted for extrinsic fraud on the theory that by reason of the fraud preventing a party from fully exhibiting and trying his case, there never has been a real contest before the court of the subject matter of the action." Chewning v. Ford Motor Co., 354 S.C. 72, 82, 579 S.E.2d 605, 610 (2003). If a judgment procured by extrinsic fraud could have been avoided if the challenging party exercised due diligence, a court generally will not grant relief from the judgment. Center v. Center, 269 S.C. 367, 373, 237 S.E.2d 491, 494 (1977).

Intrinsic fraud is fraud which was presented and considered at trial. Chewning, 354 S.C. at 81, 579 S.E.2d at 610. "It is fraud which misleads a court in determining issues and induces the court to find for the party perpetrating the fraud." Id.

Wando River LLC would go through another 13 contracts where Darby, Bennett or Owens would interfere with the buyer right up till October of 2007(A total of 22 signed Contract were terminated after their "Involvement") where Broker Bill McGill would provide an LOI for $12.5 Million. While going over the contract on a conference call Mr Owens would inform the buyer that Wando River LLC could not sell the property until they have signed the amended agreements. Mr Owens appoligized to the buyer then hung up on them. He would do this one more time before the end of 2007 with VP of Crescent Builders. This represented Crescent's 3Rd attempt to buy the property.

After holding the Wando River property at bay until Darby and Bennett finally threatened the balance of the original investment money with a lis pendens. KRA/Bennett held the property from January till June 2008 while formulating their version of the financial numbers. After Wando River accept KRA/Bennett's' proposal to close prior to June, KRA/Bennett again refused to close due to the fact that there was between 200,000 and 300,000 above Wando Rivers' original investment. ONLY when KRA/Bennett knew for sure that Wando River walked away with $0.00 did they agree to close. The last act was their fraudulent statements showing the property at $8+ million dollars and demanding the funds

Remember, KRA/Bennett had our money and property tied up until final closing June 28, 2008. Wando River and I as Managing member, could not act on anything that caused trouble because of the negotiations under duress up till closing with Wando River LLC's original cash still not returned to members

Original suit was brought about because it was believed that the two lawyers and Higgins did not do what they said they would and billed me for (mal-Practice). It was not until Mr. W told me and Lawyers;, Mr. C., Ms. C., that Mr. W. did in fact give Higgins prearranged directions on the deposit of the $500,000.00. It is at this time that the realization that Higgins went against the direction of Wando Rivers' and Mr.W as lawyer for Wando River late in 2010 after specific directions from KRA Darby and Bennett.

The fraud culmination began coming to light late in 2010 where duties of Mr. Higgins ,after full disclosure and his informed consent regarding deposit instructions, were discarded

The Flagrant acts of fraud that have unfolded in front of me in Charleston County have left me with no income and the loss of over ten opportunities for solid employment in six figure position. When the final act of taken all proceeds from the Real Estate Closing on June 28, 2008, I was left with $0.00 when I owed people and business that have supported me through the years. Since this act, I have been deprived of access to funds, friends and freedoms that no one can live without. This case should be criminal but due to efforts to keep out of the court room, No legal authority has been able to look at this. Dolo malo pactumse non servatuuum. An agreement induced by fraud is not valid. The agreements that the dismissals are based on are fraudulent. . Extrinsic fraud occurs when deceit is employed to keep someone from exercising a right. So, I had no choice but to protect my wife and two kids by representing myself Pro Se. Somehow I was once deemed worthy to go through a lengthy background screening to adopt two children internationally but now deemed not worthy of a trial to protect them. Make no mistake, this crime was threatened and vicious in its planning. Bennett was a lawyer ,that I found out late in the mess, who has been removed from the SC Bar. He is one that the legal system cannot let go on corrupting the laws made to protect the people. Without protection, there is lawlessness.

In an attempt to be heard in state, Fed and USA, Local and 1st. Asst. USA there has been one constant that no one wants this case in their court room or office.

Section 1983, unlike its criminal counterpart, 18 U. S. C. § 242, has never been found by this Court to contain a state-of-mind requirement.[2] The Court recognized as much in Monroe v. Pape, 365 U. S. 167 (1961), when we explained after extensively reviewing the legislative history of § 1983, that

*"[i]t is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges and immunities guaranteed by the Fourteenth 535*535 Amendment might be denied by the state agencies." Id., at 180.*

A Cause of Action, the facts that give a person a right to judicial relief, usually accrues on the date that the injury to the plaintiff is sustained. When the injury is not readily discoverable, the cause of action accrues when the plaintiff in fact discovers the injury. This occurs frequently in cases of Fraud

This distinction is important for purposes of the running of the Statute of Limitations, the time set by law within which a lawsuit must be commenced after a cause of action accrues. In cases involving injuries that cannot be readily discovered, it would be unfair to bar a plaintiff from bringing a lawsuit because he or she does not start the suit within the required time from the date of injury.

In addition, I have stated affirmatively time and time again that I went into the hospital in January 2009 for cancer surgery and spent the following two years under the effects of medications and mental trauma of the findings of a second mass found on my lungs that should have been followed up for a scan in 2011. At this time Dr. Stanley Hall recommended that I get scanned in 6 months to a year to confirm the type according to its growth pattern. That would be possible if I had not had all my funds taken in the fraud I have been seeking justice for.

Again, in addition, I have stated affirmatively time and time again that I have had heart disease that took my father at the age of 41, his sister at 50, along with 3 heart attacks for my Brother of 54 years. My heart problems come in the form of high blood pressure that began getting out of control while the acts of the defendants began and got to 190 /98 in December 2011 that found me in Dr. Usher's office after a friend contacted him and arranged to get me taken care of immediately. My primary physician had noted my record this past week that my heart rate continues to raise to bad levels due to my not being able to afford medications even after applying through trident help organizations and others. The effects of fraud never too far away.

Once again, in addition, I have stated affirmatively time and time again that I have struggled with a mental unbalance to drug upon drug that was brought about by my original primary physician had a stroke and while being see by the other three dr.'s in the practice was given different medication that counter acted and found me struggling for life and everything I value. This can be verified by Charleston County records and was directly the effect of having to run from lawyer to lawyer telling the same story of the past Chair of the SC State Bar acts that I believe led to mal practice.

Contrary to allagations, I do not find it gratifying to be involved in a lawsuit or find it flattering to have my sanity questioned because of the struggle this frauds' effect has had on me. To be certain the court understands me I do not now, nor have I ever engaged in fraud. I do not and will not take the title of a Fraud under any circumstances. Be it poor, or hungry or struggling for my health and the medications I cannot be afforded due to the effects of this fraud that Charleston County's Courts and Legal Officials refusal to take this action in their Courtroom or Office. This goes further to include the State of SC as has been well

documented. With the Ethos of the SC Bar it is clear that no lawyer will step up and take this case involving the past Chair of the Real Estate ethics Advisory Committee. Regardless of the crude nature of the actions. The ones that have stepped up and get involved go on step down after something transpires behind the scenes.

SECTION 15-3-40. Exceptions as to persons under disability

If a person entitled to bring an action mentioned in Article 5 of this chapter or an action under Chapter 78 of this title, except for a penalty or forfeiture or against a sheriff or other officer for an escape, is at the time the cause of action accrued either
(1) within the age of eighteen years, or
(2) insane,
the time of the disability is not a part of the time limited for the commencement of the action, except that the period within which the action must be brought cannot be extended
(a) more than five years by any such disability, except infancy, nor
(b) in any case longer than one year after the disability ceases.

SECTION 15-3-60. Effect of two or more disabilities.

When two or more disabilities shall coexist at the time the right of action accrues the limitation shall not attach until they all be removed.

§ 35.171 Acceptance of complaints

Defines disabilities only for reference

Disability means, with respect to an individual, a physical or mental impairment that substantially limits one or more of the major life activities of such individual, a record of such an impairment, or being regarded as having such an impairment

- *(1)*
  - *(i) The phrase physical or mental impairment means—*
    - *(A) Any physiological disorder or condition, cosmetic disfigurement, or anatomical loss affecting one or more of the following body systems neurological, musculoskeletal, special sense organs, respiratory (including speech organs), cardiovascular, reproductive, digestive, genitourinary, hemic and lymphatic, skin, and endocrine,*
    - *(B) Any mental or psychological disorder such as mental retardation, organic brain syndrome, emotional or mental illness, and specific learning disabilities*
  - *(ii) The phrase physical or mental impairment includes, but is not limited to, such contagious and noncontagious diseases and conditions as orthopedic, visual, speech and hearing impairments, cerebral palsy, epilepsy, muscular dystrophy, multiple sclerosis, cancer, heart disease, diabetes, mental retardation, emotional illness, specific learning disabilities, HIV disease (whether symptomatic or asymptomatic), tuberculosis, drug addiction, and alcoholism.*

On 9-15-09, I filed the case for malpractice based on the defendants W O Higgins, Mr. W and Mr. McC to meet the three year statute on 9-16-09. After going through my case week after week with a different law firm, most would give a commitment to work with me and Wando River LLC. Within a couple days to two weeks I would get notice of a conflict. So without an expert witness, I filed an extension on 10-30-09 due to working through the weekend with one more lawyer who I believed was finally there to work with me.

After struggling to tell this story again and again I finally filed to have my case sent to a master in equity for finality. With my faith in the justice system, I took the facts that I have compiled all the facts and put it away until the master

heard the facts which are more than clear enough to substantiate action by the court. All I had to do is hold on financially to keep my home and try to continue my business that was finally at the point of approval throughout Pepsi North America. After 6 months the date of the hearing finally came up. The day before I would be informed that the MIE would recues himself and have the case put back in general sessions without any consideration for the extreme fraudulent activies.

During this time I would be diagnosed with Cancer and go through surgery. What would follow is a whirlwind of problems that would ultimately have me disabled according to Charleston County. My bankruptcy atty told me to just hold off on my bankrupt filing and asked his sister (Lawyer Amy Campbell-Kelly)to help preserve any rights during this time. My Brother and member of Wando River LLC would attend meetings with me at Wando River llc patty's office where she agreed to help prepare for the hearing that was upon us. The Legal Malpractice hearing where I would also state the events that gave cause to the release of the two attys and change the cause of action on Mr. Higgins, as I stated ,after the significance of Mr. Higgins actions were revealed a couple days prior to the hearing. The morning of the trial I was struggling with my health and arrived in the court late sick from medication but in time to get into court prepared to speak on my behalf . While Mr. Higgins atty was yelling at the judge that anything else simply could not be heard due to the mandate of legislative detail. My brother let Atty Ms. C know I was there and as I stood up the judge would have enough and said he will consider the remainder in chamber. Shock as everyone left the court room , I sat outside the courtroom for a bit before I realize that this is not a short brake. My brother and I are expecting another hearing that will be in the form of a notice from the court because surely the court will not rule on a case where a plaintiff is not heard. Not heard on significant details that clarify every issue at hand in this hearing. A notice in the end of January 2011 would come in Granting Mr. Higgins motion

To consider that my day in court was a full and fair trial is not even close and the SC Supreme CT as well as the appellate court have decision to support this including the fact that nothing was ever litigated other than legislative error on the serving of paper to Mr. Higgins Secretary;

SC Court of Appeals # 3626 - Nelson v. Coker
THE STATE OF SOUTH CAROLINA
In The Court of Appeals

James Nelson, Jr., as guardian ad litem for Ty'Quain S. Nelson, a minor child, Appellant,
v.
QHG of South Carolina, Inc., d/b/a Carolina Hospital System, Quorum Health Group, Inc., Drs. Coker, Phillips, and Haswell, P.A., and Thomas W. Phillips, M.D., Defendants,
of whom Drs. Coker, Phillips, and Haswell, P.A. and Thomas W. Phillips, M.D. are Respondents.

Appeal From Williamsburg County
L. Henry McKellar, Circuit Court Judge

Opinion No. 3626
Heard March 13, 2002 - Filed April 14, 2003

There are numerous exceptions to the application of res judicata and collateral estoppel. In Pye, this court adopted the Restatement (Second) of Judgments section 28, which states:

Although an issue is actually litigated and determined by a valid and final judgment, and the determination is essential to the judgment, relitigation of the issue in a subsequent action between the parties is not precluded in the following circumstances:

(1) The party against whom preclusion is sought could not, as a matter of law, have obtained review of the judgment in the initial action; or

(2) The issue is one of law and (a) the two actions involve claims that are substantially unrelated, or (b) a new determination is warranted in order to take account of an intervening change in the applicable legal context or otherwise to avoid inequitable administration of the laws; or

(3) A new determination of the issue is warranted by differences in the quality or extensiveness of the procedures followed in the two courts or by factors relating to the allocation of jurisdiction between them; or

(4) The party against whom preclusion is sought had a significantly heavier burden of persuasion with respect to the issue in the initial action than in the subsequent action; the burden has shifted to his adversary; or the adversary has a significantly heavier burden than he had in the first action; or

(5) There is a clear and convincing need for a new determination of the issue (a) because of the potential adverse impact of the determination on the public interest or the interests of persons not themselves parties in the initial action, (b) because it was not sufficiently foreseeable at the time of the initial action that the issue would arise in the context of a subsequent action, or (c) because the party sought to be precluded, as a result of the conduct of his adversary or other special circumstances, did not have an adequate opportunity or incentive to obtain a full and fair adjudication in the initial action.

Pye, 325 S.C. at 437-38, 480 S.E.2d at 460-61.

In Beall v. Doe, this court adopted section 29 of the Restatement (Second) of Judgments:

For determining whether res judicata applies, the identity of the parties in the first lawsuit also includes persons in privity with the named parties. Pye v. Aycock, 325 S.C. 426, 480 S.E.2d 455 (Ct. App. 1997). One not a party to a prior action can be precluded from relitigating the issue only if he is in privity with a party to the prior action against whom an adverse finding is made. Roberts v. Recovery Bureau, Inc., 316 S.C. 492, 450 S.E.2d 616 (Ct. App. 1994). In regard to res judicata or collateral estoppel, privity "does not embrace relationships between persons or entities, but rather it deals with a person's relationship to the subject matter of the litigation." Wyndam v. Lewis, 292 S.C. 6, 8, 354 S.E.2d 578, 579 (Ct. App. 1987). "Privity" means one so identified in interest with another that he represents the same legal right. Carriag v. Cannon, 347 S.C. 75, 552 S.E.2d 767 (Ct. App. 2001). In Wade v. Berkeley County, 330 S.C. 311, 498 S.E.2d 684 (Ct. App. 1998), this court discussed privity by stating:

Regarding the parties other than Mr. Higgins

Privity deals with a person's relationship to the subject matter of the previous litigation, not to the relationships between entities. To be in privity, a party's legal interests must have been litigated in the prior proceeding. Having an interest in the same question or in proving or disproving the same set of facts does not establish privity. Nor is privity found when the litigated question might affect a person's liability as a judicial precedent in a subsequent action.

The doctrine of res judicata is primarily one of public policy... its roots lie in the principle that public policy and welfare require a definite end to litigation when each of the parties has had a full, free and untrammeled opportunity of presenting all of the facts pertinent to the controversy

Regarding the facts to decide whether the second claim is an impermissible variation on the theme of the first. Both claims arise out of the same life situation insofar as they have to do with Wando River's moving to develop and sell River front marina property. But there the common ground ends. Public Corruption and Fraud are asserted against the Defendants in this case under Nature of Action Section 199. Fraud in Wando River LLC, Fraud in their actions to convert the 1100 acres on Hwy 61 that they noticed me 5 days prior to closing that "Mr. Darby doesn't have the money" when Mr Darby's Brother and brother in law deposited the closing funds in Mr. McCants escrow account to close the 1100 acre property. Right after I disclosed the mineral appraisal for Net Positive Actual Value of $48,000,000. Even after securing another loan to close the Darby brothers would thwart any attempt in my closing until they took all my Wando River funds, my money invested in Edisto Funds, cause Foreclosure on a mountain property that was paid for after going to my bank, having a discussion with the bank about the status of my finances, putting Wando River llc loan in jeopardy after spending the $500,000.00 escrow funds on unapproved nothingness from September 2006 till December 2007, in the last quarter of 2007 while outside of a meeting at Carolina 1st for Wando River LLC's loan I saw papers for a loan amendment based on Wando River llc's 8.9 million appraisal to get an 8.3 million loan and when Mike Rose walked in he would literally spend under five minutes with me in the meeting before excusing me and asking Bennett and Mr Owens to stay to discuss other loans with Carolina 1ST . In those 4 minutes I was told that Wando River llc loan wasn't going to happen unless paid down 500,000 to 1 mil. I even had a chance to reference the $3.150.000 note with a $8.900.000 appraisal but that was it. All the documents show Wando River LLC's note to be in and on its own accord (Attachments N). After looking through the documents relating to Governors Cay loan (a loan that interest statements have been sent to my home address sometime in 2005 including year-end statements and late notices) , it seems to be the same document I saw and it would explain all the reasons for not giving Wando River LLC loans, or allowing interest draws an why KRA, Bennett and Darby went to such lengths to keep the property.

Legal Mal-practice is the claim in the case partially heard at best (Affidavit included) asserted against Mr. Higgins and two other lawyers. Even if the court considers Res Judicata and the dismissal with prejudice is applied to Mr. Higgins, in light of suppression of the facts regarding the case being heard, as well as the actions, so out of any bounds of law, that most cannot comprehend, the other defendants have no standing here. As I stated in the hearing, the documents of the Summons and Complaint are only similar due to the printer failure outside the clerk of courts office. The documents that were used were from the same independent action I filed in federal court that was review without serving the defendants and dismissed without prejudice, on jurisdictional issues. Put together with the documents from others that were with me to complete the half printed document on to meet statue that day. Further If the fact and supporting documents provide any small notion of fraud in a position held as high as Mr.Higgins as the previous Chair of the SC Bar Real Estate Ethics Advisory Committee, in a profession that defines itself as.... Surley these facts should warrant the Court of Law's attention.

http://www.sccourts.org/opinions/advSheets/no152008.pdf

THE STATE OF SOUTH CAROLINA
In The Court of Appeals
Mr. T, Appellant,
v.
Ms. T and Michael Alston, Respondents.
In Re: S.N.T and D.T.T
Appeal From Sumter County
Jeffrey Young, Family Court Judge
Opinion No. 4369
Heard January 8, 2008 – Filed April 15, 2008

newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 59(b);

While the most common ground for an independent action is for fraud, the rule is not restricted to only that ground. The structure of this rule and its use of the word"or" indicate to this court two potential independent action attacks on a judgment, order or proceeding: 1) one based on such rare, special, exceptional or unusual circumstances that may warrant equitable relief, including accident or mistake or 2) one based in equity for fraud upon the court. See, 11 CHARLES ALAN WRIGHT, ARTHUR R. MILLER & MARY KAY KANE, FEDERAL PRACTICE. & PROCEDURE § 2868 (2d ed. 1995).

The Eighth Circuit characterized the independent action as follows: The indispensable elements of such a cause of action are 1) a judgment which ought not, in equity and good conscience, to be enforced; 2) a good defense to the alleged cause of action on which the judgment is founded; 3) fraud, accident, or mistake which prevented the defendant in the judgment from obtaining the benefit of his defense; 4) the absence of fault or negligence on the part of the defendant; and 5) the absence of ony adequate remedy at low.

I have been suppressed from presenting these facts to any official as I mentioned in the hearing so much that given the test of "Interest in" my case could clearly be supported. I understand no one wants to hear this ugly case but there are several cases associated with my case that show a pattern of HABITUAL fraudulent behavior on the part of Charles Darby, KRA and Russell Bennett.

Case 1) **2011CP1004173** is TD Bank N A AS Successor vs. KRA Bennett where KRA & Bennett allegedly used the property owned by Wando River LLC to fraudulently collateralize another loan through TD Bank.

1. That he is Vice President at Plaintiff TD Bank, N.A., successor by merger to Carolina First Bank ("Plaintiff").

2. That as of May 26, 2011, the Defendants, including Defendant L. Russell Bennett ("Bennett"), are justly and truly indebted to Plaintiff in the total sum of Three Million Two Hundred Thirty-Two Thousand Nine Hundred Eighty and 07/100 Dollars ($3,232,980.07), plus interest, late charges, attorneys' fees and costs (the "Debt"), and that Plaintiff is entitled to an attachment against Bennett, upon the following grounds:

(a) That Plaintiff is informed and reasonably believes that Bennett has assigned, disposed of or secreted or is about to assign, dispose of or secrete his property with the intent to defraud Plaintiff and to avoid payment of the Debt; and

(b) That Plaintiff's reasonable belief is based on Jeffrey Mumm's face-to-face meeting with Bennett on July 20, 2011, in which Bennett represented that he would secrete his assets and would hide and/or dispose of his assets in order to prevent Plaintiff from collecting on

Case 2) 2012CP1003663 is The Long Family et. al. vs. Charles P. Darby III Charleston County case#-2012-CP-10-3663
In The Long Family et. Al. vs. Charles P. Darby III Charleston County case#-2012-CP-10-3663 the plaintiffs allege the following:

7. Buddy Darby has proceeded, on a systematic, unremitting course of conduct for years to exclude the Plaintiffs from the business and affairs of the Kiawah Entities by, for example, excluding the Plaintiffs from having any voice in the governance of the Kiawah Entities, denying Plaintiffs access to corporate information, and in more recent years eliminating most, if not all, financial benefits in such businesses in the form of returns, distributions, or dividends while divesting, siphoning off, and misappropriating most, if not all, income and other assets of the businesses to himself and members of his family, the majority owners.

19. The Kiawah Entities are business entities in which the Plaintiffs have minority ownership interests and that are managed and controlled by defendant Buddy Darby. As alleged herein, Buddy Darby has used his control of the Kiawah Entities to engage in oppression of the Plaintiffs and to attempt to freeze them out of the businesses and squeeze them out of their interests in the Kiawah Entities.

Case 3) 1999CP1003195) is MARK W ELLIS, PLAINTIFF, ET AL VS ERIC J DAVIDSON, DEFENDANT, ET AL

where Rusty Bennett has carried out the same pattern of fraudulent behavior that he continued in his business dealings with Wando River and myself. In Mark Ellis vs Davison et. al Charleston County case#-99-cp-10-3195, the following was alleged and proven and a judgement was entered against all defendants including Russell Bennett:

FOR A SIXTH CAUSE OF ACTION
FRAUD

(AS APPLIES AGAINST ALL DEFENDANTS EXCEPT DAVIS AND AMERICAN)

86. Each and every allegation in paragraphs 1-85 above are to be considered restated herein as if fully set forth verbatim.

87. The Defendant's, directly or indirectly, by omission or commission, deliberate mislead and misrepresented their intentions to allow Plaintiff Ellis to purchase their interest's in American and continue doing business with American by referring business for land surveys from the Davidson and Bennett Law Firm real estate closing practice.

88. The representation of the Defendants was false.

89. The representation of the Defendants was material.

90. The Defendants either had knowledge of the falsity of the representation or had a reckless disregard of the falsity of the representation.

91. The Defendant's intended that the representation be acted upon.

92. The Plaintiff was ignorant of the falsity of the representation.

93. The Plaintiff relied on the truth of the representation.

Case 4) 2011CP1002691 KIAWAH RESORT ASSOCIATES L P VS SHEPPARD H DAVIS JR

FOR A FIRST CAUSE OF ACTION
(Breach of Contract- KRA LP Partnership Agreement)

51. Claimants incorporate all of the preceding paragraphs as if fully stated here.

52. Windgolf, Carolyn, and the other general and limited partners entered into the KRA LP Partnership Agreement, by which Windgolf has certain statutory and contractual rights as a limited partner, including the right to have any disputes submitted to mediation and arbitration and the right to receive certain partnership documents upon demand.

53. Under Delaware Code Tit. 6 § 17-305 and S.C. Code § 33-42-450, Respondents must provide the Claimants information Claimants requested and that Respondents have refused to provide

54. Respondents breached their agreements with Claimants by refusing to mediate and/or arbitrate the dispute and by refusing to provide requested partnership information and documents

55. Claimants are entitled to an award declaring Claimants' claims to be arbitrable and directing Respondents to produce for inspection and copying the information Claimants have requested and which Respondents refuse to provide.

FOR A SECOND CAUSE OF ACTION
(Breach of Contract - Option to Sell)

56. Claimants incorporate all of the preceding paragraphs as if fully stated here.

58 At all times relevant hereto Respondents owed, and continue to owe, Claimants the duties of good faith and fair dealing. Respondents have breached their agreements with the Claimants, have acted in bad faith and have breached their duties of good faith and fair dealing.

c. An award finding that Respondents have breached their fiduciary duties to Claimants,

d. An award finding that Respondents have breached their duties of good faith and fair dealing,

e. An award providing the declaratory and equitable relief requested herein;

f An award of damages that may be proven at the hearing on this matter;

g. An award of attorneys' fees and costs to the extent set forth in the KRA L.P Partnership Agreement and KRAD Partnership Agreement;

h To the extent that the arbitration panel rules that Respondents may deduct non-interest bearing liabilities to determine the Option Price, then the award should direct that the third valuation firm utilize a standard of value that takes into account all non-interest bearing liabilities that are allowed to be deducted, so that liabilities are not deducted from the value twice and the resulting conclusion will then equal equity value;

i. An award that KPMG and Houlihan Lokey increase the value they determine for KRA by the amount of any elements of value that have been omitted;

j. An award of prejudgment interest; and

k. Such further relief as the tribunal deems just

FOR A THIRD CAUSE OF ACTION
(Breach of Fiduciary Duty)

61. Claimants incorporate all of the preceding paragraphs as if fully stated here.

62. Respondents owed, and continue to owe, Claimants duties of a fiduciary, including but not limited to the duties of loyalty, honesty and full disclosure. Further, Respondents are required by statute to provide certain financial information to Claimants.

63. Respondents breached their fiduciary duties in ways that include, but are not limited to the following.

a. Refusing to provide information requested by the valuation firms that reveal KRA's management compensation and the amount KRA's management has been reimbursed for expenses;

b. Delaying all aspects of the valuation process and refusing to allow the process to be completed;

d. Declaring their intent when calculating the Option Price to be paid for Claimants' interest to deduct items from KRA's value that would not be satisfied in the event of a sale, that are not true liabilities, that have already been considered and taken into account by the valuation firms in determining KRA's value and that otherwise are not properly deductible;

e Refusing to participate in mediation of the parties' dispute; and

f Disputing that Claimants' exercise of its option to sell its interest in KRA applies to all of KRA.

64 Claimants are entitled to an award declaring:

a. Claimants' claims are arbitrable;

b. When calculating the price to be paid to Claimants for their interest in KRA, Respondents may not deduct membership deposits, real estate deposits, deferred revenues, current liabilities or other items that would not be satisfied in the event of a sale of KRA or that are not otherwise properly deductible from the value assigned to KRA;

c. Claimants' right to sell its interest in KRA applies to all of KRA and the KRA Related Entities, and

EREFORE, Claimants pray for the following relief:

a. An award declaring Claimants' claims arbitrable;

b. An award finding that Respondents have breached their agreements;

c. An award finding that Respondents have breached their fiduciary duties to Claimants;

d An award finding that Respondents have breached their duties of good faith and fair dealing;

e An award providing the declaratory and equitable relief requested herein;

f An award of damages that may be proven at the hearing on the matter;

g An award of attorneys' fees and costs to the extent set forth in the KRA LP Partnership Agreement and KRAD Partnership Agreement;

h To the extent that the arbitration panel rules that Respondents may deduct non-recourse debt liabilities to determine the Option Price then the award should direct that the third valuation firm utilize a standard of value that takes into account all non-recourse debt liabilities that are allowed to be deducted, so that liabilities are not deducted from the value twice and the resulting conclusion will then equal equity value;

i An award that KPMG and HuddPark Cakey increase the value they determine for KRA by the amount of any elements of value that were created;

j An award of prejudgment interest; and

k Such further relief as the tribunal deems just.

RICHARDSON MOORE SMYTHE MCGEE P.A.

William Cleveland (S.C. Bar No. 1284)
Matthew Tillman (S.C. Bar No. 70138)
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(843) 722-3400

October 7, 2013
Charleston, SC

20

Case 5) **2004CP1002559 KIAWAH RESORT ASSOCIATES L P VS EDGAR A BUCK, DEFENDANT, ET AL**

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON KIAWAH RESORT ASSOCIATES, L.P., A DELAWARE LIMITED PARTNERSHIP, PLAINTIFF, vs. EDGAR A. BUCK, MARGARET B. BUCK, AND DISHER, HAMRICK & MYERS RESIDENTIAL, INC., DEFENDANTS.	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CASE NO. 2004-CP-10-2559 EDGAR A. BUCK, MARGARET B. BUCK, AND DISHER, HAMRICK & MYERS RESIDENTIAL, INC.'S MEMORANDUM OF LAW IN OPPOSITION TO THE PLAINTIFF'S MOTION FOR SUMMARY JUDGMENT

CHARLESTON COUNTY
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CLERK OF COURT
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I. Introduction

Edgar A. Buck, Margaret B. Buck and Disher, Hamrick & Myers Residential, Inc. (hereinafter referred to collectively as "Owners") submit this Memorandum in response to the Plaintiff's Motion for Summary Judgment and as a supplement to their previously furnished Memorandum in Support of their Motion for Summary Judgment.

Affirmative Defenses

Even if the Plaintiff were able to establish that there was no question of fact regarding its authority to control the use of the Bucks' property or the lack of approval for the use of the cabana building as a real estate office, the Defendants have still raised affirmative defenses which preclude summary judgment. These include the Doctrine of Unclean Hands, Waiver and Estoppel. If established, any or all of these defenses preclude judgment in favor of the Plaintiff.

1.5

A. Doctrine of Unclean Hands

The Plaintiffs allege this is an action for enforcement of restrictive covenants, and is based in equity. See Houck v. Rivers, 316 S.C. 414, 450 S.E.2d 106 (1994). In equity, the Doctrine of "Unclean Hands" precludes a Plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the Defendant. Arnold v. City of Spartanburg, 201 S.C. 523, 23 S.E.2d 735 (1943).

Owners have previously pointed out the factual inconsistencies in the position of the Developer and its wholly controlled ARB. The facts clearly reveal that the Developer has had no written procedure or application process for the exercise of its alleged control over the use of property it has already sold. As stated previously, the Developer sold this property as commercial property to the Bucks for $750,000. Developer received full fair market value for it, and even agreed to restrict other properties against the sale of food in order to protect the Buck's investment.

Affirmative Defenses

Even if the Plaintiff were able to establish that there was no question of fact regarding its authority to control the use of the Bucks' property or the lack of approval for the use of the tenant building as a real estate office, the Defendants have still raised affirmative defenses which preclude summary judgment. Those include the Doctrine of Unclean Hands, Waiver and Estoppel. If established, any or all of these defenses preclude judgment in favor of the Plaintiff.

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A. Doctrine of Unclean Hands

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Owners have previously pointed out the factual inconsistencies in the position of the Developer and its wholly controlled ARB. The facts clearly reveal that the Developer has had no written procedure or application process for the exercise of its alleged control over the use of property it has already sold. As stated previously, the Developer sold this property as commercial property to the Bucks for $750,000. Developer received full fair market value for it, and even agreed to restrict other properties against the sale of fuel in order to protect the Buck's investment.

However, in recent depositions, Leonard Long and Charles Darby, Jr. principals in the Developer, testified that the original Developers made a mistake in allowing the Buck's commercial property at that location, and that they did not want it to remain in its location. (Deposition of Charles Darby, Jr. p 61; Deposition Leonard Long, P. 15). In other words, even assuming the Developer is not attempting to feather its own nest by thwarting competition, under their own version of the facts they are still admitting a desire to keep the Buck's from realizing the full potential of their investment. There is a question of fact that is raised as to their motive, and this implicates the unclean hands doctrine. Therefore, summary judgment to the Plaintiff is not proper.

Furthermore, Owners have testified that a meeting between Brown Hamrick, Eddie Buck, Leonard Long and Charles Darby took place before this suit was filed, in which Leonard Long stated that the Developer would prevent DHM from leasing the Buck's property because it did not want the competition of another real estate company on the Island. (Deposition of Brown Hamrick, pp. 29-30) Charles Darby, Jr. was thereafter deposed as the Chairman of the Board and CEO of the managing partner of the Developer, and was asked if Brown Hamrick's testimony as to this conversation and the statements attributed to Long were accurate. Darby acknowledged that they were. (Deposition of Charles Darby, pp. 76-77). Therefore, a question of fact is raised under the unclean hands doctrine as to this illegal motive of the Developer to stifle competition.

The Plaintiff itself does not come to this case with "clean hands." "The maxim, 'One who comes into equity must come with clean hands,' is as old as courts of equity, and is the expression of the elementary and fundamental conception of equity jurisprudence; and, although not the source of any distinctive doctrines, it furnishes a most important and even universal rule, affecting the entire administration of equity jurisprudence as a system of remedies and remedial rights. It is based upon conscience and good faith." American Association v. Innis, et al., 109 Ky. 395, 60 S.W. 388 (1901). "The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant." First Union National Bank of South Carolina v. Soulas, 333 S.C. 554, 511 S.E.2d 372 (1998). South Carolina Courts unanimously adhere to the "clean hands" rule. See, e.g., Id., Ingram v. Kasey's Associates, 340 S.C. 98, 531 S.E.2d 287 (2000); Norton v. Mathews, 249 S.C. 71, 152 S.E.2d 680 (1967).

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The only limitation on this most basic of equity principles is that it be "confined to misconduct in regard to, or in all events connected with, the matter in litigation, so that it in some measure affects the equitable relations subsisting between the two parties, and arising out of the transaction." Innis at 390. KRA's engagement in unfair trade practices and in monopolistic activities in violation of Section 2 of the Sherman Anti-Trust Act are related closely to its claims against Defendant DHM. The Plaintiff desires to terminate Defendants Buck's lease agreement with Defendant DHM in order to maintain a monopoly on residential real estate sales on Kiawah Island. The very reason for the present controversy is a product of KRA's "unclean" attempts to flaunt the law.

The actions of the Developer constitute a violation of Section 2 of the Sherman Anti-Trust Act by attempting to monopolize and monopolizing in fact residential real estate sales on Kiawah Island. The Sherman Act is applicable to the case at hand. "The jurisdictional requirement for the Sherman act is that the 'plaintiff show (1) that the local activity has a (2) substantial effect on (3) interstate commerce.'" Grand Shoppard Real Estate Company, Inc. v. Velinda Freed & Associates, Inc., 608 F.Supp. 354 (1985) (citing Shahawy v. Harrison, 755 F.2d 1432, 1436 (11th Cir.1985)). Here, the sale of residential real estate on Kiawah Island has a substantial effect on interstate commerce as the Plaintiff advertises for and draws buyers from beyond South Carolina's borders. Moreover, Kiawah Island is a center of tourism that attracts visitors and homebuyers from all over the United States as well as from abroad. See East West Resorts' Great Beach Vacations™ at http://www.kiawah.com (reporting Kiawah Islands ranked third among North American islands by *Condé Nast's* 2000 Reader's Choice Awards). The entity that controls residential real estate transactions on Kiawah Island has a significant impact on interstate commerce.

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Section 2 of the Sherman Act "addresses the actions of single firms that monopolize or attempt to monopolize, as well as conspiracies and combinations to monopolize. Section 2 does not define the elements of the offense of attempted monopolization." Spectrum Sports, Inc. v. McQuillan, 506 U.S. 447, 454, 113 S.Ct. 884, 889 (1993). Nonetheless, over time, Courts have laid out various tests for establishing a violation of § 2 of the Sherman Act. "In order to sustain a claim for monopolization, a plaintiff must show that the defendant (1) possessed monopoly power in the relevant product and geographic markets and (2) acquired and maintained that power willfully, as distinguished from having developed its business as a result of a superior product, business acumen, or historic accident." Queen City Pizza, Inc. v. Domino's Pizza, Inc., 922 F.Supp. 1055, 1060 (1996).

First, with regard to the "relevant market," Courts have interpreted the phrase as "consist[ing] of both a product market and a geographic market." Bacchus Industries, Inc. v. Arvin Industries, Inc., 939 F.2d 887, 893 (1991). In the present case, the Plaintiff possesses monopoly power in both markets; that is, the residential real estate product and the geographic expanse of Kiawah Island, which it bought in 1988. Virtually all residential real estate transactions conducted on Kiawah Island are done through the Plaintiff. See Kiawah Island Real Estate Website at http://www.kiawahisland.com (stating "Kiawah Island Real Estate is the only Real Estate sales team located on Kiawah" and "[n]early nine out of ten properties sold on Kiawah are sold by Kiawah Island Real Estate. Our two top sales professionals do more business on Kiawah than all of our competition put together.") Second, though the Plaintiff may have acquired the island itself through historic accident or business acumen, it has established and maintained its monopoly in the real estate market there willfully. The present case is only one

illustration of the lengths to which the Plaintiff will go to retain its monopoly on residential real estate transactions on Kiawah.

It must be noted that as of July 15, 2004, two weeks after this action was commenced, Defendants Buck's site plan approval was rescinded retroactively. Defendants Buck had properly submitted and subsequently had received approval for these plans from the County. The sudden rescission of the plans in light of the present controversy only serves as further evidence that the Plaintiff is engaged in unfair trade practices in an attempt to monopolize the residential real estate market on Kiawah Island. Moreover, by attempting to retroactively rescind the site plan, the Town of Kiawah and the County of Charleston have violated DHM's federally protected due process and equal protection rights.

The court will note that these 5 cases show all of the same habitual fraudulent tactics that Defendants Charles Darby, KRA and Russell Bennett used. The cases cited above are the same HABITUAL fraudulent tactics used against me Wando River LLC and my interest in Wando River LLC. This consistent pattern of fraudulent behavior of Charles Darby, KRA and Russell Bennett should be enough for the court to allow further discovery into this case. As the old saying goes, "Where there is smoke there's fire," These defendants have a forrest fire of smoke around them and their habitual fraudulent business practices and they need to finally be stopped.

An additional case that is pending associated with this process is my bankruptcy hearing which hasn't been filed yet because of all the nastiness of what's going on in a pending case regarding the foreclosure of my home. For clarification, that's home not house. It means, in this case, where a gifted school teacher lives that has focused her life on the less fortunate in McClellanville. A school that anyone will vouch for the irreplaceable value she brings to school each day. It is also the home of two adopted children that are united citizens and to their father . A father that has dedicated the past 20+ years to Conservation Work throughout North America and the globe. Work that has been lost from accusations of being called a fraud. There is not a stopping point for me on this issue in the court. Whether I am locked up again for saying bad things about the defendant's fraudulent actions or put in the grave as my doctor has told me this is clearly doing.

So regarding 15-3-130, there are written notices to and from a federal agency securing action against the defendants and anyone who stands in the way of justice. I have asserted the right to be heard during the proceeding at issue and such right was denied. It has been clearly stated, to me, that this is better off in a civil court regardless of the evidence that meets others incarceration. Although I do not understand this, I have followed through the course laid out to me to clear my name that I hope ends here.

SECTION 15-3-130. Suits on causes saved from bar of statute by part payment or written acknowledgment.

All actions upon causes of action which would be barred by the statute of limitations but for part payment or a written acknowledgment shall be brought on the original cause of action and the part payment or written acknowledgment shall be evidence to prevent the bar of the statute of limitations

In addition the statute of limitation has been clearly explained to me as three years from the close of the business which is the closing which occurred June 28th. 2008 and is why I filed the case June 27th. 2012 to meet the three year statue.

Below my signature you will find support documents for my statement above ;

The motive on what prompted Darby, KRA an Bennett to take away the liberties in everything we were working together on got a little clearer to me when I volunteered at the PGA event held in Kiawah. After our first meeting regarding the work I was to do, I was walking out and reading the History of the Ocean Course that KRA has an interest in. There it was, Pete Dye's wife was at the course back in the Ryder Cup when she mentioned the idea of raising the whole golf course to above the dunes so that the players would be in the wind with the same view of Her and her guest sitting on the porch at the time. Needless to say the raising of a golf course well over ten feet takes every bit of sand you can get your hands on. It wasn't that they own pretty much every marina in Charleston and purchased the property directly across the river from Wando Rivers property as well as the adjacent shipyard property after finding out about the closure zone I noted in confidential business information supplied to KRA, Darby and Bennett. They just have to have it all.

I understand that I obviously do not speak the language of the Court in Charleston County but I am a Pro Se litigant not a leper. A great Father (Affidavit included for character Reference) My wife and I have suffered and served our sentence enough. The hardest part of being discounted is the effect this has on my children and wife who have had to go without life's basic care items. Everything about this is wrong and waiting while I appeal to higher court or the filing of Writ of *Writ of Error Coram Nobis* will probably put me in my grave with the effect the constant pleading of Fraud has had on me. I have been denied Victim Assistance in every aspect including medical care that several groups following this case have noted but have directed me to maintain my action in the Civil Court.

If there is a procedural error I have made in an attempt to follow court rules that I have had to interpret myself, please inform me of the appropriate manner to present to the court all supporting documents regarding the fraudulent actions of the defendants as well as for the issues we discussed in the hearing.

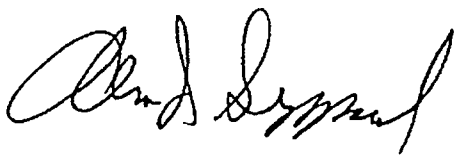
Last as I am struggling with everything connected to this case. I've clearly shown fraudulent behavior on these gentlemen who showed a habitual pattern of this and I must notify you that a change of venue and appeal will go forward as **I plead for appeal for court outside of Charleston SC for my Rights under the US Constitution's 5th and 14th amendments.**

I will ask for a New Trial or judgment as a matter of law and/or a Change of Venue that is not within a jurisdiction affected by the defendant's influence that I have seen is dangerous to say the least.

It is with great respect for the law that I will ask for these actions

I can attest that the statement I have made here are true to the best of my knowledge.

Respectfully,



Alan Joseph Sheppard

11-2-2012

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SECTION 15-3-530. Three years.

Within three years:

(7) any action for relief on the ground of fraud in cases which prior to the adoption of the Code of Civil Procedure in 1870 were solely cognizable by the court of chancery, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

SECTION 15-3-535. Limitation on actions commenced under Section 15-3-530(5). [SC ST SEC 15-3-535]

Except as to actions initiated under Section 15-3-545, all actions initiated under Section 15-3-530(5) must be commenced within three years after the person knew or by the exercise of reasonable diligence should have known that he had a cause of action.

In South Carolina, duress of goods, under circumstances of great hardship, will avoid a contract. 2 Bay R. 211 Bay, R. 470. But see Hardin, R. 605; 2 Gallis. R. 337

The Fifth and Fourteenth Amendments of the United States Constitution limit the power of the federal and state governments to discriminate. The private sector is not directly constrained by the Constitution.
The Fifth Amendment has an explicit requirement that the Federal Government not deprive individuals of "life, liberty, or property," without due process of the law and an implicit guarantee that each person receive equal protection of the laws.
The Fourteenth Amendment explicitly prohibits states from violating an individual's rights of due process and equal protection

1343. Civil rights and elective franchise
M Under Article IVI of the Constitution
(1) To recover damages for injury to his person or property, or because of the deprivation of any right or privilege of a citizen of the United States, by any act done in furtherance of any conspiracy mentioned in section 1985 of Title 42;
(2) To recover damages from any person who fails to prevent or to aid in preventing any wrongs mentioned in section 1985 of Title 42 which he had knowledge were about to occur and power to prevent;
(3) To redress the deprivation, under color of any State law, statute, ordinance, regulation, custom or usage, of any right, privilege or immunity secured by the Constitution of the United States or by any Act of Congress providing for equal rights of citizens or of all persons within the jurisdiction of the United States;.

Monroe v. Pape, 365 US 167 - Supreme Court 1961

Those aspects of Congress' purpose which are quite clear in the earlier congressional debates, as quoted by my Brothers DOUGLAS and FRANKFURTER in turn, seem to me to be inherently ambiguous when applied to the case of an isolated abuse of state authority by an official. One can agree with the Court's opinion that.

"It is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies. . "

and

*If the state remedy was considered adequate when the official's unconstitutional act was unauthorized, why should it not be thought equally adequate when the unconstitutional act was authorized? For if one thing is very clear in the legislative history, it is that the Congress of 1871 was well aware that no action requiring state judicial enforcement could be taken in violation of the Fourteenth Amendment without that enforcement being declared void by this Court on direct review from the state courts. And presumably it must also have been understood that there would be Supreme Court review of the denial of a state damage remedy against an official on grounds of state authorization of the unconstitutional 195*195 action. It therefore seems to me that the same state remedies would, with ultimate aid of Supreme Court review, furnish identical relief in the two situations. This is the point Senator Blair made when, having stated that the object of the Fourteenth Amendment was to prevent any discrimination by the law of any State, he argued that:*

"This being forbidden by the Constitution of the United States, and all the judges, State and national, being sworn to support the Constitution of the United States, and the Supreme Court of the United States having power to supervise and correct the action of the State courts when they violated the Constitution of the United States, there could be no danger of the violation of the right of citizens under color of the laws of the States." Cong. Globe, 42d Cong., 1st Sess , at App. 231

Rule 12(b), SCRMC provides that on motion and upon terms that are just, the court may relieve a party or the party's legal representative from a final judgment, order, or proceeding for the following reasons (1) mistake, inadvertence, surprise, or excusable neglect, (2) newly discovered evidence which by due diligence could not have been discovered in time to move for a new trial under Rule 19; (3) fraud, misrepresentation, or other misconduct of an adverse party; (4) the judgment is void, (5) the judgment has been satisfied, released, or discharged, or a prior judgment upon which it is based has been reversed or otherwise vacated, or it is no longer equitable that the judgment should have prospective application. The motion shall be made within a reasonable time, and for reasons (1), (2), and (3), not more than one year after the judgment, order, or proceeding was entered or taken. A motion under this subdivision does not affect the finality of a judgment or suspend its operation. This rule does not limit the power of the court to entertain an independent action to relieve a party from a judgment, order, or proceeding, or to set aside a judgment for fraud upon the court. During the pendency of an appeal, leave to make the motion must be obtained from the appellate court. The procedure for obtaining any relief from judgment shall be by motion as prescribed in these rules, by appeal, or by an independent action.

Elements of Common Tort Actions

1. Generally

A tort is defined as a private wrong or injury done to person or property for which a legal remedy is afforded. A tort arises where there is 1) a duty of due care, 2) a breach of that duty--i e. negligence; 3) a legally protected injury; and 4) a causal relationship between that injury and the negligence such that the

negligence "proximately caused" the injury. A wrongful act may be a breach of a contract, a crime punishable by law and a tort. A tort compensates victims, while criminal law punishes wrongdoers

For example, if a person assaults and injures another person, the injured party may institute two separate and distinct actions, one civil and one criminal. The civil action designated as a tort will be for a money judgment against the defendant seeking to be compensated for his damages. Damages may include hospital bills, compensation for lost income if the injury prevented a return to work, and in some instances, compensation for the injured party's pain and suffering.

A criminal action may also be instituted for assault and battery. In this action, the theory is that the defendant has committed a wrong against society.

Whether the defendant breached his duty of due care (or some other related duty) and proximately caused the plaintiff's injury is a mixed question of law and fact to be determined at trial. The judge should provide a proper charge and direct a verdict only where there is no evidence upon which a reasonable juror could decide otherwise.

A tort may be inflicted either negligently or intentionally. The legal definition of negligence is conduct which falls below the standard established by law for the protection of others against unreasonable risk of harm. In judging whether conduct is negligent, the law applies objective standards of reasonableness. The question is what would a reasonable person have done under the same circumstances.

An intentional tort is an act committed with a particular state of mind. Intent is defined as the desire to cause certain immediate consequences. Certainty of the harmful consequences is what distinguishes intentional torts from negligent or reckless ones. Common intentional torts include Battery, Assault, False Imprisonment, Intentional Infliction of Emotional Distress, and Trespass to Land.

http://www.state.il.us/court/opinions/appellatecourt/1999/1stdistrict/february/html/1981277.htm

Once the defendant establishes the existence of a release, legal and binding on its face, the burden shifts to the plaintiff to prove it invalid by clear and convincing evidence. *McComb v. Seestadt*, 93 Ill. App. 3d 705, 706, 417 N.E.2d 705, 707 (1981).

As previously discussed, the release in this case is clear and unambiguous. However, a release is only effective if plaintiff's consent to the agreement was knowing and voluntary. *Constant*, 745 F. Supp. at 1379. It may be voided where its execution was obtained through fraud, duress, illegality or mistake. *Simmons*, 263 Ill. App. 3d at 832, 635 N.E.2d at 603. As such, plaintiff contends that the release in question was executed under duress and was, therefore, unenforceable as a matter of law.

Economic duress is a condition where one is induced by a wrongful act or threat of another to make a contract under circumstances that deprive one of the exercise of one's own free will. *De Fontaine v. Passalino*, 222 Ill. App. 3d 1018, 1029, 584 N.E.2d 933, 940 (1991); *Kaplan v. Kaplan*, 25 Ill. 2d 181, 185, 182 N.E.2d 706, 709 (1962). To establish duress, one must demonstrate that the threat has left the individual " 'bereft of the quality of mind essential to the making of a contract.' " *Alexander v. Standard Oil Co.*, 97 Ill. App. 3d 809, 815, 423 N.E.2d 578, 582

(1981), quoting *Kaplan*, 25 Ill. 2d at 186, 182 N.E.2d at 709. The acts or threats complained of must be wrongful; however, the term "wrongful" is not limited to acts that are criminal, tortious, or in violation of a contractual duty. They must extend to acts that are wrongful in a moral sense as well. *Kaplan*, 25 Ill. 2d at 186, 182 N.E.2d at 709. In terms of "economic duress," also known as "business compulsion," the defense cannot be predicated upon a demand that is lawful or upon doing or threatening to do that which a party has a legal right to do. *Alexander*, 97 Ill. App. 3d at 815, 423 N.E.2d at 582. Furthermore, it has been long held that where consent to an agreement is secured merely because of hard bargaining positions or financial pressures, duress does not exist. *Wallenius v. Sison*, 243 Ill. App. 3d 495, 503, 611 N.E.2d 1096, 1101 (1993); *Chouinard v. Chouinard*, 568 F.2d 430, 434 (5th Cir. 1978). A party must demonstrate inducement by a wrongful act or threat of another to execute an agreement under circumstances depriving him of the exercise of free will in order to invalidate an agreement on the basis of duress. *Willcutts v. Galesbury Clinic Ass'n*, 201 Ill. App. 3d 847, 852-53, 560 N.E.2d 1, 4 (1990). Unless wrongful or unlawful pressure is applied, there is no business compulsion or economic duress. *De Fontaine*, 222 Ill. App. 3d at 1029, 584 N.E.2d at 941. "Rather, the conduct of the party obtaining the advantage must be shown to be tainted with some degree of fraud or wrongdoing in order to have an agreement invalidated on the basis of duress." *Alexander*, 97 Ill. App. 3d at 215, 423 N.E.2d at 583.

Many states have adopted the modern doctrine of 'business compulsion' or what is sometimes referred to as 'economic duress.'" 25 AmJur2d Duress and Undue Influence § 6 (1996). "The doctrine of economic duress applies only to special, unusual, or extraordinary situations in which unjustified coercion is used to induce a contract . under such circumstances that the victim has little choice but to accede." Newburn, 657 So.2d at 852. The states adopting economic duress as a defense limit its availability by requiring that three elements be met to justify its application.[2] Basically, these three elements are:

1. One side involuntarily accepted the terms of another; and

2. That circumstances permit no other reasonable alternative; and

3. That said circumstances were the result of a coercive wrongful act of the opposite party.

See e.g., Oskey Gasoline & Oil Co., Inc., v. Continental Oil, 534 F.2d 1281, 1286 (8th Cir.1976); Saint Alphonsus Med. Center, 861 P.2d at 77; Mellon, 493 N.W.2d at 703; Zeilinger, 823 P.2d at 657. All three elements must be met to sustain a defense of economic necessity. Id.

[¶20.] To establish the **first prong of this test,** the plaintiff has the burden to "go beyond the mere showing of a reluctance to accept and of financial embarrassment." Oskey, 534 F.2d at 1286. There must be a demonstration of acts on the part of the defendant which produced economic duress. It "must be proven by evidence that the duress resulted from the defendant's wrongful and oppressive conduct and not by plaintiff's necessities." Id. "The entering

into a contract with reluctance or even dissatisfaction with its terms because of economic necessity does not, of itself, constitute economic duress invalidating the contract." Newburn, 657 So.2d at 852.

[¶21.] In addition, the **second prong** requires that the circumstances permit no other reasonable alternative. Oskey, 534 F.2d at 1286. "In determining whether a reasonable alternative is available, we employ an objective test." Zeilinger, 823 P.2d at 658. Therefore, "the outcome depends on the circumstances of each case." Id. The availability of a legal resolution is one such circumstance. Oskey, 534 F.2d at 1286.

[¶22.] The **third prong requires** (a) coercive wrongful acts on the part of the other party and (b) a causal link between the coercive wrongful acts and the circumstances creating economic duress. Id. These acts include acts which are criminal or tortious. Id. A claim of economic duress cannot be based upon a claim that one has been the victim of a hard bargain. Newburn, 657 So.2d at 852. The party asserting economic duress must establish they were the victim of unlawful or unconscionable pressure. Id.

[¶23.] **All negotiations inherently involve a certain amount of pressure and coercion. However, to satisfy the requirements of economic duress "that pressure must be wrongful and not all pressure is wrongful." 25 AmJur2d Duress and Undue Influence § 7 (1996).** A party's actions, rather than motive, govern the determination of wrongful and coercive. Id. A defense of economic necessity cannot be maintained when a party's actions are lawful, or threats to carry out that which the law entitles them to do. Id. Factors to be considered for economic duress include: the age and mental ability, financial condition, business expertise, absence of good faith, adequacy of consideration and the adequacy of a legal remedy of the party seeking relief. Id

Consideration

This court has held that "[a] release must be based upon consideration which consists either of some right, interest, profit or benefit accruing to one party, or some forbearance, detriment, loss of responsibility given, suffered or undertaken by another."*Gavery*, 283 Ill. App. 3d at 489, 670 N.E.2d at 826; see also *White v. Village of Homewood*, 256 Ill. App. 3d 354, 356, 628 N.E.2d 616, 618 (1993). Any act or promise that is a benefit to one party or a detriment to the other is a sufficient consideration to support a contract. *De Fontaine*, 222 Ill. App. 3d at 1028, 584 N.E.2d at 939. The record indicates, however, that consideration was bestowed upon plaintiff.

This court has further noted:

"A court's inquiry into whether a contract is supported by consideration does not extend to examining the adequacy of the consideration. *Goodwine State Bank v. Mullins*, 253 Ill. App. 3d 980, 1011, 625 N.E.2d 1056 (1993). It is not [the] court's function to review the amount of consideration unless the amount is so grossly inadequate as to shock the conscience of the court. *Bonner v. Westbound Records, Inc.*, 76 Ill. App. 3d 736, 743, 394 N.E.2d 1303 (1979). Mere inadequacy of consideration, in the absence of fraud or unconscionable advantage, ordinarily is insufficient to justify setting aside a contract. *Mullins*, 253 Ill. App. 3d at 1011." *Gavery*, 283 Ill. App. 3d at 490-91, 670 N.E.2d at 827.

As such, notwithstanding any legal or ethical considerations the firm had to plaintiff, plaintiff agreed to "unconditionally and forever release,

acquit, and discharge the Firm, *** from *any and all* claims, demands, liabilities and causes of action." (Emphasis added.) Although a promise to do something one is already obligated to do is no consideration and creates no new obligation (*De Fontaine*, 222 Ill. App. 3d at 1028, 584 N.E.2d at 939), by signing the release, plaintiff obligated himself to never file suit against the firm in exchange for thousands of dollars in benefits he was not entitled to. In our view, this was adequate consideration.

Moreover, even assuming *arguendo* that the release was unenforceable, we believe that plaintiff ratified the agreement by his subsequent conduct. It has been held:

"A party cannot be permitted to retain the benefits received under a contract and at the same time escape the obligations imposed by the contract. If a releasor, therefore, retains the consideration after learning that the release is voidable, her continued retention of the benefits constitutes a ratification of the release." *Seward v. B.O.C. Division of General Motors Corp.*, 805 F. Supp. 623, 632 (N.D. Ill. 1992).

Further, " '[i]t is well established that the retention of the consideration by one sui juris, with knowledge of the facts will amount to a ratification of a release executed by him in settlement of a claim, where the retention is for an unreasonable time under the circumstances of the case.' " *Golden v. McDermott Will & Emery*, 299 Ill. App. 3d 982, 993, 702 N.E.2d 581, 589 (1998), quoting 66 Am. Jur. 2d *Release* §27 (1973). As such, "[a] victim of fraud who, knowing of the fraud, 'accepts the benefits flowing from a contract for any considerable length of time ratifies the contract.' " *Golden*, 299 Ill. App. 3d at 993, 702 N.E.2d at 589; see also *Seward*, 805 F. Supp. at 632.

Here, following the execution of the release, plaintiff was compensated until December 31, 1994, although he was to vacate his office on November 15, 1994. He received a tax "draw" on January 13, 1995, in the amount of $8,125, was offered the opportunity to purchase his office furnishings at book value, and was allowed to remain on the firm's life, health, and disability insurance programs until December 31, 1994. After accepting this compensation, plaintiff waited close to three years to file suit. As a result, plaintiff ratified the purportedly unenforceable release. See *Seward*, 805 F. Supp. at 632.

McComb v. Seestadt, 417 NE 2d 705 - Ill: Appellate Court, 1st Dist. 1981

http://scholar.google.com/scholar_case?case=10914063038752195122&hl=en&as_sdt=2,41

1 A release or a covenant not to sue, in essence, is the abandoning of a claim to the person against whom the claim exists, and where the release or covenant is executed with knowledge of its meaning, causes of action covered by the release or covenant are barred. (See Ogren v. Graves (1976), 39 Ill. App.3d 620, 622, 350 N.E.2d 249.) Defenses which may be asserted to vitiate a release or covenant not to sue include fraud in the execution, fraud in the inducement, mutual mistake and mental incompetence. (Blaylock v. Toledo, Peoria & Western R.R. Co. (1976), 43 Ill. App.3d 35, 37, 356 N.E.2d 639.) Once the defendant establishes the existence of the document, legal and binding on its face, the burden shifts to the plaintiff to prove it invalid by clear and convincing evidence. Meyer v. Murray (1979), 70 Ill. App.3d 106, 111, 387 N.E.2d 878.
707 707 Section 48 of the Civil Practice Act affords a means of obtaining at the outset of a case a summary disposition of issues of law or easily proved issues of fact. (Meyer v. Murray, at 114.) If the record establishes that a genuine and material question of fact does not exist, the motion to dismiss should be allowed. Meyer v. Murray, at 114.

• 2 Viewing the record under the law relevant to the determination of settlement agreements in personal injury actions, and in accordance with the law applicable to motions to dismiss pursuant to section 48 of the Civil Practice Act, we believe for the reasons hereinafter stated, the trial court did not err in granting defendant **Seestadt's** motion to dismiss.

Plaintiff seeks the application of the rule that releases or covenants not to sue may be invalidated when it is shown that they are grossly unfair and unjust. We have no quarrel with this rule as discussed in *Meyer v. Murray* (1979), 70 Ill. App.3d 106, 112, 387 N.E.2d 878; *Ruggles v. Selby* (1960), 25 Ill. App.2d 1, 165 N.E.2d 733; and *Clancy v. Pacenti* (1957), 15 Ill. App.2d 171, 145 N.E.2d 802, but it is clear that as applied in such cases the rule is premised upon a mutual mistake of fact regarding the nature and extent of the injuries sustained. (*Blaylock v. Toledo, Peoria & Western R.R. Co.* (1976), 43 Ill. App.3d 35, 38, 356 N.E.2d 639.) However, plaintiff's argument finds no support in the record for the application of this rule. Neither the pleadings nor plaintiff's affidavit set forth any facts from which it may be inferred there was a mutual mistake of fact resulting in the execution of the release. In his written response to defendant's motion to dismiss, plaintiff stated:

"In 1977 there was a diagnosis of pulmonary embolism, recurrent chest pains, and breathing difficulty. Further in March 1977 cellulitis over the left thigh, post vena caval clipping, a recurred pulmonary embolism, pulmonary infarction."

At the time the covenant was executed on October 17, 1977, plaintiff was fully aware of the nature and extent of his injuries. Yet in spite of these unresolved physical problems he executed the covenant not to sue defendant **Seestadt**. Under these facts, we cannot conclude that the extent of plaintiff's injuries was an "unexpected consequence." See *Scherer v. Ravenswood Hospital Medical Center* (1979), 70 Ill. App.3d 939, 388 N.E.2d 1268; see also *Kiest v. Schrawder* (1978), 56 Ill. App.3d 732, 372 N.E.2d 442.

Nor do the facts indicate that the casualty adjuster Hertko pressured plaintiff into settling.[3] More than four months passed from the date of the accident before Hertko contacted plaintiff to discuss a settlement and 14 months had passed before the settlement was reached. This is in sharp contrast to other cases where releases were set aside. (See *Florkiewicz v. Gonzalez* (1976), 38 Ill. App.3d 115, 347 N.E.2d 401 (release executed 708*708 three days after accident); *Smith v. Broscheid* (1964), 46 Ill. App.2d 117, 196 N.E.2d 380 (release executed two weeks after accident); *Fraser v. Glass* (1941), 311 Ill. App. 336, 35 N.E.2d 953 (release executed six days after accident).) Here plaintiff had ample time to seek medical treatment and to consult an attorney to determine possible legal remedies.

Furthermore, we note that the $7500 plaintiff received as consideration for the covenant not to sue was not a nominal or unconscionable amount as it was in other instances where a release was set aside. See *Florkiewicz v. Gonzalez* ($30 release for a skull fracture); *Reede v. Treat* (1965), 62 Ill. App.2d 120, 210 N.E.2d 833 ($125 for a back injury); *Smith v. Borscheid* ($216.99 release for back injury).

Over the years a trend has developed to apply a doctrine of liberality with respect to setting aside settlement agreements which subsequently prove to be grossly unfair and unjust. (.) This development has progressed to the stage where it has recently been stated that the "trend is to set aside releases of personal injury claims in a situation where the facts, when finally known, present an unconscionable result," and that the question in these cases is simply "whether the result * * * is unconscionable." (.) However, as this court observed in

"[T]his so-called liberal trend must exist in harmony with a policy of encouraging the settlement of personal injury claims and the forbearance of litigation entirely. [Citations.] It is especially important to maintain this latter principle in our progressively litigious society where cases are mounting in our overburdened courts. If a release or covenant is to be lightly disregarded, then the peaceful settlement of claims becomes realistically impossible. Prospective litigants cannot or will not negotiate settlements if the law will not give effect to their executed settlement of claims. [Citations.] It is perhaps for these reasons that public policy favors the peaceful and voluntary resolution of claims; where there appears to have been such a resolution by virtue of a release or covenant, a presumption of its validity is created. [Citations.]"

Plaintiff also argues that the statements made by casualty adjuster Hertko in the course of negotiations of the covenant not to sue were fraudulent as a matter of law. "[I]n order to entitle a releasor to avoid a release on the ground of fraud or of a false or fraudulent representation, he must show, in addition to the fact of a false representation, that such representation was made with knowledge of its falsity on the part of the party making it, or was recklessly uttered without regard to, or knowledge of, its truth, or would, by the exercise of ordinary diligence, have been known to be false; and it must also be shown that the releasor by action on the fraud or false representation suffered damage or injury." .

Martin v. Po-jo

ILLINOIS APPELLATE COURT — SECOND JUDICIAL DISTRICT

http://scholar.google.com/scholar_case?case=6411725140659044563&q=Martin+v.+Po-jo&hl=en&as_sdt=2,41

The single issue raised is whether the pleadings disclose a material and genuine disputed question of fact here are numerous cases in the State which have considered whether a release of a claim for personal injuries may be avoided on the ground that at the time it was executed the releasor was mistaken or misled as to the nature or extent of his injuries, or for fraud.

[1-5] Illinois follows the majority of jurisdictions in allowing a court to set aside a release executed by a tort victim when the facts indicate that the parties were mutually mistaken as to the extent of the releasor's injuries. The mistake must be mutual, and a unilateral or self-induced mistake of fact will be insufficient to void a release The burden of proving that a release should be set aside rests with the party urging the invalidity of the document, and the evidence must be clear and convincing, inasmuch as the law favors compromise. Welsh v. Centa, 75 Ill. App.2d 305, 311-312, 221 N.E.2d 106 (1966). (Citing numerous cases.) See also 71 ALR2d 77, Annotated A release may be avoided for fraud or fraudulent representations made by the releasee or his agent and relied upon by the releasor to his injury under the usual rules which apply to any other written instrument, but the release of personal injury should be carefully considered because mistakes are easily made and the consequences are more serious than in any other of the affairs of man Brackeen v Milner, 88 Ill. App 2d 50, 58, 59, 232 N.E.2d 241 (1967). In general, the modern trend of decisions is toward liberally relieving a party who has signed a release under a mistake as to the extent of his injuries, where the facts present an unconscionable result This is due in large measure to the fact that the rescission or voidance of a release is often a form of equitable relief addressed to the chancellor in equity who is vested with that degree of discretion and flexibility necessary to the doing of justice under the circumstances of each individual case Child v Lincoln Enterprises, Inc , 51 Ill App 2d 76, 81, 82, 200 N E 2d 751(1964)

While the majority of the cases have not been decided on pleadings, they may be so decided at that stage in a proper case. Civil Practice Act, § 48 (supra). Brackeen v. Milner (supra); Thomas v Hollowell, 20 Ill App.2d 288, 155 N E 2d 827 (1959); Tidwell v Smith, 27 Ill. App 2d 63, 169 N.E.2d 157 (1960), Welsh v Centa (supra).

With reference to the motion to dismiss, it is clear that such motions admit facts well pleaded, but do not admit conclusions of law or conclusions of fact unsupported by allegations of specific facts upon which such conclusions rest. Triangle Sign Co v. Randolph & State Property, Inc , 16 Ill App.2d 21, 26, 27, 147 N.E 2d 451 (1957)

Considering the pleadings before us under the authorities, we find no error in the ruling of the trial court. The plaintiff's counteraffidavit shows on its face that the plaintiff knew that she had a fractured hip and was under medical care for that injury. We are not persuaded by her argument that the fact that she did not know that she had what she characterized as a "plastic hip" was the statement of a material and genuine disputed fact which would prevent the decision on the motion. This related to the manner in which her known injury, that is the fractured hip, was treated, and not to the extent of her injuries under the circumstances set forth There is no claim of any new developments or change in her condition, nor any affidavit from her attending physician, or any other physician, that the method used was not the most effective treatment for one of her age or would cause her increased complications. There are no facts to support plaintiff's conclusion that the mistake was mutual with the insurance company and Mr. Pedderson, her attorney.

Similarly plaintiff's statements of fraud and overreaching are unsupported by facts and are conclusions It appears from the pleadings that plaintiff sought counsel and discussed the accident with her counsel as well as her injuries The negotiations and final settlement were concluded on her behalf by the attorneys of her choice and she had no direct dealings with the defendant after they entered into the case, so that the record is devoid of any fact which would substantiate or in any way indicate that plaintiff acted in response to any claimed conduct of fraud and overreaching on the part of the defendant. Her statement that she did not receive the $1,000 consideration cannot be considered a material statement of fact in view of the evidence in the record that she signed the release, endorsed the draft and dealt through her attorneys with the defendant.

We, therefore, affirm.

Affirmed.

MORAN, P.J and DAVIS, J., concur.

Blaylock v. Toledo, Peoria & Western Rd., 351 NE 2d 539 - Ill: Appellate Court, 3rd Dist. 1976

[illegible]

However, federal and Illinois law generally agree on the defenses which may be asserted to vitiate a release. Generally these are fraud in the execution, fraud in the inducement, mutual mistake, and mental incompetence. [illegible] aff'd [illegible]

The existence of the release is a matter upon which the defendant has the burden of proof. However, once the release is established, it is then the burden of plaintiff attacking the validity of the release to prove its invalidity. *Callen v. Pennsylvania R.R. Co.* 332 U.S. 625, 92 L.Ed. 242, 68 S.Ct. 296 (1947); *Welsh v. Centa,* 75 Ill. App.3d 305, 221 N.E.2d 106.

• 3 As indicated earlier, the plaintiff filed a pleading in response to the affirmative defense of release, claiming fraud. In this pleading the plaintiff made no effort to support his general allegation of fraud by 38*38 referring to misrepresentations, but contented himself with indicating that he did not understand the release. So far as the documents are concerned which the court considered in relation to the motion for summary judgment, we have been unable to find and the plaintiff has not called our attention to any facts which might support an inference of fraud. Even the plaintiff's own deposition is lacking in any support for such claim. Indeed, whenever plaintiff was questioned about his understanding about the transaction or what was said to him he was advised not to respond to the questions by his counsel and he did not respond. Since no counteraffidavits were filed, there is a complete absence of any factual basis supporting a claim of fraud. It seems to have been the plaintiff's position that it was the burden of the defendant to prove the absence of those grounds which might vitiate the release. As heretofore stated, this is not the rule and the plaintiff's failure to support his charge of fraud is fatal.

Lastly, plaintiff seeks the application of the rule that releases may be invalidated when it is shown that they are grossly unfair and unjust. We have no quarrel with this rule as discussed in *Ruggles v. Selby,* 25 Ill. App.2d 1, 165 N.E.2d 733, and *Clancy v. Pacenti,* 15 Ill. App.2d 171, 145 N.E.2d 802, but it is clear that as applied in such cases the rule is premised on a mutual

mistake of fact, i.e., neither party was aware of the serious nature of the injuries. However, plaintiff's argument finds no support in the record for the application of this rule. Neither the pleadings nor plaintiff's deposition set forth any facts from which it may be inferred there was a mutual mistake of fact resulting in the execution of the release and again it is not the burden of the defendant to establish the absence of a mutual mistake of fact.
Finding no error in the judgment of the circuit court of Tazewell County, the judgment of said court is affirmed.
Judgment affirmed.
STENGEL and BARRY, JJ., concur.

E 18 > PART II > CHAPTER 237 > § 3771

§ 3771. Crime victims' rights

How Current is This?

(a) Rights of Crime Victims.— A crime victim has the following rights:
(1) The right to be reasonably protected from the accused.
(2) The right to reasonable, accurate, and timely notice of any public court proceeding, or any parole proceeding, involving the crime or of any release or escape of the accused.
(3) The right not to be excluded from any such public court proceeding, unless the court, after receiving clear and convincing evidence, determines that testimony by the victim would be materially altered if the victim heard other testimony at that proceeding.
(4) The right to be reasonably heard at any public proceeding in the district court involving release, plea, sentencing, or any parole proceeding.
(5) The reasonable right to confer with the attorney for the Government in the case.
(6) The right to full and timely restitution as provided in law.
(7) The right to proceedings free from unreasonable delay.
(8) The right to be treated with fairness and with respect for the victim's dignity and privacy.
(b) Rights Afforded.—
(1) In general.— In any court proceeding involving an offense against a crime victim, the court shall ensure that the crime victim is afforded the rights described in subsection (a). Before making a determination described in subsection (a)(3), the court shall make every effort to permit the fullest attendance possible by the victim and shall consider reasonable alternatives to the exclusion of the victim from the criminal proceeding. The reasons for any decision denying relief under this chapter shall be clearly stated on the record.
(2) Habeas corpus proceedings.—
(A) In general.— In a Federal habeas corpus proceeding arising out of a State conviction, the court shall ensure that a crime victim is afforded the rights described in paragraphs (3), (4), (7), and (8) of subsection (a).
(B) Enforcement.—
(i) In general.— These rights may be enforced by the crime victim or the crime victim's lawful representative in the manner described in paragraphs (1) and (3) of subsection (d).
(ii) Multiple victims.— In a case involving multiple victims, subsection (d)(2) shall also apply.
(C) Limitation.— This paragraph relates to the duties of a court in relation to the rights of a crime victim in Federal habeas corpus proceedings arising out of a State conviction, and does not give rise to any obligation or requirement applicable to personnel of any agency of the Executive Branch of the Federal Government.
(D) Definition.— For purposes of this paragraph, the term "crime victim" means the person against whom the State offense is committed or, if that person is killed or incapacitated, that person's family member or other lawful representative.

(c) Best Efforts To Accord Rights.—
(1) Government.— Officers and employees of the Department of Justice and other departments and agencies of the United States engaged in the detection, investigation, or prosecution of crime shall make their best efforts to see that crime victims are notified of, and accorded, the rights described in subsection (a).
(2) Advice of attorney.— The prosecutor shall advise the crime victim that the crime victim can seek the advice of an attorney with respect to the rights described in subsection (a).
(3) Notice.— Notice of release otherwise required pursuant to this chapter shall not be given if such notice may endanger the safety of any person.
(d) Enforcement and Limitations.—
(1) Rights.— The crime victim or the crime victim's lawful representative, and the attorney for the Government may assert the rights described in subsection (a). A person accused of the crime may not obtain any form of relief under this chapter.
(2) Multiple crime victims.— In a case where the court finds that the number of crime victims makes it impracticable to accord all of the crime victims the rights described in subsection (a), the court shall fashion a reasonable procedure to give effect to this chapter that does not unduly complicate or prolong the proceedings.
(3) Motion for relief and writ of mandamus.— The rights described in subsection (a) shall be asserted in the district court in which a defendant is being prosecuted for the crime or, if no prosecution is underway, in the district court in the district in which the crime occurred. The district court shall take up and decide any motion asserting a victim's right forthwith. If the district court denies the relief sought, the movant may petition the court of appeals for a writ of mandamus. The court of appeals may issue the writ on the order of a single judge pursuant to circuit rule or the Federal Rules of Appellate Procedure. The court of appeals shall take up and decide such application forthwith within 72 hours after the petition has been filed. In no event shall proceedings be stayed or subject to a continuance of more than five days for purposes of enforcing this chapter. If the court of appeals denies the relief sought, the reasons for the denial shall be clearly stated on the record in a written opinion.
(4) Error.— In any appeal in a criminal case, the Government may assert as error the district court's denial of any crime victim's right in the proceeding to which the appeal relates.
(5) Limitation on relief.— In no case shall a failure to afford a right under this chapter provide grounds for a new trial. A victim may make a motion to re-open a plea or sentence only if—
(A) the victim has asserted the right to be heard before or during the proceeding at issue and such right was denied;
(B) the victim petitions the court of appeals for a writ of mandamus within 14 days; and
(C) in the case of a plea, the accused has not pled to the highest offense charged.
This paragraph does not affect the victim's right to restitution as provided in title 18, United States Code.
(6) No cause of action.— Nothing in this chapter shall be construed to authorize a cause of action for damages or to create, to enlarge, or to imply any duty or obligation to any victim or other person for the breach of which the United States or any of its officers or employees could be held liable in damages. Nothing in this chapter shall be construed to impair the prosecutorial discretion of the Attorney General or any officer under his direction.

241. Conspiracy against rights

How Current is This?

If two or more persons conspire to injure, oppress, threaten, or intimidate any person in any State, Territory, Commonwealth, Possession, or District in the free exercise or enjoyment of any right or privilege secured to him by the Constitution or laws of the United States, or because of his having so exercised the same; or
If two or more persons go in disguise on the highway, or on the premises of another, with intent to prevent or hinder his free exercise or enjoyment of any right or privilege so secured—
They shall be fined under this title or imprisoned not more than ten years, or both; and if death results from the acts committed in violation of this section or if such acts include kidnapping or an attempt to kidnap, aggravated sexual abuse or an attempt to commit aggravated sexual abuse, or an attempt to kill, they shall be fined under this title or imprisoned for any term of years or for life, or both, or may be sentenced to death

RULE 8

GENERAL RULES OF PLEADING

(a) Claims for Relief. A pleading which sets forth a cause of action, whether an original claim, counterclaim, cross-claim, or third-party claim, shall contain (1) a short and plain statement of the grounds including facts and statutes upon which the court's jurisdiction depends, unless the court already has jurisdiction to support it, (2) a short and plain statement of the facts showing that the pleader is entitled to relief, and (3) a prayer or demand for judgment for the relief to which he deems himself entitled. Relief in the alternative or of several different types may be demanded. Relief for a sum certain in money may be demanded for actual damages, but claims for punitive or exemplary damages shall be in general terms only and not for a stated sum, provided however, a party may plead that the total amount in controversy shall not exceed a stated sum which shall limit the claim for all purposes.

Note:

This Rule 8(a) is in the same general language as the Federal Rule with the important distinction that the State practice requiring pleading of the facts (rather than a "statement of the claim") is retained. The prayer or demand for relief is also designated as a part of the pleading to finally eliminate confusion on that point. Liberal rules as to amendment throughout (i.e., Rule 15) enable the parties to conform the pleadings to the facts and relief demanded, as they develop. See Rule 54(c). The final sentence is added to eliminate prayers for exaggerated and sensational claims for damages.

Note to 1986 Amendment:

Rule 8(a) is amended because the amount in controversy may determine the jurisdiction of the State and Federal courts, as well as the methods of discovery available in State courts. As originally adopted a general plea seeking punitive damages placed no limit on the amount sought and could expand the scope of the case unduly. This amendment avoids an exaggerated interpretation of a claim for punitive damages and permits the pleader to keep the case proportionate to the actual injury suffered.

(b) Defenses; Form of Denials. A party shall state in short and plain terms the facts constituting his defenses to each cause of action asserted and shall admit or deny the averments upon which the adverse party relies. If he is without knowledge or information sufficient to form a belief as to the truth of an averment, he shall so state and this has the effect of a denial. Denials shall fairly meet the substance of the averments denied. When a pleader intends in good faith to deny only a part or a qualification of an averment, he shall specify so much of it as is true and material and shall deny only the remainder. Unless the pleader intends in good faith to controvert all the averments of the preceding pleading, he may make his denials as specific denials of designated averments or paragraphs, or he may generally deny all the averments except such designated averments or paragraphs as he expressly admits; but, when he does so intend to controvert all its averments, including averments of the grounds upon which the court's jurisdiction depends, he may do so by general denial subject to the obligations set forth in Rule 11.

Note:

This Rule 8(b) is the same as the Federal Rule. It abolishes the "general denial" unless the pleader can controvert every allegation of the complaint, including the jurisdictional allegations. Every allegation must be specifically admitted or denied. Failure to deny constitutes admission. An answer neither admitting nor denying but "demanding proof thereof" is insufficient. The pleader must deny in good faith all parts of an averment not admitted.

Note to 1986 Amendment:

Rule 8(b) is amended to make clear that fact pleading is required for both the complaint and answer.

(c) Affirmative Defenses; Reply. In pleading to a preceding pleading, a party shall set forth affirmatively the defenses: accord and satisfaction, arbitration and award, assumption of risk, condonation, contributory negligence, discharge in bankruptcy, duress, fraud, illegality, injury by fellow servant, laches, license, misrepresentation, mistake, payment,

plene administravit or the administration of the estate is closed, recrimination, release, res judicata, statute of frauds, statute of limitations, waiver, and any other matter constituting an avoidance or affirmative defense. When a party has mistakenly designated a defense as a counterclaim or a counterclaim as a defense, the court shall treat the pleading as if there had been a proper designation. A party may file a reply to any of the foregoing affirmative defenses.

Note:

This Rule 8(c) is the same as the Federal Rule except for some affirmative defenses added to the list as a guide. The aim is to avoid the "surprise" defenses permissible under the old general denial answer, and require the defendant also to stick to "fact" pleading. The last sentence permits a fact pleading reply to all affirmative defenses. This reinforces the intent to fix the facts by the pleadings, an important departure from the Federal Rules approach to pleadings.

Note to 1986 Amendment:

The affirmative defenses of condonation and recrimination are added to Rule 8(c) because they are often asserted in pleadings in Family Courts.

Note to 1995 Amendment:

Rule 8(c) is amended to add the affirmative defense of duress to conform the rule to the comparable federal rule. The amendment does not change substantive or procedural law because duress is recognized as an affirmative defense, and the concluding clause of the first sentence requires it to be asserted as a matter of avoidance.

SECTION 15-3-530. Three years.

Within three years:

(1) an action upon a contract, obligation, or liability, express or implied, excepting those provided for in **Section 15-3-520;**

(2) an action upon a liability created by statute other than a penalty or forfeiture;

(3) an action for trespass upon or damage to real property;

(4) an action for taking, detaining, or injuring any goods or chattels including an action for the specific recovery of personal property;

(5) an action for assault, battery, or any injury to the person or rights of another, not arising on contract and not enumerated by law, and those provided for in Section 15-3-545;

(6) an action under Sections 15-51-10 to 15-51-60 for death by wrongful act, the period to begin to run upon the death of the person on account of whose death the action is brought;

(7) any action for relief on the ground of fraud in cases which prior to the adoption of the Code of Civil Procedure in 1870 were solely cognizable by the court of chancery, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts constituting the fraud;

(8) an action on any policy of insurance, either fire or life, whereby any person or property, resident or situate in this State, may be or may have been insured, or for or on account of any loss arising under the policy, any clause, condition, or limitation contained in the policy to the contrary notwithstanding; and

(9) an action against directors or stockholders of a monied corporation or a banking association to recover a penalty or forfeiture imposed or to enforce a liability created by law, the cause of action in the case not considered to have accrued until the discovery by the aggrieved party of the facts upon which the penalty or forfeiture attached or the liability was created, unless otherwise provided in the law under which the corporation is organized.

SECTION 15-3-540. Three years.

Within three years:

(1) An action against a sheriff, coroner or constable upon a liability incurred by the doing of an act in his official capacity and in virtue of his office or by the omission of an official duty, including the nonpayment of money collected upon an execution, subject to the provisions of Section 15-3-560; and

(2) An action upon a statute for a penalty or forfeiture when the action is given to the party aggrieved or to such party and the State, except when the statute imposing it prescribes a different limitation.

Title 15 - Civil Remedies and Procedures

CHAPTER 17.

ARREST AND BAIL IN CIVIL ACTIONS

ARTICLE 1.

ARREST

SECTION 15-17-20. Arrest in civil actions permitted in certain cases.

The defendant may be arrested, as prescribed in this article, in the following cases:

(1) In an action for money received or property embezzled or fraudulently misapplied by a public officer, an attorney, solicitor or counsellor, an officer or agent of a corporation or banking association in the course of his employment as such or a factor, agent, broker or other person in a fiduciary capacity or in an action for any misconduct or neglect in office or in a professional employment;

(2) In an action to recover the possession of personal property fraudulently detained or when property has been fraudulently concealed, removed or disposed of so that it cannot be found or taken by the sheriff or constable and with intent that it should not be so found or taken or with intent to deprive the plaintiff of the benefit thereof;

(3) When the defendant has been guilty of a fraud in contracting the debt or incurring the obligation for which the action is brought or in concealing or disposing of the property for the taking, detention or conversion of which the action is brought, or when the action is brought to recover damages for fraud or deceit;

SECTION 15-17-50. Affidavit to obtain order for arrest.

The order may be made when it shall appear to the proper officer by the affidavit of the plaintiff or of any other person that a sufficient cause of action exists and that the case, from the facts stated, is one of those mentioned in Section 15-17-20.

- Witness 1 and 2,Two People have come forth and informed Wando River llc that Mr. Darby and Mr. Bennett had a $10 Million contract shortly after Wando River llc closed property and held contract out until they could seize Wando River's property or the majority %. (This is where they set us up & documents clearly show this.) Someone has contacted this group and changed their mind as they have gone into hiding since the days after I emailed this to the court.
- Witness 1, One person from Charleston has stepped up and stated he would testify that Mr. Darby has a pattern of doing this specific type of business and that he worked with Mr. Darby as several projects were carried out before having enough and leaving or run off. included in Exhibit of Affidavits
- Witness 3 and 4, two people will testify that they were told by Darby that "I took the money ($500,000.00 escrow) so Reed and Alan would not run off to the islands..." Affidavits included in Exhibit of Affidavits
- One person will testify to Mr. Bennett has a pattern of doing this specific type of business and that he worked with Mr Bennett on the same type action Affidavits included in Exhibit of Affidavits
- E-mail from Higgins that shows DR Horton lawyer would like to enter into the contract to close on the property is with held one week and not disclosed to Wando River LLC until after contract with Crescent resources is agreed upon with LOI. Wando River LLC could have avoided all actions with DR Horton and dragging Crescent Resources along. We could have simply closed it then and all the trouble avoided. *Not included due to time*
- As the documents unfold Wando River LLC does not have KRA/ Bennett listed on any documents as a guarantor except on documents that KRA/ Bennett produce for Wando River presentations and meetings. Attachment N
- The "Guarantor Agreement" referred to states ; "The Investor Agreement(Referred to as "The Guarantor Agreement") Attachment A
- Summary of terms from KRA to assist with loan the week of August 24, 2004 did not include Bennett as 25% guarantor Attachment Q
- summary of **"Amended Terms of Investor Agreement"** from guarantor in March of 05 defines guarantors objective to acquire property prior to contract with D.R. Horton Attachment D
- Guarantors **cash flow analysis from March 11, 2005** defines guarantors objective in line with summary above *Not included due to time*
- **Wando River LLC "operating agreement"**; KRA and Bennett *not on documents and never acting as Guarantors Not included due to time*

- HUD statement from closing August 24, 2004. Wando River LLC **only entity on statement** Attachment R
- KRA/Bennett **investor agreement**. Referred to by guarantors as **guaranty agreement** Attachment A
- Escrow agent agreement and escrow agreement both ended on April 16th. 2006 Attachment U
- DEED, list the Wando River llc as the owner, KRA and Bennett *not on documents and never acting as Guarantors filed online court document*
- Original loan documents from Carolina First dated August 24, 2004. List Wando River LLC as borrower. KRA and Bennett *not on documents and never acting as Guarantors* Attachment N
- Chicago title insurance List Wando River LLC as borrower. KRA and Bennett *not on documents and never acting as Guarantors Not included due to time*
- $500,000 escrow money being held by Higgins is addressed to Wando River LLC
- Verification of Wando River LLC ownership to Higgins from Trentholm Walker and Clay McCullough statements Attachment F,G,H
- Wando River's new loan and its terms disclosed to Mr. Higgins along with significance of $500,000 that must be deposited into Wando River LLC's operating. Only contingency on loan Exhibit of Affidavits
- Wando River's CPA instructions for constructive receipt to guarantors and escrow agent to inform them that Wando River must sign On $500,000 deposit is avoided by wiring funds Attachment J
- Guarantors agreement that clearly states this agreement terminates at which time the loan is paid off, Attachment A
- False claims by guarantors of all filings after December 28, 2007 stating that Alan Sheppard did not notify guarantors of sale and the two e-mails to support along with guarantors replies
- Guarantors list of checks written with with-held escrow funds list numerous checks written outside of Wando River LLC's authority and included the following Attachment B
-
    - check number 1018, design works $612
    - check number 1020, Mr. Higgins law firm$ 2765
    - check number 1021 Mr. Higgins law firm$ 1170
    - check number 1015, design works $9641
    - check number 1023 states that Mr. Higgins was paid out of the $72,677 is incorrect

- check number 1026 Kiawah capital $23,000 is to an entity that has nothing to do with the guarantee or investor agreement of Wando River
- check number 1027, Nexen Pruitt $290 to review loan documents that Wando River never requested
- there is a wire $80,000 wire on the list of checks that had the word "split" next to it that no one could identify
- there is a wire for $2760 listed as related to loan documents initiated by guarantors did not close because Wando River llc never wanted it for any reason

- All of the other listed checks were for items outside of the management of Wando River LLC project. This included over $10,000 of checks to Design works, a firm used by Mr. Higgins and Mr. Bennett's LLC's; Stonos and Poe's Tavern where Scott Parker aided the town of Sullivan's island deal with alternatives to shutting down Poe's tavern due to Island resident complaints. Design work did the alternative plans that included getting Mr. Bennett's Request to add additional parking granted after much to-do. *Not included due to time*
- Stonos LLC, Stonos Oyster Bar LLC, Poes Tavern LLC, Poes Tavern, Jax Fl. LLC, LRB Funding transferred back and forth From Mr. Higgins to Mr. Bennett between 2004 and 2011 showing that Mr. Higgins who was inserted as a neutral escrow agent to both parties in place of Robert Dodd's, Wando River llc's atty. On the D R Horton contract in 2005; Shows a lot. *Not included due to time*

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT

AGREEMENT

This is an agreement among and between, on the one hand, Kiawah Resort Associates, L.P., a Delaware limited partnership ("KRA") and L. Russell Bennett ("Bennett") and, on the other hand, Wando River, LLC, a South Carolina limited liability company ("Company"), Alan J. Sheppard ("Sheppard") and Julian Reed Simmons, III ("Simmons"). KRA and Bennett are referred to herein collectively as the "Investors". The date of this Agreement is August 25, 2004.

BACKGROUND

1. By contract dated July ____, 2004 (the "Contract"), Sheppard and Simmons agreed to purchase certain property in Charleston County, South Carolina (the "Property"). The Contract was assigned to Company on August _____, 2004. A legal description of the Property is attached hereto as Exhibit A.

2. To finance a portion of the purchase price of the Property, the Company obtained a commitment from Carolina First Bank ("Lender") for a credit facility in the amount of $3,150,000.00 (the "Loan").

3. A condition of the Loan is that seventy five percent (75%) of the loan balance be guaranteed (the "Guaranty") by KRA and twenty five percent (25%) by Bennett.

4. Investors have agreed to provide the Guaranty under the terms and conditions hereinafter set forth.

NOW THEREFORE, for valuable consideration and intending to be bound the parties agree as follows:

1. Guaranty. Subject to the terms and conditions hereinafter set forth, Investors agree to provide the Guaranty to Lenders in the form attached hereto as Exhibit B. The Guaranty shall be delivered at closing (the "Closing") on the Loan.

2. Fees.

2.1 The Company, Sheppard and Simmons jointly and severally agree to pay Investors the following fees in consideration of their entering into the Guaranty:

2.1.1 A commitment fee equal to one percent (1%) of the Guaranty amount which shall be earned at the closing of the Loan ("Closing") and shall be due and payable at the earlier of (i) the sale of all or part of the Property or (ii) the first anniversary of Closing.

2.1.2 A guarantee fee which shall accrue at a rate of five percent (5%) per annum on the outstanding Loan balance as the same shall vary from time to time and shall be payable at the earlier of (i) the sale of all or part of the Property or (ii) the first anniversary of Closing.

2.2 In the event of a Default as hereinafter defined, the fees described in Section 2.1 shall become immediately due and payable. After an event of Default the guarantee fee shall increase to twelve percent (12%) and shall continue to accrue so long any Loan balance remains.

2.3 The operating agreement of Company shall provide that no distributions shall be made to members until all fees due Investors have been fully paid.

3. Escrow Agreement.

3.1 Company agrees to establish an Escrow (the "Escrow") and to enter into an escrow agreement (the "Escrow Agreement") with Kiawah Capital, LLC, the Investor's

representative, in the form attached as Exhibit C. The Escrow will be funded with $300,000 less the amount of closing costs paid by Company in connection with closing on the Loan and this Agreement.

4. Term; First Anniversary.

4.1 The parties contemplate that the Property will be sold and the Loan repaid on before the first anniversary of Closing. If this has not occurred, then the Company shall within ten (10) days of the first anniversary of Closing pay to Investors all fees due pursuant to Section 2.1 and pay into the Escrow an amount equal to the remaining interest due on the Loan until maturity plus any amounts needed for taxes, insurance or other budgeted expenses of the Company through maturity less the amount, if any, of the Escrow balance, provided (i) that if the Property is subject to a bona fide purchase agreement on such first anniversary, (ii) no condition of Default exists and (iii) the Escrow has sufficient funds to pay interest for sixty days, then no fee or escrow payments shall be required for a period of sixty (60) days. If closing does not occur within such sixty (60) day period, the required payments shall be made on such sixtieth day.

4.2 This Agreement shall terminate at such time as Investors' liability on the Guaranty ends

5 Obligations of Company.

5.1 So long as the Investors are obligated under the Guaranty the Company agrees as follows.

5.1.1 It shall provide Investors such financial information and reports as shall be requested from time to time.

5.1.2 It shall keep Investors informed about all matters dealing with the development of the Property, including specifically, condemnation, annexation, zoning, environmental and permitting matters and shall promptly provide Investors with copies of all correspondence which it receives granting or denying requested governmental approvals.

5.1.3 It shall immediately inform Investors of the occurrence of any material adverse event in connection with the Property or the development thereof.

5.1.4 It shall promptly provide Investors with any correspondence received by Company from Lender relating to a default under the Loan and any agreements related thereto as the same may be amended from time to time (collectively the "Loan Agreements").

5.1.5 It shall not further mortgage the Property.

5.1.6 It shall maintain comprehensive insurance with coverage and limits acceptable to Investors, name Investors as an additional insured and provide Investors with proof thereof at or before Closing.

5.1.7 Its operating agreement shall not be amended without Investors prior written consent.

5.1.8 It shall not make any loans or advances to any member.

5.1.9 It shall provide Investors for their approval a preliminary development budget for the Property within 30 days of Closing, (the "Budget"). The Budget shall be updated monthly and submitted to Investors. Company, shall not make expenditures which materially vary from the provisions of the Budget (as adjusted) or enter into contracts or commitments to make such expenditures without Investors' prior written consent. If Investors determine that the Escrow amount is not adequate to fund all items in the Budget, then Investors

may elect to defer payment of all or part of any development fees included in the Budget until the Escrow Funds are sufficient

6. Default.

6.1 The following shall constitute an event of default by Company ("Default") hereunder.

6.1.1 The occurrence of a default under the Loan Agreement which remains uncured after any applicable cure period.

6.1.2 The breach by Company of any provision, representation or warranty contained in this Agreement, which breach is not cured (if curable) by Company within ten (10) days of notice by Investors

6.1.3 The filing of bankruptcy by the Company, Sheppard or Simons.

6.1.4 The failure of the Company to discharge any lien against the Property or judgment within thirty (30) days

6.1.5 Any breach by the Company or its members of the terms of its operating agreement

6.1.6 The failure of Sheppard to pay $150,000 into the Escrow within five (5) days of Closing.

6.2 Investors' Remedies.

Upon the occurrence of an event of Default and in addition to all rights which Investors' may have at law or equity, Investors' shall have the following rights

6.2.1 Purchase the Property for the Default Amount, as hereinafter defined; or

6.2.2 Acquire all membership interests in the Company for an amount equal to the Default Amount, paid pro-rata to the Members, or in such a manner as all members shall direct in writing.

6.3 Default Amount. The "Default Amount" shall be equal to seventy-five percent (75%) of the appraised value of the Property, less: (i) all amounts of principal, interest and fees due Lender; (ii) property taxes on the Property pro-rated through the purchase; (iii) the amount of all liens, judgments and charges to which the Property is subject; (iv) all amount due Investors hereunder, (v) $5,000.00 for Investor's professional fees and (vi) the cost of any appraisal required by Section 6.4. If the Default Amount is a negative number, then the Default Amount shall be $10.00

6.4 Appraisal. If Investors elect to proceed under Section 6.2.1 or 6.2.2 and the parties are unable to agree on the value of the Property, then Investors shall select an appraiser who is a Member of the Appraisal Institute ("MAI") who shall appraise the Property and the value so determined shall be used for purposes of this Section 6

6.5 Closing on Purchase. The purchase of the Property, or the membership interests as the case may be, shall occur within thirty (30) days of the determination of value, provided, Investors may elect to deliver to the Company or the members a promissory note payable at the earlier of (i) the sale of the Property or (ii) one year from date. Absent such election, the purchase price shall be paid in cash at the closing. Closing documentation shall be prepared by Investors' counsel.

6.6 Right to Purchase Loan. Company acknowledges that in addition to the rights set forth in this Section 6, Investors are entitled, pursuant to the Loan Agreements, to purchase Lender's note and mortgage and exercise all rights thereunder in the event of a Default

6.7 Cross-Default. Company acknowledges that a Default under this Agreement also constitutes a default under the Loan Agreements.

7 Indemnification by Company, Simmons and Sheppard. In the event of a Default hereunder or under the Warrant, Company, Simmons and Sheppard shall jointly and severally indemnify and hold harmless Investors from all claims, losses, damages and liabilities (including attorney's fees) resulting therefrom (collectively "Damages") as defined in Section 8. It is understood and agreed that the calculation of Damages may not be completed until the disposition of the Property and the indemnification obligation shall survive for one year after such disposition.

8 Warrant. At closing, Company shall issue Investors a warrant in the form attached as Exhibit D (the "Warrant").

9 Arbitration. If a dispute arises out of or relates to this Agreement, or its breach, the parties agree to submit the dispute to a sole mediator selected by the parties. If not thus resolved it shall be referred to a sole arbitrator selected by the parties within thirty (30) days of the mediation or, in the absence of such selection, to the American Arbitration Association ("AAA") for arbitration which shall be governed by its Commercial Arbitration Rules. The award shall be made within six (6) months of selection of the arbitrator and judgment on the award may be entered in any court having jurisdiction. The mediation and arbitration shall be held in Charleston, South Carolina. The arbitrator shall determine issues of arbitrability but may not limit, expand or otherwise modify the terms of the Agreement, nor have authority to award punitive or other damages in excess of compensatory damages and each party irrevocably waives any claim thereto. The costs of mediation shall be born equally by the parties to the dispute. The costs of arbitration shall be apportioned amongst the parties as the arbitrator shall determine

in his or her discretion. The parties, their representatives, other participants and the mediator and arbitrator shall hold the existence, content and result of mediation and arbitration in confidence.

10 Miscellaneous

10.1 Waiver. Any waiver by the Investors of any breach of any term or condition hereof shall be effective only if in writing and such writing shall not be deemed to be a waiver of any subsequent or other breach, term or condition of this Agreement

10.2 Severability. If any provision, sentence, phrase or word of this Agreement or the application thereof to any person or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision, sentence, phrase, or word to persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby.

10.3. Agreement in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and this Agreement may be executed by the affixing of the signatures of each of the parties to one of such counterpart signature pages; all of such signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page

10.4 Notice. Any notice request, approval, consent, demand or communication shall be in writing and shall be effective upon the first to occur of the following: upon receipt by the party to whom intended or three business days after deposit in the United States Mail, registered or certified, return receipt requested to the then current business or primary residence address of the intended party.

10.5 Construction Counsel for all parties have reviewed this Agreement and no provision hereof shall be construed on the basis of authorship

COUNTER PART SIGNATURE PAGES FOLLOW

Counter Part Signature Page to Agreement between Kiawah Resort Associates, L.P., L. Russell Brunch, Wando River, LLC, Alan J. Sheppard and Julian Reed Simmons, III dated as of August 5, 2004.

KIAWAH RESORT ASSOCIATES, L.P.

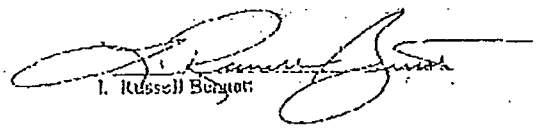
By: D & W Investments, Inc.
Its: General Partner

By: _____
Charles P. Darby, III
Its: President

TWD INVESTMENTS, LLC

By: _____
Charles P. Darby, III
Its: Manager

Counter Part Signature Page to Agreement between Kiawah Resort Associates, L.P., J. Russell Bennett, Wando River, LLC, Alan J. Sheppard and Julian Reed Simmons, III dated as of August __, 2006.



J. Russell Bennett

Counter Part Signature Page to Agreement between Kiawah Resort Associates, L.P., L. Russell Bennett, Wando River, LLC, Alan J. Sheppard and Julian Reed Simmons, III dated as of August __, 2004

WANDO RIVER, LLC

Alan J. Sheppard
Its: Manager Member

Alan J. Sheppard, individually

Julian Reed Simmons, III, individually

Attachment B

Kiawah Capital, LLC - Wando Escrow

Register: Checking Primary

From 01/01/2017 through 10/31/2017

Sorted by: Date, Type, Number/Ref

Date	Number	Payee	Account	Memo	Payment	C	Deposit	Balance
01/11/2017		Checking Primary	Interest Income	Deposit		X	777.96	110,115.09
03/10/2017		Checking Primary	-split-		80,966.75-	X		129,108.13
03/11/2017		Checking Primary	Professional Fees	Appraisal - Re	975.00	X		128,133.13
03/11/2017	1015	Bluffton Service	Bank Service Charges	Check service	7,875.00	X		120,158.13
03/11/2017	1016	Kiawah Capital	Bank Service Charges	Check service	11,625.00	X		196,733.13
03/11/2017	1017	Nelson Price	Professional Fees:Legal	Loan Review	150.00	X		196,883.13
03/13/2017		Checking Primary	Interest Income	Deposit		X	579.15	197,012.09
03/31/2017		Checking Primary	Interest Income	Deposit		X	518.81	197,530.90
04/16/2017		Checking Primary	Interest Expense	Month Interest	11,666.25-	X		175,864.65
04/19/2017		Checking Primary	Interest Income	Deposit		X	471.66	176,336.31
04/19/2017		Checking Primary	Interest Expense	Interest April	11,178.12-	X		165,158.19
04/19/2017	1018	Robert Dodds Associates	Professional Fees:Legal	06-999-WAN	1,118.50-	X		163,639.69
04/19/2017	1019	Nelson Price	Professional Fees:Legal	Invoice Number	450.00-	X		163,189.69
05/19/2017		Checking Primary	Interest Expense	May	11,666.25-	X		151,523.44
05/31/2017		Checking Primary	Interest Income	Deposit		X	710.89	152,234.33
06/19/2017		Checking Primary	Interest Income	Deposit		X	366.91	152,601.24
07/03/2017		Checking Primary	Interest Expense	June	11,178.11-	X		141,423.13
07/19/2017		Checking Primary	Interest Expense	July	11,666.25-	X		129,756.88
07/31/2017		Checking Primary	Interest Income	Deposit		X	316.96	130,073.84
08/19/2017		Checking Primary	Interest Expense	Aug	11,178.11-	X		118,895.73
08/31/2017		Checking Primary	Interest Income	Deposit		X	180.11	119,075.84
09/19/2017		Checking Primary	Interest Income	Deposit		X	113.11	119,188.95
09/19/2017		Checking Primary	Interest Expense	September	11,000.00			108,188.95

Attachment C

12-18-07-12-19-07 Notice to sell and Meet commitment to pay off loan by 12-31-07 with KRA/Bennet reply and Acknowledgement

Alan,

Thank you for your note below. We are happy to discuss these matters with you further, but are concerned that at this late date it will not be possible to complete the refinancing before Dec. 30. As we and our lawyer have noted to you and Mr. Dodds numerous times over the past month, we had hoped to complete the refinancing by now as all of our necessary signatories will not be available after this week. As such, we'd suggest that you instruct Mr. Dodds to make every effort to close the refinancing this week. If you think that it would be helpful, we are available for a call with both of our lawyers today or tomorrow to discuss any remaining issues.

To your point below, we feel that the provisions you have deleted in the draft Second Amendment to Agreement are reasonable given your request for additional credit support from the Investors and we cannot move forward without such protections. Also, noting the current time pressure, we would suggest that we discuss any potential sales of the property after the refinancing has closed. We look forward to your response.

Ronald C. Owens
14 North Adger's Wharf
Charleston, SC 29401

(O) 843-722-1506
(C) 843-224-7876

Ron Owens@KiawahIsland.com

-----Original Message-----
From: Alan Sheppard [mailto:alshep2000@yahoo.com]
Sent: Tuesday, December 18, 2007 12:42 PM
To: Ron Owens
Subject: Agreement

Ron,

This was going to Buddy but I will let you deal with it.

I have been chasing down Robert to have this agreement done and have found that the lawyer for your group would not accept changes and said that your group would deal with Alan and take care of everything. I just pried this out of Robert. Robert was asked by our group to confirm that the agreement was exactly what we had agreed upon up front. Ron also said that

Merry Christmas

Alan Sheppard

Phone #843-224-9169
Fax #843-884-8131

12-19-07 Westbrook notice to proceed with confidentiality

Hey Alan

I have spoken to Robert Dodds and he is supposed to call you to confirm details and prepare papers for Friday signing. I have also started the process of arranging the "down payment" transfer before the end of the year. To avoid any problem with your bank getting it late, I will shoot to have the transfer take place on Dec 28th. Can you or Robert get me wiring instructions before this Friday so I can arrange that before I leave? Robert thought he could have draft papers ready to review by tomorrow You should be sure to have everything reviewed by Cotton or another lawyer in whom you have confidence since you have apparently had a few bad experiences Hope this one goes well for both of us.

Ed

This communication may be attorney-client privileged or otherwise confidential. If you are not the intended recipient, please delete this message and notify the sender of this error.

Attachment D

SECOND AMENDMENT TO AGREEMENT

This is the Second Amendment (this "Second Amendment") to that certain Agreement dated August 25, 2004 (as amended or modified, the "Investor Agreement") among and between, on the one hand, Kiawah Resort Associates, L.P. ("KRA") and L. Russell Bennett ("Bennett" and, together with KRA, the "Investors") and, on the other hand, Wando River, LLC (the "Company"), Alan J. Sheppard ("Sheppard"), and Julian Reed Simmons, III ("Simmons"). The effective date of this Second Amendment is _____, 2007. Except as otherwise provided herein, capitalized terms used herein shall have the same meaning as in the Investor Agreement.

BACKGROUND

A. The Investor Agreement provides for, among other things, guarantees by KRA and Bennett of the Loan for the development of the Property.

B. The Company, Sheppard, and Simmons desire to refinance the Loan with a $3,535,000 loan (the "New Loan") from South Carolina Bank and Trust Company, N.A. (the "New Lender") on the terms outlined in that certain Loan Commitment dated October 18, 2007 from the New Lender.

C. The New Lender requires that seventy-five percent (75%) of the New Loan be guaranteed by KRA and that twenty-five percent (25%) of the New Loan be guaranteed by Bennett (the "New Guaranty").

D. The Investors have agreed to provide the New Guaranty under the terms and conditions set forth herein.

NOW THEREFORE for valuable consideration, and intending to be legally bound, the parties agree to amend the Investor Agreement as follows:

1. References to the "Lender", the "Loan", and the "Guaranty" in the Investor Agreement shall hereafter be deemed to refer to the "New Lender", the "New Loan", and the "New Guaranty", each as defined in this Second Amendment, respectively.

2. The Investors shall execute and deliver to the New Lender at closing of the New Loan the New Guaranty in the form attached hereto at Exhibit A.

3. Commencing on date of the closing of the New Loan, the guarantee fee set forth in Section 2.1.2 of the Investor Agreement shall accrue at a rate of seven and one half percent (7.5%) per annum.

3. The remaining funds in the Escrow, including those funds received from DR Horton relating to its efforts to purchase the Property, shall be used to pay interest on the New Loan and any other amounts owed to the New Lender, prior to the draw of additional funds under the New Loan for the payment of such amounts.

4. Section 2.3 of the Investor Agreement shall be deleted in its entirety and the following shall be substituted in lieu thereof:

"2.3 No distributions shall be made by the Company to its members until all amounts due Investors have been fully paid, unless otherwise approved by Investors."

5. Section 4.2 of the Investor Agreement shall be deleted in its entirety and the following shall be substituted in lieu thereof:

"4.2 **This Agreement shall terminate at such time as the Investors' liability on the New Guaranty ends and all payments due under this Agreement and the Warrant have been made.**"

6. Section 5.1.8 of the Investor Agreement shall be deleted in its entirety and the following shall be substituted in lieu thereof:

"5.1.8 The Company shall not make any distributions, payments, loans or advances to any member or related party except for distributions permitted pursuant to Section 2.3 hereof."

7. The following is added to the end of Section 6.1 of the Investor Agreement as a new Section 6.1.7:

"6.1.7 **The failure of the Company to make any payment under the Warrant when due.**"

8. Sheppard, Simmons, and the Company shall cause the sale of the Property to a third party on or before June 30, 2008 on terms approved in writing by the Investors in advance in their sole discretion. Failure to do so shall immediately constitute a Default under the Investor Agreement without any requirement for notice or further action by the Investors notwithstanding anything in the Investment Agreement to the contrary. Upon receipt of the terms and conditions of any such sale proposed by Sheppard, Simmons, and/or the Company, either or both of the Investors (individually or collectively, the "Purchasing Investor") may exercise the right of first refusal that is hereby granted to them and elect to purchase the Property on those same terms and conditions by delivering written notice to Sheppard, Simmons, and the Company within fifteen (15) days of receipt of written notice of such terms and conditions. Closing documentation shall be prepared by the Investors' counsel.

9. The following Sections are added to the Investor Agreement as new Sections 10.6, 10.7, and 10.8, respectively:

"10.6 Governing Law and Amendments. This Agreement shall be construed and enforced under the laws of the State of South Carolina applicable to contracts to be wholly performed in such State. No amendment or modification hereof shall be effective except in a writing executed by each of the parties hereto.

10.7. Time is of the Essence. Time is of the essence with respect to performance of the obligations of the parties hereunder.

10.8 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION."

10. The Company shall pay to the Investors upon the execution of this Second Amendment an additional commitment fee in the amount of $3,850.00.

11. The parties hereto confirm that, other than the original commitment fee set forth in Section 2.1.1 of the Investor Agreement, which was paid at execution of the First Amendment, and the additional commitment fee to be paid in accordance with Section 10 of this Second Amendment, all amounts due to the Investors under the Investor Agreement and the Warrant have not been paid and remain outstanding.

12. Except as amended herein, the Investor Agreement shall remain in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

KIAWAH RESORT ASSOCIATES, L.P.

By: D & W Investments, Inc.

Its: General Partner

By: _____

Charles P. Darby, III

Its: President

WANDO RIVER, LLC

_____

By: Alan J. Sheppard

Its: Manager

_____

Alan J. Sheppard, individually

TWD INVESTMENTS, LLC

_____

Julian Reed Simmons, III, individually

By: _____

Charles P. Darby, III

Its: Manager

_____

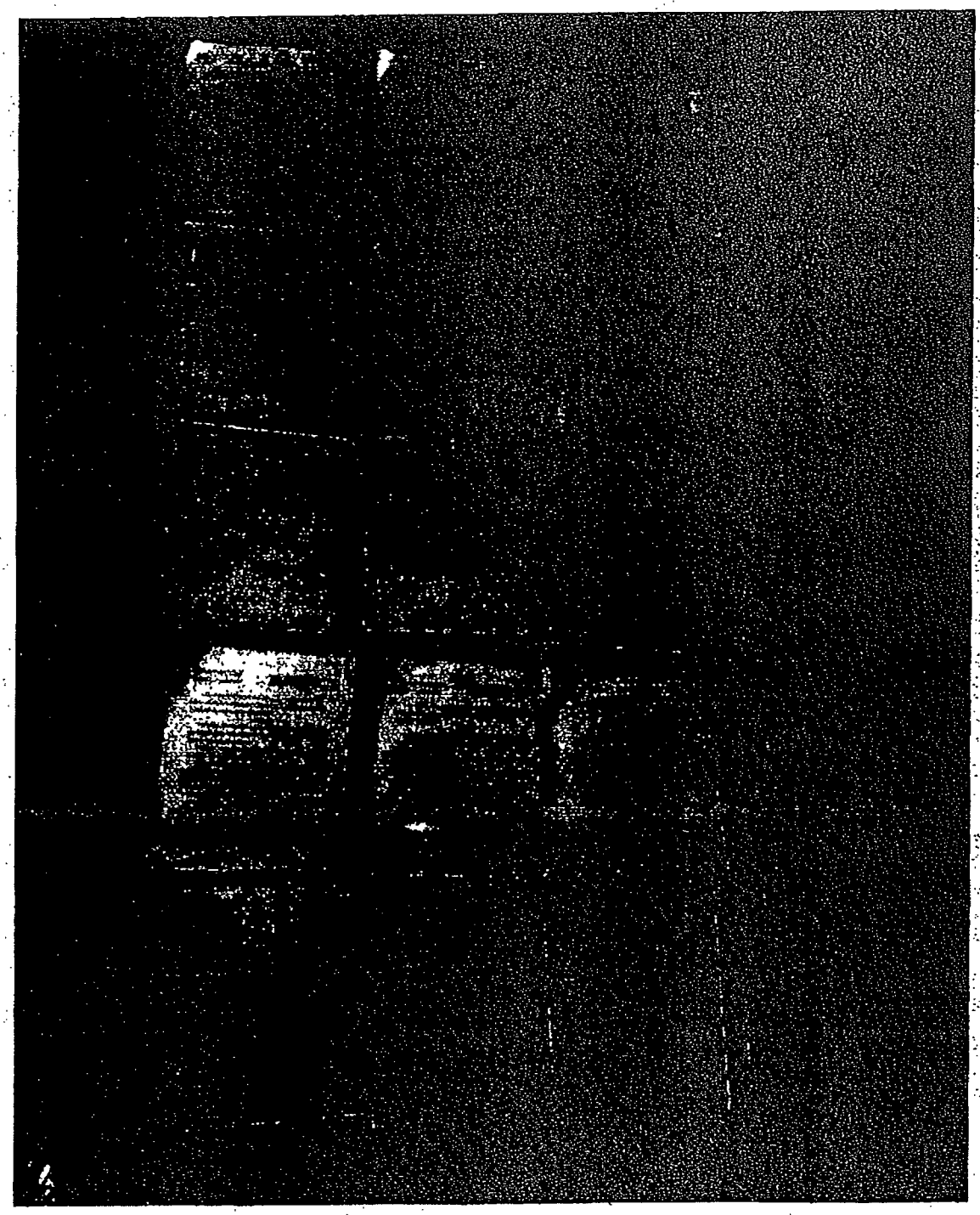
L. Russell Bennett, individually

Exhibit A

Form of New Guaranty

[See attached]

Attachment E



Attachment F

ELLIS, LAWHORNE & SIMS, P.A.
PO BOX 2285
COLUMBIA, SC 29202
(803) 254-4190
FEDERAL I.D. NO. 57-0765871
October 10, 2006
Billed through 09/30/06

Bill number 000668- 00018 - 70528 MOH

L RUSSELL BENNETT
3124 MARSHALL BLVD.
SULLIVANS ISLAND, SC 29482

WANDO RIVER, LLC

Balance forward as of last bill dated 09/14/06 $6,156.06
Payments received since last bill (last payment 02/08/06) 0.00

Net balance forward $6,156.06

PROFESSIONAL SERVICES RENDERED

09/13/06 MOH TELEPHONE CONFERENCE CLAY MCCULLOUGH AND ALAN SHEPPARD
0.20 hrs 225 /hr $45.00

09/14/06 MOH REVIEW AND RESPOND TO E-MAIL MESSAGES RE: DISBURSEMENT OF FUNDS. REVIEW EXECUTED SETTLEMENT AGREEMENT; TELEPHONE CONFERENCE ALAN SHEPHERD
0.60 hrs 225 /hr $135.00

09/15/06 DGP ISSUE PRORATA EARNEST MONEY DISBURSEMENT CHECK TO D.R. HORTON, INC.. PRINT LEDGER BALANCE REPORT, PREPARATION OF DRAFT OF LETTER TO M. SHETTERLY SENDING SAME, EMAIL FROM ALAN SHEPPARD AUTHORIZING WIRE; EMAIL TO ALAN SHEPPARD REQUESTING WIRING INSTRUCTIONS, WITH COPY TO R BENNETT AND R. OWENS, EMAIL FROM R. OWENS PROVIDING ADDITIONAL WIRING INFORMATION; EMAIL FROM R. BENNETT PROVIDING CONSENT; EMAIL TO R. OWENS REQUESTING ADDITIONAL WIRE INFORMATION
1.00 hrs 90 /hr $90.00

09/18/06 DGP EMAIL FROM R OWENS PROVIDING ADDITIONAL WIRE INFORMATION; TELEPHONE CONFERENCE WITH MELINDA SATTERFIELD, CAROLINA FIRST BANK, REGARDING INTERBANK ACCOUNT TRANSFER; EMAIL TO MELINDA PROVIDING TRANSFER INFORMATION; EMAIL FROM MELINDA PROVIDING CONFIRMATION OF PRORATA EARNEST MONEY DISBURSEMENT TRANSFER TO RIAMAH

4 A

ELLIS, LAWHORNE & SIMS, P.A.
PO BOX 2285
COLUMBIA, SC 29202
(803) 254-4190
FEDERAL I.D. NO. 57-0769871
October 10, 2006
Billed through 09/30/06
Bill number 000668- 00018 - 70528 WOH

L RUSSELL BENNETT
3124 MARSHALL BLVD
SULLIVANS ISLAND, SC 29482

WANDO RIVER, LLC

Balance forward as of last bill dated 09/14/06 $6,156.06
Payments received since last bill (last payment 02/08/06) 0.00

Net balance forward $6,156.06

PROFESSIONAL SERVICES RENDERED

09/13/06 WOH TELEPHONE CONFERENCE CLAY MCCULLOUGH AND ALAN SHEPPARD
0.20 hrs 225 /hr $45.00

09/14/06 WOH REVIEW AND RESPOND TO E-MAIL MESSAGES RE: DISBURSEMENT OF FUNDS, REVIEW EXECUTED SETTLEMENT AGREEMENT; TELEPHONE CONFERENCE ALAN SHEPHERD
0.60 hrs 225 /hr $135.00

09/15/06 DGF ISSUE PRORATA EARNEST MONEY DISBURSEMENT CHECK TO D.R. HORTON, INC.; PRINT LEDGER BALANCE REPORT; PREPARATION OF DRAFT OF LETTER TO M. SHETTERLY SENDING SAME; EMAIL FROM ALAN SHEPPARD AUTHORIZING WIRE; EMAIL TO ALAN SHEPPARD REQUESTING WIRING INSTRUCTIONS, WITH COPY TO R. BENNETT AND R. OWENS; EMAIL FROM R. OWENS PROVIDING ADDITIONAL WIRING INFORMATION; EMAIL FROM R BENNETT PROVIDING CONSENT, EMAIL TO R. OWENS REQUESTING ADDITIONAL WIRE INFORMATION
1.00 hrs 90 /hr $90.00

09/18/06 DGF EMAIL FROM R OWENS PROVIDING ADDITIONAL WIRE INFORMATION; TELEPHONE CONFERENCE WITH MELINDA SATTERFIELD, CAROLINA FIRST BANK, REGARDING INTERBANK ACCOUNT TRANSFER; EMAIL TO MELINDA PROVIDING TRANSFER INFORMATION; EMAIL FROM MELINDA PROVIDING CONFIRMATION OF PRORATA EARNEST MONEY DISBURSEMENT TRANSFER TO KIAWAH

4 A

CAPITAL, LLC ESCROW FOR WADDO RIVER, LLC; UPDATE ESCROW ACCOUNT LEDGER AND PRINT BALANCE REPORT; EMAIL TO P. BENNETT, A. SHEPPARD, R. OWENS ADVISING OF FUNDS TRANSFER

	1.00 hrs	90/hr	$90.00
Total fees for this matter			$360.00

EXPENSES INCURRED

09/18/06	OVERNIGHT COURIER SERVICE; FED EX	6.24
09/30/06	COPIES	1.00
09/30/06	POSTAGE	2.52
Total expenses for this matter		$9.76

BILLING SUMMARY

DONNA G. FRYE	2.00 hrs	90/hr	$180.00
WILLIAM O. HIGGINS	0.80 hrs	225/hr	$180.00
TOTAL FEES			$360.00
TOTAL DISBURSEMENTS			$9.76
TOTAL CHARGES FOR THIS BILL			$369.76

Attachment G

ELLIS, LAWHORNE & SIMS, P.A.
PO BOX 2285
COLUMBIA, SC 29202

(803) 254-4190 FEDERAL I.D.
NO. 57-0765871 October 10,
2006 Billed through 09/30/06

Bill number

ALAN SHEPPARD
462 COMMONWEALTH ROAD
MT. PLEASANT, SC 29466

WANDO RIVER, LLC
000668- 00018 - 70528
WOH

Balance forward as of last bill dated 09/14/06
Payments received since last bill (last payment 02/08/06) $6,156.06

Net balance forward

PROFESSIONAL SERVICES RENDERED

$6,156.06 0.00

09/13/06 WCE TELEPHONE CONFERENCE CLAY MCCULLOUGH AND ALAN SHEPPARD

0.20 hrs $45.00

225 /hr

09/14/06 WCE REVIEW AND RESPOND TO E-MAIL MESSAGES RE: DISBURSEMENT OF FUNDS; REVIEW EXECUTED SETTLEMENT AGREEMENT; TELEPHONE CONFERENCE ALAN SHEPHERD

0.60 hrs $135.00

225 /hr

09/15/06 WCE ISSUE PRO RATA EARNEST MONEY DISBURSEMENT CHECK TO D.R. HORTON, INC.; PRINT LEDGER BALANCE REPORT; PREPARATION OF DRAFT OF LETTER TO M. SHETIERLY SENDING SAME; EMAIL FROM ALAN SHEPPARD AUTHORIZING WIRE; EMAIL TO ALAN SHEPPARD REQUESTING WIRING INSTRUCTIONS, WITH COPY TO R. BENNETT AND R. OWENS; EMAIL FROM R. OWENS PROVIDING ADDITIONAL WIRING INFORMATION; EMAIL FROM R. BENNETT PROVIDING CONSENT; [illegible]

1.00 hrs $90.00

90 /hr

09/18/06 WCE EMAIL FROM R. OWENS PROVIDING ADDITIONAL WIRE INFORMATION; TELEPHONE CONFERENCE WITH MELINDA SATTERFIELD, CAROLINA FIRST BANK, REGARDING INTERBANK ACCOUNT TRANSFER; EMAIL TO

INDA PROVIDING TRANSFER INFORMATION; EMAIL FROM MELINDA PROVIDING CONFIRMATION OF PRO RATA EARNEST MONEY DISBURSEMENT TRANSFER TO KIAWAH CAPITAL, LLC ESCROW FOR WANDO RIVER, LLC; UPDATE ESCROW ACCOUNT LEDGER AND PRINT BALANCE REPORT; EMAIL TO R. BENNETT, A. SHEPPARD, R. OWENS ADVISING OF FUNDS TRANSFER

Bill number

DONNA G. FRYE WILLIAM O. HIGGINS

TOTAL FEES

TOTAL DISBURSEMENTS

2.00 hrs	0.80 hrs	
90/hr	225/hr	
$180.00	$180.00	
$360.00		
$9.76		

TOTAL CHARGES FOR THIS BILL

NET BALANCE FORWARD BALANCE DUE

$369.76	
$6,156.06	
$6,525.82	

Attachment H

PRATT-THOMAS EPTING WALKER
PROFESSIONAL ASSOCIATION

ATTORNEYS AT LAW

Direct Dial 843 727 2243
Direct Fax 843 805 6522
Email cbm@pwpalaw.com

September 28, 2006

ELECTRONIC MAIL

Alan Sheppard
Wando River, LLC
462 Commonwealth Road
Mount Pleasant, SC 29466

Ronald C. Owens, CPA, CFA
18 North Adger's Wharf
Charleston, SC 29401

L Russell Burnett
3124 Marshall Blvd
Sullivans Island, SC 29482

RE D. R. Horton
Our File No. 6828-001

Gentlemen

Please find enclosed our firm's final bill for services rendered in the above-entitled case. If this bill meets with your approval, please place it in line for payment at your earliest convenience.

If you have any questions, please feel free to give me a call.

With kind regards.

Sincerely,

PRATT-THOMAS, EPTING & WALKER, P.A

Clayton B. McCullough

Clayton B McCullough

CBM/eab
Enclosure - as stated above

PRATT-THOMAS, EPTING & WALKER
PROFESSIONAL ASSOCIATION
ATTORNEYS AT LAW
18 CHARLOTTE STREET (29403)
P O DRAWER 22247
CHARLESTON, SC 29413-2247
(843) 727-2200

WANDO RIVER, LLC
462 COMMONWEALTH ROAD
MT PLEASANT SC 29466

FILE NO 09/28/2006
6828-001M

ATTN Alan Sheppard

WANDO RIVER LLC V D R HORTON

		HOURS
09/01/2006		
CBM	TELEPHONE CALL TO ALAN - TIMING OF SETTLEMENT	0 10
CBM	DRAFT EMAIL TO MICHAEL -UPDATE/OFFER	0 20
CBM	REVIEW EMAIL FROM MICHAEL - OFFER	0 10
CBM	REVIEW EMAIL FROM MICHAEL - OFFERED $475,000 00	0 10
CBM	DRAFT EMAIL TO MICHAEL - REJECT OFFER	0 10
09/05/2006		
GTW	CONFERENCE WITH MCCULLOUGH (RESOLUTION - TERMS)	2 00
CBM	REVIEW EMAIL FROM ALAN - INTEREST PAYMENT	0 10
CBM	REVIEW EMAIL FROM MICHAEL - WILL PAY 500K	0 10
CBM	TELEPHONE CALL TO MICHAEL - ACCEPT OFFER SETTLEMENT DOCS/ISSUES	0 30
CBM	DRAFT EMAIL TO CLIENTS - 500K	0 10
09/06/2006		
GTW	REVIEW DRAFT RELEASE FROM DRH, PREPARE MEMO TO MCCULLOUGH WITH COMMENTS ON RELEASE	0 30
CBM	DRAFT RELEASE	0 80
09/08/2006		
CBM	REVISE RELEASE	0 20
CBM	TELEPHONE CALL TO MICHAEL - ESCROW FUNDS	0 30
09/11/2006		
CBM	TELEPHONE CALL TO RUSTY BENNETT - CHANGES TO RELEASE	0 10
CBM	REVISE RELEASE	0 10
CBM	TELEPHONE CALL TO MICHAEL - RELEASE	0 20
CBM	DRAFT EMAIL TO MICHAEL - RELEASE	0 10
09/12/2006		
CBM	REVIEW EMAIL FROM MICHAEL - RELEASE	0 10
CBM	TELEPHONE CALL TO ALAN - RELEASE AND ESCROW FUNDS	0 10
09/13/2006		
CBM	TELEPHONE CALL TO ALAN - ISSUES WITH MONEY	0 10
CBM	TELEPHONE CALL TO ALAN & BILL - DISTRIBUTION	0 20
CBM	TELEPHONE CALL TO MICHAEL - RELEASE, EARLY DISTRIBUTION	0 30
CBM	DRAFT EMAIL - REVISED RELEASE	0 10

WANDO RIVER, LLC

09/28/2006
FILE NO 6828-001M

WANDO RIVER, LLC V D R HORTON

		HOURS	
09/14/2006			
GTW	REVIEW NOTICE OF DISMISSAL FROM JUDICIAL COURT	0 10	
EAB	DRAFT EMAIL TO CINDY - ORDER OF DISMISSAL	0 20	
EAB	CONFERENCE WITH AL SHEPPARD - EXECUTE RELEASE, DRAFT EMAIL TO ALL - FULLY EXECUTED RELEASE AND ORDER	0 30	
EAB	PREPARE DISMISSAL FOR FILING	0 10	
EAB	TELEPHONE CALL TO JUDGE DUFFY'S LAW CLERK - STIPULATION	0 20	
CBM	REVIEW EMAIL FROM RUSTY - RELEASE	0 10	
CBM	DRAFT EMAIL TO MICHAEL - RELEASE	0 10	
CBM	REVIEW EMAIL FROM MICHAEL - RELEASE AND WIRE	0 10	
CBM	REVIEW EMAIL - REVISED RELEASE - HAVING EXECUTED	0 10	
CBM	DRAFT EMAIL - REVISED RELEASE - HAVING EXECUTED	0 20	
CBM	REVIEW EXECUTED RELEASE	0 10	
CBM	TELEPHONE CALL TO MICHAEL - STIPULATION	0 20	
CBM	DRAFT EMAIL TO MICHAEL - AUTHORITY TO ESCROW AGENT	0 10	
CBM	PREPARE DOCUMENTS TO FINALIZE (MULTIPLE PHONE CALLS TO MIKE ALLEN, DRAFT EMAILS TO GET DOCS STRAIGHT - CALL HIGGINS)	1 60	
09/28/2006			
EAB	REVIEW EMAIL FROM CINDY RICH, T/C FROM CINDY - RE-SEND EXECUTED SETTLEMENT AGREEMENT, DRAFT EMAIL TO MIKE SHETTERLY - DUPLICATE COPY OF FULLY EXECUTED SETTLEMENT AGREEMENT	0 30	
	TOTAL LEGAL SERVICES RENDERED	10 00	2,037 00

TIMEKEEPER SUMMARY

TIMEKEEPER	HOURS	HOURLY RATE	TOTAL
G TRENHOLM WALKER	2 40	$275 00	$660 00
EMILY A BINNS	1 10	70 00	77.00
CLAYTON B MCCULLOUGH	6 50	200 00	1 300.00

TOTAL SERVICE AND EXPENSE	2,037 00
PREVIOUS BALANCE	$10,069 08
BALANCE DUE	$12,106 08

TO ASSURE PROPER CREDIT -- PLEASE INDICATE
FILE NO ON YOUR PAYMENT
FEDERAL IDENTIFICATION NO 57-0692224

Attachment I

9-14-06 @ 4:05PM

Gentlemen:
I will await wiring instructions for the $500,000. Please understand that I do not intend to disburse those funds without the common consent of Alan, Ron and Rusty.

Thanks,
Bill

William O. Higgins
Ellis, Lawhorne & Sims, P.A.
Telephone # 803-343-1220
Fax # 803-779-4749
1501 Main Street, 5th Floor (29201)
P.O. Box 2285 (29202)
Columbia, South Carolina

>>> "Ron Owens" <rono@bluegranitecapital.com> 9/14/2006 2:22 PM >>>
Alan,

Thanks for the update. As we discussed, the forfeited escrow deposit should be wired to Kiawah Capital Escrow for Wando River LLC. The account number is 7100506743.

We can then transfer funds as needed to your operating account to pay expenses.

Thanks,

Ron Owens

14 North Adger's Wharf

Charleston, SC 29401

Office 843-722-1506

Mobile 843-224-7876

Attachment J

Ron Follows up with this email to put in Kiawah Capital for Wando River, An acct that is actually for numerous Kiawah endeavors (ie; Governors Cay being 1)

> "Ron Owens" <rono@bluegranitecapital.com> 9/15/2006 3:56 PM
> Donna,

>Kiawah Capital, LLC Escrow for Wando River LLC ABA# 053201885 Acct # >7100506743

>Please let me know if you need anything else.

>Thanks, Ron

--- Bill Higgins <bhiggins@ellislawhorne.com> wrote:

> Gentlemen:
> I will await wiring instructions for the $500,000. Please
> understand that I do not intend to disburse those funds without the
> common consent of Alan, Ron and Rusty.
>
>
> Thanks,
>
> Bill
>
> William O. Higgins
> Ellis, Lawhorne & Sims, P.A.
> Telephone # 803-343-1220
> Fax # 803-779-4749
> 1501 Main Street, 5th Floor (29201)
> P.O. Box 2285 (29202)
> Columbia, South Carolina
>
> >>> "Ron Owens" <rono@bluegranitecapital.com>

Ron and I just got off phone still arguing over Acct that 500k to be deposited in. At this point I had now explained to Ron Owens the tax implication, along with the check being made out to Wando River LLC and it has to go into Wando River LLC Acct where we will pay overdue accts and let interest be drawn out of Wando River LLC Acct. and here comes his reply by email;
> Alan,

> 9/14/2006 2:22 PM >>>
>
>
>
> Thanks for the update. As we discussed, the forfeited escrow deposit
> should be wired to Kiawah Capital Escrow for Wando River LLC. The
> account number is 7100506743.
>
>
>
> We can then transfer funds as needed to your operating account to pay
> expenses.
>
>
>
>
>
>
> Thanks,
>
>
>
> Ron Owens
>
> 14 North Adger's Wharf
>
> Charleston, SC 29401
>
> Office 843-722-1506
>
> Mobile 843-224-7876
>
>
>
>

Alan Sheppard

Phone #843-224-9169
Fax #843-884-8131

Attachment K

GUARANTY AGREEMENT

THIS GUARANTY dated November ____, 2007 (together with any amendments or modifications hereto in effect from time to time, the "Guaranty"), made by KIAWAH RESORT ASSOCIATES, L.P., having an office at 14 North Adgers Wharf, Charleston, South Carolina 29401 ("Guarantor"), in favor of SOUTH CAROLINA BANK AND TRUST, having an office at 46 Broad Street, Charleston, South Carolina, 29401 ("Bank").

To induce Bank to make loans, extensions of credit or other financial accommodations to Wando River, LLC ("Borrower"), now or in the future, to secure the observance, payment and performance of the Liabilities (as defined below), and with full knowledge that Bank would not make the said loans, extensions of credit or financial accommodations without this Guaranty Agreement, which shall be construed as a contract of suretyship, Guarantor, jointly and severally and unconditionally agrees as follows:

1. LIABILITIES GUARANTEED.

Guarantor, jointly and severally, hereby guarantees and becomes surety to Bank for the full, prompt and unconditional payment of the Liabilities (as defined below), when and as the same shall become due, whether at the stated maturity date, by acceleration or otherwise, and the full, prompt and unconditional performance of each term and condition to be performed by Borrower under the Loan Documents (as defined below). This Guaranty is a primary obligation of Guarantor and shall be a continuing inexhaustible Guaranty. This is a guaranty of payment and not of collection. Bank may require Guarantor to pay and perform its liabilities and obligations under this Guaranty and may proceed immediately against Guarantor without being required to bring any proceeding or take any action against Borrower, any other guarantor or any other person, entity or property prior thereto, the liability of Guarantor hereunder being joint and several, and independent of and separate from the liability of Borrower, any other guarantor or person, and the availability of other collateral security for the Note and the other Loan Documents.

Notwithstanding anything herein to the contrary, Guarantor's obligations hereunder shall not exceed the sum of (i) 75% of the outstanding principal balance of the Liabilities as of the date of the occurrence of an Event of Default (without giving effect to any payments made by or on behalf of

Borrower or to the proceeds of any collateral securing the Liabilities), plus (ii) all accrued and unpaid interest thereon and all other fees, expenses and other sums due and owing under the Loan Documents.

2. DEFINITIONS.

2.1. "Note" means that certain Promissory Note of even date herewith in the principal amount of Three Million Five Hundred Thirty Five Thousand and 00/100 ($3,535,000.00) Dollars from Borrower to Bank.

2.2. "Loan Documents" shall have the meaning set forth in the Note. The terms of the Loan Documents are hereby made a part of this Guaranty to the same extent and with the same effect as if fully set forth herein.

2.3. "Liabilities" means, collectively: (i) the repayment of all sums due under the Note (and all extensions, renewals, replacements and amendments thereof) and the other Loan Documents; (ii) the performance of all terms, conditions and covenants set forth in the Loan Documents; (iii) the repayment of all reimbursement obligations due or that may become due under or in connection with any present or future letters of credit issued by Bank for the account of Borrower; and (iv) all other obligations or indebtedness of Borrower to Bank whenever borrowed or incurred, including without limitation, principal, interest, fees, late charges and expenses, including attorneys' fees.

2.4. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Documents.

3. REPRESENTATION AND WARRANTIES. Guarantor represents and warrants to Bank as follows:

3.1. Organization, Powers. Guarantor (i) is a limited partnership, duly organized, validly existing and in good standing under the laws of the state of its organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such authorization; (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution,

delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party.

3.2. Execution of Guaranty. This Guaranty and each other Loan Document to which Guarantor is a party have been duly executed and delivered by Guarantor. Execution, delivery and performance of this Guaranty and each other Loan Document to which Guarantor is a party will not: (i) violate any of its organizational documents, provision of law, order of any court, agency or instrumentality of government, or any provision of any indenture, agreement or other instrument to which it is a party or by which it or any of its properties is bound; (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature, other than the liens created by the Loan Documents; and (iii) require any authorization, consent, approval, license, exemption of, or filing or registration with, any court or governmental authority.

3.3. Obligations of Guarantor. This Guaranty and each other Loan Document to which Guarantor is a party are the legal, valid and binding obligations of Guarantor, enforceable against it in accordance with their terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws or equitable principles relating to or affecting the enforcement of creditors' rights generally. The loans or credit accommodations made by Bank to Borrower and the assumption by Guarantor of its obligations hereunder and under any other Loan Document to which Guarantor is a party will result in material benefits to Guarantor. This Guaranty was entered into by Guarantor for commercial purposes.

3.4. Litigation. There is no action, suit, or proceeding at law or in equity or by or before any governmental authority, agency or other instrumentality now pending or, to the knowledge of Guarantor, threatened against or affecting Guarantor or any of its properties or rights which, if adversely determined, would materially impair or affect: (i) the value of any collateral securing the Liabilities; (ii) Guarantor's right to carry on its business substantially as now conducted (and as now contemplated); (iii) its financial condition; or (iv) its capacity to consummate and perform its obligations under this Guaranty or any other Loan Document to which Guarantor is a party.

3.5. No Defaults. Guarantor is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained herein or in any material agreement or instrument to which it is a party or by which it or any of its properties is bound that would materially impair its ability to perform its obligations under the Guaranty.

3.6. No Untrue Statements. No Loan Document or other document, certificate or statement furnished to Bank by or on behalf of Guarantor contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading. Guarantor acknowledges that all such statements, representations and warranties shall be deemed to have been relied upon by Bank as an inducement to make the Loan to Borrower.

4. NO LIMITATION OF LIABILITY.

4.1 Without incurring responsibility to Guarantor, and without impairing or releasing the obligations of Guarantor to Bank, and without reducing the amount due under the terms of this Guaranty, Bank may at any time and from time to time, without the consent of or notice to Guarantor, upon any terms or conditions, and in whole or in part:

4.1.1. Change the manner, place or terms of payment of (including, without limitation, the interest rate and monthly payment amount), and/or change or extend the time for payment of, or renew or modify, any of the Liabilities, any security therefor, or any of the Loan Documents evidencing same, and the Guaranty herein made shall apply to the Liabilities and the Loan Documents as so changed, extended, renewed or modified;

4.1.2. Sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order, any property securing the Liabilities;

4.1.3. Exercise or refrain from exercising any rights against Borrower or other obligated parties (including Guarantor) or against any security for the Liabilities;

4.1.4. Settle or compromise any Liabilities, whether in a proceeding or not, and whether voluntarily or involuntarily, dispose of any security therefor (with or without consideration), and subordinate the payment of any of the Liabilities, whether or not due, to the payment of liabilities owing to creditors of Borrower other than Bank and Guarantor;

4.1.5. Apply any sums it receives, by whomever paid or however realized, to any of the Liabilities;

4.1.6. Add, release, settle, modify or discharge the obligation of any maker, endorser, guarantor, surety, obligor or any other party who is in any way obligated for any of the Liabilities;

4.1.7. Accept any additional security for the Liabilities; and/or

4.1.8. Take any other action which might constitute a defense available to, or a discharge of, Borrower or any other obligated party (including Guarantor) in respect of the Liabilities.

4.2. The invalidity, irregularity or unenforceability of all or any part of the Liabilities or any Loan Document, or the impairment or loss of any security therefor, whether caused by any action or inaction of Bank, or otherwise, shall not affect, impair or be a defense to Guarantor's obligations under this Guaranty.

5. LIMITATION ON SUBROGATION. Until such time as the Liabilities are paid in full, Guarantor waives any present or future right to which Guarantor is or may become entitled to be subrogated to Bank's rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank against Borrower or any security which Bank now has or hereafter acquires, whether or not such claim, right or remedy arises under contract, in equity, by statute, under common law or otherwise. If, notwithstanding such waiver, any funds or property shall be paid or transferred to Guarantor on account of such subrogation, contribution, reimbursement, or indemnification at any time when all of the Liabilities have not been paid in full, Guarantor shall hold such funds or property in trust for Bank and shall forthwith pay over to Bank such funds and/or property to be applied by Bank to the Liabilities.

6. Covenants.

6.1 Financial Statements; Compliance Certificate.

6.1.1. Guarantor shall furnish to Bank the following financial information:

(a) Not later than one hundred twenty (120) days after the end of each fiscal year, annual financial statements of Guarantor including, without limitation, a balance sheet, profit and loss statement and statement of cash flow, a reconciliation of net worth, a listing of all contingent liabilities, notes to financial statements and any other information requested by Bank, consistent with previous year's financial statements.

(b) Not later than thirty (30) days after filing with the Internal Revenue Service, a true and complete copy of the federal tax returns, including all schedules.

(c) Such other information respecting the operations of Guarantor as Bank may from time to time reasonably request.

6.1.2 Guarantor shall furnish to Bank, with each set of financial statements described herein, a compliance certificate signed by Guarantor's chief financial officer certifying that to the best of his knowledge: (i) all representations and warranties of Guarantor set forth in this Guaranty or any other Loan Document remain true and correct in all material respects; (ii) none of the covenants of Guarantor contained in this Guaranty or any other Loan Document has been breached; and (iii) to its knowledge, no event has occurred which, with the giving of notice or the passage of time, or both, would constitute an Event of Default under this Guaranty or any other Loan Document. In addition, Guarantor shall promptly notify Bank of the occurrence of any default, Event of Default, adverse litigation or material adverse change in its financial condition.

6.2. Subordination of Other Debts. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank have been paid in full on or prior to such date, and (ii) no event which is or, with the passage of time or giving of notice or both, could become an Event of Default shall have occurred and be continuing; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Liabilities.

6.3. Security for Guaranty. Guarantor hereby grants to Bank a continuing security interest in all property of Guarantor, now or hereafter in the possession of Bank, as security for the performance

of this Guaranty, which security interest shall be enforceable and subject to all the provisions of this Guaranty, as if such property were specifically pledged hereunder.

7. EVENTS OF DEFAULT.

Each of the following shall constitute a default (each, an "**Event of Default**") hereunder:

7.1 Non-payment when due, taking into consideration cure periods, if any, of any sum required to be paid to Bank under any of the Loan Documents or of any of the other Liabilities;

7.2. A breach by Guarantor of any other term, covenant, condition, obligation or agreement under this Guaranty, and the continuance of such breach for a period of fifteen (15) days after written notice thereof shall have been given to Guarantor;

7.3. Any representation or warranty made by Guarantor in this Guaranty shall prove to be false, incorrect or misleading in any material respect as of the date when made;

7.4. Intentionally Deleted

7.5. An Event of Default under any of the Loan Documents.

8. REMEDIES.

8.1. Upon an Event of Default, all liabilities of Guarantor hereunder shall become immediately due and payable without demand or notice and, in addition to any other remedies provided by law, Bank may:

8.1.1. Enforce the obligations of Guarantor under this Guaranty.

8.1.2. To the extent not prohibited by and in addition to any other remedy provided by law, setoff against any of the Liabilities any sum owed by Bank in any capacity to Guarantor whether due or not.

8.1.3. Perform any covenant or agreement of Guarantor in default hereunder (but without obligation to do so) and in that regard pay such money as may be required or as Bank may reasonably deem expedient. Any costs, expenses or fees, including reasonable attorneys' fees and costs, incurred by Bank in connection with the foregoing shall be included in the Liabilities guaranteed hereby, and shall be due and payable on demand, together with interest at the Default Rate (as defined and described in the Note), such interest to be calculated from the date of such advance to the date of repayment thereof. Any such action by Bank shall not be deemed to be a waiver or release of Guarantor hereunder and shall be without prejudice to any other right or remedy of Bank.

8.2. Settlement of any claim by Bank against Borrower, whether in any proceeding or not, and whether voluntary or involuntary, shall not reduce the amount due under the terms of this Guaranty, except to the extent of the amount actually paid by Borrower or any other obligated party and legally retained by Bank in connection with the settlement (unless otherwise provided for herein).

9. MISCELLANEOUS.

9.1. Disclosure of Financial Information. Bank is hereby authorized to disclose any financial or other information about Guarantor to any regulatory body or agency having jurisdiction over Bank or to any present, future or prospective participant or successor in interest in any loan or other financial accommodation made by Bank to Borrower or Guarantor. The information provided may include, without limitation, amounts, terms, balances, payment history, return item history and any financial or other information about Guarantor.

9.2. Remedies Cumulative. The rights and remedies of Bank, as provided herein and in any other Loan Document, shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Bank at law or in equity. The failure, at any one or more times, of Bank to exercise any such right or remedy shall in no event be construed as a waiver or release thereof.

Bank shall have the right to take any action it deems appropriate without the necessity of resorting to any collateral securing this Guaranty.

9.3. Integration. This Guaranty and the other Loan Documents constitute the sole agreement of the parties with respect to the transaction contemplated hereby and supersede all oral negotiations and prior writings with respect thereto.

9.4. Attorneys' Fees and Expenses. If Bank retains the services of counsel by reason of a claim of a default or an Event of Default hereunder or under any of the other Loan Documents, or on account of any matter involving this Guaranty, or for examination of matters subject to Bank's approval under the Loan Documents, all costs of suit and all reasonable attorneys' fees and such other reasonable expenses so incurred by Bank shall forthwith, on demand, become due and payable and shall be secured hereby.

9.5. No Implied Waiver. Bank shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Bank, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy on a subsequent event.

9.6. Waiver. Guarantor waives notice of acceptance of this Guaranty and notice of the Liabilities and waives notice of default, non-payment, partial payment, presentment, demand, protest, notice of protest or dishonor, and all other notices to which Guarantor might otherwise be entitled or which might be required by law to be given by Bank. Guarantor waives the right to marshaling of Borrower's assets or any stay of execution and the benefit of all exemption laws, to the extent permitted by law, and any other protection granted by law to guarantors, now or hereafter in effect with respect to any action or proceeding brought by Bank against it. Guarantor irrevocably waives all claims of waiver, release, surrender, alteration or compromise and the right to assert against Bank any defenses, set-offs, counterclaims, or claims that Guarantor may have at any time against Borrower or any other party liable to Bank.

9.7. No Third Party Beneficiary. Except as otherwise provided herein, Guarantor and Bank do not intend the benefits of this Guaranty to inure to any third party and no third party (including Borrower) shall have any status, right or entitlement under this Guaranty.

9.8. Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Guaranty shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

9.9. Binding Effect. The covenants, conditions, waivers, releases and agreements contained in this Guaranty shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns; provided, however, that this Guaranty cannot be assigned by Guarantor without the prior written consent of Bank, and any such assignment or attempted assignment by Guarantor shall be void and of no effect with respect to the Bank.

9.10. Modifications. This Guaranty may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

9.11. Sales or Participations. Bank may from time to time sell or assign, in whole or in part, or grant participations in the Loan, the Note and/or the obligations evidenced thereby. The holder of any such sale, assignment or participation, if the applicable agreement between Bank and such holder so provides, shall be: (a) entitled to all of the rights, obligations and benefits of Bank; and (b) deemed to hold and may exercise the rights of setoff or banker's lien with respect to any and all obligations of such holder to Guarantor, in each case as fully as though Guarantor were directly indebted to such holder. Bank may in its discretion give notice to Guarantor of such sale, assignment or participation; however, the failure to give such notice shall not affect any of Bank's or such holder's rights hereunder.

9.12. Jurisdiction. Guarantor irrevocably appoints each and every owner, partner and/or officer of Guarantor as its attorneys upon whom may be served, by regular or certified mail at the address set forth above, any notice, process or pleading in any action or proceeding against it arising out of or in connection with this Guaranty or any other Loan Document; and Guarantor hereby consents that any action or proceeding against it be commenced and maintained in any court within the State of South Carolina by service of process on any such owner, partner and/or officer; and Guarantor agrees that the courts of such State shall have jurisdiction with respect to the subject matter hereof and the person of Guarantor and all collateral securing the obligations of Guarantor. Guarantor agrees not to assert any defense to any action or proceeding initiated by Bank based upon improper venue or inconvenient forum.

9.13. Notices. All notices and communications under this Guaranty shall be in writing and shall be given by either (a) hand-delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid), to the addresses listed in this Guaranty. Notice shall be deemed to have been given and received: (i) if by hand delivery, upon delivery; (ii) if by mail, three (3) calendar days after the date first deposited in the United States mail; and (iii) if by overnight courier, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

9.14. Governing Law. This Guaranty shall be governed by and construed in accordance with the substantive laws of the State of South Carolina without reference to conflict of laws principles.

9.15. Joint and Several Liability. Subject to the provisions of Section 1 hereof, if Guarantor consists of more than one person or entity, the word "Guarantor" shall mean each of them and their liability shall be joint and several. The liability of Guarantor shall also be joint and several with the liability of any other guarantor under any other guaranty.

9.16. Continuing Enforcement. If, after receipt of any payment of all or any part of the Liabilities, Bank is compelled or agrees, for settlement purposes, to surrender such payment to any person or entity for any reason (including, without limitation, a determination that such payment is void or voidable as a preference or fraudulent conveyance, an impermissible setoff, or a diversion of trust funds), then this Guaranty shall continue in full force and effect or be reinstated, as the case may be, and Guarantor shall be liable for, and shall indemnify, defend and hold harmless Bank with respect to the full amount so surrendered. The provisions of this Section shall survive the termination of this Guaranty and shall remain effective notwithstanding the payment of the Liabilities, the cancellation of the Note, this Guaranty or any other Loan Document, the release of any security interest, lien or encumbrance securing the Liabilities or any other action which Bank may have taken in reliance upon its receipt of such payment. Any cancellation, release or other such action shall be deemed to have been conditioned upon any payment of the Liabilities having become final and irrevocable.

9.17. Waiver of Jury Trial. GUARANTOR AND BANK AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY BANK OR GUARANTOR ON OR WITH RESPECT TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. BANK AND GUARANTOR EACH HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND INTELLIGENTLY, AND WITH THE ADVICE OF THEIR RESPECTIVE COUNSEL, WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO

A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, GUARANTOR WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. GUARANTOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS GUARANTY AND THAT BANK WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS GUARANTY.

IN WITNESS WHEREOF, Guarantor, intending to be legally bound, has duly executed and delivered this Guaranty Agreement as of the day and year first above written.

KIAWAH RESORT ASSOCIATES, L.P.

By: D&W Investments, Inc., its general partner

By:_____

Townsend P. Clarkson

Authorized Signatory

By: TWD Investments, LLC, its general partner

By:_____

Townsend P. Clarkson

Authorized Signatory

LOAN AGREEMENT

This LOAN AGREEMENT is made this _____ day of November ____, 2007, by and between SOUTH CAROLINA BANK AND TRUST, whose address is 46 Broad Street, Charleston, South Carolina, 29401 (hereinafter referred to as the "Lender"); and WANDO RIVER, LLC, a South Carolina limited liability company, whose address is 14 North Adgers Wharf, Charleston, South Carolina 29401 ("Borrower").

ARTICLE X

LOAN

1. 10.1 In accordance with the terms and conditions of the loan commitment from Lender to Borrower (or parties related to Borrower) dated October ____, 2007, (the "Commitment"), the Lender does hereby agree to lend to the Borrower, and the Borrower does hereby agree to borrow from the Lender the sum of Three Million Five Hundred Thirty Five Thousand Dollars ($3,535,000.00) (the "Loan"), the said sum to be advanced and repaid with interest thereon and with certain costs and charges as may be incurred by the Borrower, all as more particularly set forth herein. The proceeds of the Loan shall be used in part to purchase the below described Property.

10.2 The Loan shall be evidenced by a Promissory Note of the Borrower in the original principal amount of the Loan in form and content satisfactory to Lender, to be dated the date hereof and drawn to the order of the Lender ("Note"), the terms of which are incorporated herein by reference. The Note shall be secured by:

(a) Mortgage and Security Agreement from the Borrower (the "Mortgage"), in form and content satisfactory to Lender, granting to the Lender a first lien on the parcel or parcels of land as described in Exhibit A attached hereto and made a part hereof, together with all improvements constructed and to be constructed thereon (collectively, the "Real Property") and a security interest in all furniture, fixtures, equipment and personal property located, or to be located, on the Real Property (the "Personal Property"; the Real Property and the Personal Property are hereinafter referred to collectively as the "Property"), together with sufficient financing statements (the "Financing Statements"), in form and content satisfactory to Lender, to perfect such security interest in accordance with South Carolina law;

(b) A Guaranty Agreement (collectively, the "Guaranty Agreements") from each of L. Russell Bennett and Kiawah Resort Associates, L.P. (collectively "Guarantor"), pursuant to which each Guarantor shall guarantee a portion of the obligations of the Borrower under the Note and the Loan Documents; and

(c) Assignment of Contracts (the "Assignment Of Contracts") from Borrower, in form and content satisfactory to Lender;

(d) Such other documents, filings and certificates as Lender may deem necessary to confirm its security interest in the Property.

The Commitment, the Note, the Mortgage, the Financing Statements, the Guaranty Agreements and the Assignment of Contracts described above, and all other documents and instruments which may be reasonably required by the Lender to evidence or secure the Loans, are hereinafter sometimes referred to collectively as the "Loan Documents."

1.3 In the event of any conflict between the terms and provisions contained in this Agreement and in any of the Loan Documents or the Commitment, the terms and provisions of this Agreement shall control.

ARTICLE XI

REPRESENTATIONS AND WARRANTIES

OF THE BORROWER

11.1 In order to induce the Lender to enter into and execute this Agreement and to make the Loans to the Borrower, the Borrower represents and warrants to the Lender as follows:

(a) Entity Existence, Good Standing, and Authority. The Borrower is a limited liability company, organized and existing and in good standing under the laws of the State of South Carolina and duly qualified and authorized to conduct business in the State of South Carolina and has full power and authority to enter into this Agreement and the Loan Documents and to consummate the transactions contemplated hereby.

(b) Entity Documents. Borrower has heretofore delivered to Lender a true, accurate and complete copy of the Articles of Organization and the Operating Agreement of Borrower, together with all amendments thereto.

(c) Financial Statement. The Borrower has heretofore delivered to the Lender the financial statements of the Borrower and the Guarantor (the "Financial Statements"). The

Financial Statements are true, accurate and complete in all material respects. Each Guarantor does not have any obligations or liabilities (whether accrued, absolute, contingent or otherwise) other than as set forth in the Financial Statements.

(d) Contracts. The Borrower has heretofore delivered to the Lender true, complete and accurate copies of all contracts and/or options on the Property or any portion thereof, executed by the Borrower to date. The Borrower is not in default under the terms of any such contract or option, and no event has occurred which by notice, the passage of time or otherwise would constitute a default by the Borrower under any such contract.

(e) Litigation. There are no actions, suits or proceedings pending, or to the knowledge of the Borrower, threatened: (i) involving the validity or enforceability of this Agreement or any of the Loan Documents; or (ii) involving the priority of any lien created by, or granted pursuant to, any of the Loan Documents; or (iii) against or affecting the Borrower, the general partner of the Borrower, any Guarantor of the Loan, or the Property.

(f) Approvals. The Borrower has obtained all licenses, permits, authorizations, consents or approvals from all appropriate public or private boards and bodies necessary for the Borrower's intended uses on the Property, and all such licenses, permits, authorizations, consents or approvals will be kept in full force and effect.

(g) No Defaults. The Borrower is not in default under any of the Loan Documents, and no event has occurred which by notice, the passage of time or otherwise would constitute an event of default under any of the Loan Documents. The Borrower and the Guarantor are not in default in the payment of any indebtedness or borrowed money for repayment of which they are personally liable or under the terms and provisions of any agreement or instrument evidencing any such indebtedness or under any guarantee of indebtedness of others.

(h) Access; Utilities. The Property has adequate rights of access to public ways and all water, sanitary sewer and storm drain facilities. All public utilities necessary or convenient to the full use and enjoyment of the Property are available to the Property.

(i) No False Statements. No representation or warranty of the Borrower or any Guarantor contained in this Agreement or in any of the Loan Documents, and no statement

contained in any certificate, schedule, list, financial statement or other instrument furnished to the Lender by or on behalf of the Borrower or any Guarantor contains, or will contain, any untrue statement of a material fact, or omits, or will omit, to state a material fact necessary to make the statements contained herein or therein not materially misleading.

(j) Ownership of Assets. Borrower has good title to its assets, and its assets are free and clear of liens except for the lien of Wachovia Bank on other real property owned by Borrower.

(k) Taxes. All taxes and assessments due and payable by Borrower have been paid or are being contested in good faith by appropriate proceedings and the Borrower has filed all tax returns which it is required to file.

(l) Information. All factual information and financial statements furnished by Borrower or the Guarantor to Lender in connection with this Agreement and the other Loan Documents is and will be accurate and complete in all material respects on the date as of which such information is delivered to Lender and is not and will not be incomplete by the omission of any material fact necessary to make such information not materially misleading.

(m) Environmental. The conduct of Borrower's business operations and, to the best of Borrower's knowledge, the condition of the Property does not and will not violate any federal laws, rules or ordinances for environmental protection, regulations of the Environmental Protection Agency, any applicable local or state law, rule, regulation or rule of common law or any judicial interpretation thereof relating primarily to the environment or Hazardous Materials. For purposes of this Agreement, "Hazardous Materials" shall mean all materials defined as hazardous materials or substances under any local, state or federal environmental laws, rules, or regulations (the "Environmental Laws"), and petroleum, petroleum products, oil and asbestos.

(n) Physical Condition of Property. Borrower and Guarantor are aware of no latent or patent structural or other significant defect or deficiency in the Property.

(o) Compliance with Laws. To the best of Borrower's knowledge, the Borrower is in material compliance with regard to the Real Property with all applicable state, federal and local

laws, rules and regulations, including, without limitation, all zoning, doing-business, environmental and occupational safety and health laws.

(p) Entities Material to Business. The only entities controlling assets and rights that are material to the business of the Borrower and its Affiliates (as hereinafter defined) are the Borrower and the Guarantor.

11.2 All warranties and representations of the Borrower contained herein shall survive until all indebtedness under the Loan is paid in full and satisfied.

ARTICLE XII

COVENANTS OF THE BORROWER

12.1 The Borrower covenants with the Lender as follows:

(a) Access by Lender. After reasonable notice, Borrower shall permit the Lender and its duly authorized agents free access to the Property and shall make available for audit and inspection, at any reasonable time by the Lender or its duly authorized agents, all property, equipment, books, contracts, records and other papers relating to the Property. Such books and accounts shall be maintained at Borrower's office and available for inspection at all reasonable times by Lender.

(b) Inquiries by Lender. Borrower shall promptly respond to any written inquiry from the Lender for information with respect to the Property which information may be verified by the Lender; provided, however, that the Lender shall at all times be entitled to rely upon any statements or representations made by the Borrower or any employee or agent of Borrower.

(c) Indemnification of Lender. Borrower shall indemnify the Lender from claims or process arising by reason of the execution hereof or the consummation of the transactions contemplated hereby and caused by the acts or omissions of the Borrower except to the extent caused by the gross negligence or willful misconduct of Lender, its officers, employees or agents (the "Indemnified Parties").

(d) Costs. Borrower shall pay, when due, all costs, fees and expenses as required by the Loan Documents and all fees, costs and expenses concerning the consummation of the transaction contemplated hereby. Such fees and expenses shall include all reasonable fees and expenses of Lender's counsel in connection with the closing of the Loan and for such further advice and counsel as Lender may reasonably require during the term of the Loan. If Borrower fails to pay all such fees and expenses, Lender may at its option advance funds under the Note to pay such fees and expenses.

(e) Payments by Borrower. Borrower shall pay promptly when due the principal of the Loan, together with interest thereon, and all other charges and amounts due the Lender, the said payment to be made without any deduction for taxes, assessments or governmental charges in the nature thereof upon said Loans, or the interest evidenced thereby, or any part thereof, which the Borrower may be required or permitted to deduct, retain or pay therefrom or thereon, under or by reason of any present or future law of the United States or of any state, municipality or taxing authority thereof.

(f) Insurance. Borrower shall purchase or cause to be purchased and continually maintained and kept in full force and effect, at its sole expense, those policies of insurance and endorsements thereto as may reasonably be required by Lender and as more particularly described in the Mortgage. The Borrower shall deliver the original policies or certificates of insurance to the Lender and shall deliver to the Lender all renewals thereof not less than thirty (30) days in advance of the expiration date of the existing policy or policies. Borrower shall notify the Lender of any loss insured against under any policy of insurance required hereby within ten (10) days of the occurrence of said loss.

(g) Taxes. Subject to Borrower's right to contest the amount assessed in accordance with applicable laws, Borrower shall faithfully pay or cause to be paid and discharged promptly when due all taxes, assessments, forced contributions, local assessments and governmental charges of every description which shall from time to time be imposed or assessed or levied upon the Property, or any part thereof, and/or upon or against any personal property situated therein, including all state and municipal taxes affecting the Property.

(h) Validity of Loan Documents. Borrower shall keep valid and unimpaired each Mortgage and the other Loan Documents described hereinabove, and to that end shall execute at any future time and as often as may be deemed necessary, on demand of the Lender, all

further instruments, assignments and other acts in due form and effect as may be reasonably deemed proper by the Lender to the better carrying out of the true intent and meaning of this Agreement. At the Borrower's sole cost, shall do all other things that may be reasonably required by the Lender to make and keep valid the liens on, and security interest in, the property described in the various Loan Documents and to maintain the priority of said liens and security interests.

(i) Contracts. Borrower shall keep and maintain all contracts and options and shall faithfully perform the Borrower's covenants under present and future contracts and options affecting the Property and shall neither do anything nor neglect to do anything, nor permit nor suffer anything to be done, which may cause the modification or termination of any of said leases and/or contracts, or of the obligations of any lessee or persons claiming through him, or which may diminish or impair the value of any contracts or options, or the interest of the Borrower or of the Lender thereunder. Notwithstanding the foregoing, Borrower may terminate or modify any such contracts in the ordinary course of business. All contracts and options shall be subject to Lender's reasonable approval.

(j) Notices to Lender. Borrower shall notify the Lender in writing within ten (10) days thereof in the event of any material default by Borrower or any Guarantor of any obligation undertaken by it herein and/or any of the Loan Documents. Borrower shall notify the Lender in writing, within ten (10) days after Borrower receives notice thereof, should any mortgage or lien (other than mechanics and materialmen's liens) or any other security instrument whatsoever be filed against the Property.

(k) Bonding of Liens. Borrower shall bond off under the provisions of applicable law any mechanic's lien or claim of lien filed for record against the Property, within sixty (60) days of date of notice to the Borrower of filing of said claim.

(l) Maintenance of Property. Subject to Borrower's right to develop the Property in the manner it sees fit, Borrower shall maintain the Property and all of its tangible property in good condition and repair and make all necessary replacements thereof, and preserve and maintain all licenses, trademarks, privileges, permits, franchises, certificates and the like necessary for the operation of its business.

(m) Environmental. Except to the extent previously disclosed to Lender by Borrower, Borrower shall immediately advise Lender in writing of: (i) any and all enforcement, cleanup, remedial, removal, or other governmental or regulatory actions instituted, completed or threatened pursuant to any applicable federal, state, or local laws, ordinances or regulations relating to any Hazardous Materials affecting Borrower's or a Guarantor's business operations or the Property; and (ii) all claims made or threatened by any third party against Borrower or a Guarantor relating to damages, contribution, cost recovery, compensation, loss or injury resulting from any Hazardous Materials. Borrower shall immediately notify Lender of any new or additional remedial action taken by Borrower or a Guarantor with respect to Borrower's or a Guarantor's business operations or the Property. Borrower will not use or permit any other party to use any Hazardous Materials at the Property except such materials as are incidental to Borrower's or its tenants' normal course of business, maintenance and repairs and which are handled in compliance with all applicable Environmental Laws. Borrower agrees to permit Lender, its agents, contractors and employees to enter and inspect the Property at any reasonable times upon three (3) days prior notice for the purposes of conducting an environmental investigation and audit (including taking physical samples) to insure that Borrower is complying with this covenant and Borrower shall reimburse Lender on demand for the reasonable costs of any such environmental investigation and audit; provided, however, that such testing shall be done no more frequently than once per year unless an Event of Default has occurred which has not been cured. Borrower shall provide Lender, its agents, contractors, employees and representatives with access to and copies of any and all data and documents relating to or dealing with any Hazardous Materials used, generated, manufactured, stored or disposed of by Borrower's, a Guarantor's or their tenants' business operations within five (5) days of the request therefore.

(n) ERISA Compliance. In the event Borrower maintains any employee benefit plan or other plan maintained for employees of Borrower (which plan is covered by Title IV of the Employee Retirement Income Security Act of 1974, as amended, or subject to the minimum funding standards under Section 412 of the Internal Revenue Code of 1986, as amended), Borrower will (i) at all times, make prompt payment of all contributions required under all such plans and required to meet the minimum funding standard set forth in ERISA with respect to its plans; (ii) within thirty (30) days after the filing thereof, and, upon Lender's written request, furnish to the Lender a copy of each annual report/return (Form 5500 Series), as well as all schedules and attachments required to be filed with the Department of Labor and/or the Internal Revenue Service pursuant to ERISA, and the regulations promulgated thereunder, in connection with each such plan for each plan year; (iii) promptly upon Lender's written request furnish the Lender a copy of any notice received by Borrower from the Pension Benefit Guaranty Corporation (and any successor to all or any of its functions under ERISA) or the Internal Revenue Service with respect to any plan, except for routine notices promulgated for general application; (iv) upon Lender's written request notify the Lender immediately of any fact,

including, but not limited to, any Reportable Event (as defined under ERISA), arising in connection with any plan, which might constitute grounds for termination thereof by the Pension Benefit Guaranty Corporation or for the appointment by the appropriate United States District Court of a trustee to administer such plan, and deliver to the Lender a statement, if requested by the Lender, as to the reason therefor and the action, if any, proposed to be taken with respect thereto; (v) upon Lender's written request notify the Lender immediately of any withdrawal liability imposed under Section 4201(a) of ERISA with, respect to any plan; (vi) upon Lender's written request notify the Lender immediately of any taxes assessed, proposed to be assessed or which Borrower has reason to believe may be assessed by the Internal Revenue Service with respect to any plan, and (vii) furnish to the Lender, upon its request, such additional information concerning any plan as may be reasonably requested.

(o) Further Assurances. Borrower will execute, endorse, acknowledge, deliver or file all such vouchers, statements, notices, certificates and additional agreements, undertakings, conveyances, transfers, assignments, financing statements or other assurances, and take any and all such other action, as the Lender may, from time to time, deem reasonably necessary or proper in connection with this Agreement or any of the other Loan Documents or any part of the security granted for any of the obligations under the Loan Documents.

(p) Maintenance of Existence. Borrower shall do all things necessary to preserve and keep in full force and effect their respective existence and all franchises, licenses, authorizations, registrations, permits and approvals under the laws of the state of South Carolina, and shall comply with all regulations, rules, ordinances, statutes, orders and decrees of any governmental authority or court applicable to Borrower or to the Property or any portion thereof.

(q) Compliance with Laws. To the best of Borrower's knowledge, the current uses of the Property do not and will not violate: (i) any applicable law, regulation, ordinance or order of any kind whatsoever (including any such relating to zoning, building and environmental protection); (ii) any permit or license issued with respect to the Property; or (iii) any condition, easement, right-of-way, covenant or restriction affecting the Property. Borrower shall at all times comply with all statutes, laws, rules, regulations, ordinances, and requirements of any governmental authorities, including all applicable state, federal and local doing business zoning, historic preservation, environmental, ADA, OSHA, and ERISA statutes, laws, rules, regulations, ordinances and requirements of any governmental authorities, and shall keep the Property in compliance with all such applicable statutes, laws, rules, regulations, ordinances and requirements. Borrower agrees to indemnify and hold Lender harmless from any liability, claim, cause of action, cost or expense, including reasonable attorneys fees, as a result of Borrower's

failure to comply with the provisions of this subsection except to the extent caused by the gross negligence or willful misconduct of Lender and/or its officers, employees, agents, contractors, and/or representatives.

(r) Permits. [Intentionally Deleted]

(s) Financial Reporting. Borrower shall keep and maintain at all times complete, true and accurate books of accounts and records reflecting the results of the operation of the Property. After reasonable notice, Borrower shall permit Lender to inspect said books and records upon request. In addition, Borrower will deliver or cause to be delivered to Lender:

(i) As soon as practicable, and in any event within one hundred eighty (180) days after the end of each fiscal year of Borrower a financial statement of the Borrower reflecting its operations during such fiscal year, including, without limitation, a balance sheet, profit and loss statement, and statement of cash flows, with supporting schedules consistent with prior years financial statements; and

(ii) Together with each financial statement of the Borrower delivered under (i) above, a certificate signed by the manager/member of the Borrower dated the date of such financial statement stating that (a) it is unaware of any activities of Borrower that would indicate that Borrower has not complied in all material respects with the obligation of Borrower under the Loan Documents and (b) stating that, to the best of its knowledge, there did not exist as of the date of such certificate any condition or event which would constitute a material breach of any covenant or condition hereunder, or under the Note, this Agreement or any other document securing the Note or relevant to the Property or which, after notice or lapse of time, or both, would constitute such a breach, or specifying the nature or extent of each breach and the action Borrower has taken or proposes to take with respect thereto; and

(iii) Within thirty (30) days of filing, complete copies of Borrower's federal and state tax returns, each of which shall be signed and certified by Borrower to be true and complete copies of such returns.

(t) Operating Account. Borrower shall establish and maintain its operating accounts relating to the Property with Lender throughout the term of the Loan.

12.2 Negative Covenants of Borrower. The Borrower shall not do any of the following without the prior written approval of the Lender which approval shall not be unreasonably conditioned, withheld or delayed:

(a) Transfers of Ownership, Interests. Permit or allow transfer, sale or pledge of any membership interest in the Borrower except to Affiliates or the Guarantors. The term "Affiliate" shall mean any entity that is directly or indirectly owned or controlled by Borrower or any Guarantor.

(b) Transfer of Assets. [Intentionally Deleted]

(c) Alterations. [Intentionally Deleted]

(d) Use of Property. [Intentionally Deleted]

(e) Indebtedness. [Intentionally Deleted]

(f) Accounts Receivable; Chattel Paper. Except in the ordinary course of business, Borrower shall not sell, assign, or discount any of its accounts receivable, chattel paper (to include leases or any promissory note) held by it with or without recourse.

(g) Purchase or Sale of Assets. Except in the ordinary course of business, Borrower shall not sell, lease or otherwise dispose of all or a substantial part of the property or assets of the Borrower to any person, firm or corporation except to an Affiliate. Borrower shall not transfer, sell, purchase, assign, lease or otherwise abandon or dispose of in any way its accounts, contracts rights, instruments, documents, general intangibles or all or a substantial part of the properties or assets of the Borrower, change the nature of the business or the capital structure, wind up, liquidate or dissolve except that the Borrower may sell obsolete equipment

in the ordinary course of business or otherwise no longer useful in the ordinary course of business and Borrower may engage in restructuring of its entity structure with its Affiliates.

(h) Limited Liability Company Amendments. Borrower shall not amend its limited liability company documents in any manner which could have an adverse effect on the security of the Lender or prospect of repayment of the Loan. There shall be no transfer, sale or conveyance, pledge or assignment of any membership interest in the Borrower, except that Borrower may engage in restructuring of its corporate and/or entity structure with its Affiliates.

(i) Distributions. [Intentionally Deleted]

(j) Loans to Owners. [Intentionally Deleted]

ARTICLE XIII

CONDITIONS PRECEDENT

13.1 Conditions Precedent to All Advances. The Lender's obligation to advance funds under the Loan is subject to the receipt by the Lender of the following items, in form and substance satisfactory to the Lender:

(a) Loan Commitment. The Lender shall have received and approved all items required to be provided to the Lender under the terms of the Commitment and all conditions set forth therein shall have been fulfilled.

(b) Loan Documents. Each of the Loan Documents duly executed and delivered by all necessary parties thereto (other than the Lender).

(c) Borrower's Certificate. A certificate of the members or managers of Borrower certifying, among other things, that attached are true and correct copies of: (i) the Articles of

Organization of Borrower and all amendments, certified by the Secretary of State of the State of South Carolina; (ii) the Operating Agreement of Borrower; (iii) Certificates of Existence (or other similar certifications) issued by the Secretary of State of the jurisdiction of Borrower's organization, (iv) resolutions adopted by Borrower authorizing the execution, delivery and performance of the Loan Documents; and (v) the names and incumbency of those persons authorized on behalf of Borrower to sign each of the Loan Documents and the other documents or certificates to be delivered by Borrower pursuant hereto.

(d) Loan Fee. The Loan Fee in the amount of Eight Thousand Eight Hundred Thirty Seven and no/100 Dollars ($8,837.00) shall have been paid in full.

(e) Legal Opinion. The legal opinion of Borrower's and Guarantor's legal counsel addressed to the Lender regarding such matters as the Lender and its counsel may request.

(f) Insurance. Copies of all insurance policies and certificates of insurance evidencing the coverages required by the Loan Documents, including without limitation, all required flood insurance, naming Lender as loss payee.

(g) Payment of Fees Costs and Expenses. Payment of all fees due the Lender and evidence of payment to other parties of all fees or costs which Borrower is required under this Agreement to pay by the Closing Date, including, without limitation: (i) legal fees incurred by the Lender as set forth in the Commitment, and (ii) all fees due to the appraiser approved by the Lender.

(h) UCC Search. A satisfactory UCC search in all relevant jurisdictions covering Borrower's personal property.

(i) Perfection of Liens. Any documents, including, without limitation, the Financing Statements and Mortgages, required to be filed in order to create in favor of the Lender a perfected lien on the Property shall have been properly filed in each applicable jurisdiction, subject only to those liens or encumbrances approved by the Lender, and the Lender shall have received acknowledgment copies of those filings, or in lieu thereof, other evidence satisfactory to the Lender that those filings have been made.

(j) Survey. Borrower shall furnish to the Lender a satisfactory survey prepared, certified and sealed by a surveyor to the Lender showing, among other things, the location of any existing improvements wholly within the boundary lines of the Property and showing setback lines or building lines, if any. The survey shall also show: (a) the location of all easements and rights of way and all other exceptions described in the title opinion heretofore submitted to the Lender (to the extent such matters can be shown); and (b) the courses and distances to and names of the nearest intersecting public streets or roads. The survey shall include a certification as to the location of the Property within any special flood, mudslide or erosion hazard area.

(k) Compliance with Environmental Laws. If requested by Lender and in the possession of Borrower, evidence reasonably satisfactory to the Lender that the Property complies with all Environmental Laws. Such evidence shall include (without limitation) an inspection report by an environmental engineer satisfactory to the Lender, including, if required by the Lender, soil and chemical testing, addressing the probability of toxic or Hazardous Materials on the Property (in soil or water) (taking into consideration the history of the Property and its uses, adjacent land uses and the result of a site inspection of such engineer) and certifications that, to the best of Borrower's knowledge, there are no Hazardous Materials or toxic wastes on the Property.

(l) Zoning Compliance; Business Licenses and Permits. At the option of Lender, written evidence from the appropriate governmental authority(ies) that the Property and its intended use are in compliance with all applicable zoning ordinances and land use laws and regulations, including, but not limited to, evidence that the Property is in full compliance with any laws, ordinances or restrictions regarding historic properties, and that the Lender is not subject to any approval or consent of such historic property commission to foreclose upon and resell the Property, or otherwise realize the value of its collateral.

(m) Appraisal. An independent appraisal of the Property acceptable to Lender.

(n) Title Insurance. Borrower shall deliver to Lender a current title insurance binder insuring the priority of the Lender's first lien position on the Property, with exceptions acceptable to the Lender.

(o) No Default. No default or Event of Default shall exist as of the date of funding.

(p) Compliance With Agreements. Borrower shall have performed and complied with all agreements and conditions contained in each of the Loan Documents which are required to be performed or complied with by Borrower before or on the date of funding.

(q) Representations and Warranties. The representations and warranties set forth in the Loan Documents shall be true and correct in all material respects as of the date of funding.

(r) Guaranties. A guaranty of Borrower's obligations under the Loan Documents by each Guarantor.

(s) Insured Closing Letter. An insured closing letter from the Borrower's title insurance company insuring the closing of the transaction by the closing agent.

(t) Additional Documentation. Such other documentation or information as may reasonably be required by the Lender and its counsel.

13.2 No Waiver of Conditions. If the Lender makes any advance under the Loan prior to the satisfaction of any of the applicable conditions, the making of the advance shall not operate to waive the unsatisfied condition but shall be deemed to be an extension of a reasonable amount of time, in the sole and absolute discretion of the Lender, for the fulfillment of the condition, and Borrower shall use every effort to fulfill promptly each such condition.

13.3 Further Assurances. Borrower will, on request of Lender: (a) promptly correct any defect, error or omission in any Loan Document; (b) execute, acknowledge, deliver, procure, record or file such further instruments and do such further acts deemed reasonably necessary, desirable or proper by Lender to carry out the purposes of the Loan Documents and to identify and subject to the liens and security interest of the Loan Documents any property intended to be covered thereby, and to protect the liens or the security interest under the Loan Documents against the rights or interests of third persons; and (c) provide such certificates, documents, reports, information, affidavits and other instruments and do such further acts deemed reasonably necessary, desirable or proper by Lender to

comply with the requirements of any agency having jurisdiction over Lender or any examiners of such agencies with respect to the Loan, Borrower, any Guarantor or the Property. Borrower shall pay all reasonable, third-party costs connected with any of the foregoing except for fees, costs and expenses of any such examiners of such agencies or of Lender's internal operations, which shall be a demand obligation, payable fifteen (15) days after receipt of written demand from Lender, owing by Borrower (which Borrower hereby promises to pay) to Lender pursuant to this Loan Agreement.

ARTICLE 14
EVENTS OF DEFAULT; REMEDIES

14.1 The following shall constitute Events of Default hereunder:

(a) If the Borrower shall fail to pay the Note in full on its maturity date.

(b) If the Borrower shall fail to pay any other sum of money required to be paid pursuant to the Loan Documents and shall not have cured such default within five (5) days of written notice from Lender of such default.

(c) If any representation or warranty made by Borrower or by any Guarantor in any Loan Document or to induce Lender to enter into the transactions contemplated hereunder shall prove to be false, incorrect or misleading in any material respect as of the date when made.

(d) If the Borrower or any Guarantor shall breach or fail to comply with any other representation, warranty, covenant, term or condition of, or any of its obligations under, this Agreement, any Mortgage or any other Loan Document, all of which are cumulative to this Agreement and to each other, and such failure or breach is not cured by the earlier of (i) thirty (30) days after written notice from Lender of such default or (ii) the expiration of any cure periods explicitly provided in such Loan Documents.

(e) If a lien for the performance of architectural or engineering services, or other work, or labor, or the supply of materials, be filed against the Property or a portion thereof and remain unpaid or

unbonded for a period of sixty (60) days after the date of filing thereof unless Borrower is contesting the validity of said lien.

(f) If the Borrower shall agree to, or execute, any assignment of this Agreement or any advance hereunder without the Lender's prior written consent.

(g) If (A) Borrower or a Guarantor: (i) files a voluntary petition in bankruptcy; (ii) is adjudicated as a bankrupt or insolvent; (iii) files any petition or answer seeking or acquiescing in any reorganization, management, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors; (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of all or any substantial part of the Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof; (v) makes any general assignment for the benefit of creditors; or (vi) makes an admission in writing of its inability to pay its debts generally as they become due; or (B) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Borrower or a Guarantor, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof; or (C) any trustee, receiver or liquidator of Borrower or of all or any substantial part of the Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, is appointed without the prior written consent of Lender, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

(h) Upon the dissolution, liquidation, merger, consolidation or reorganization of Borrower or any Guarantor, except as permitted herein.

(i) If default be made in the repayment by the Borrower to the Lender, together with interest, of any amount the Lender may pay as insurance premiums, taxes, assessments, forced contributions, local assessments and governmental charges of every description, or other charges as herein provided and Borrower shall not have cured such default within fifteen (15) days of written notice from Lender of such default.

(j) If the Property, or any part or parcel thereof, be seized in the execution of a writ of seizure and sale, attachment, sequestration, or any other legal process or an order for the sale of such

property, or any part or parcel thereof, be issued in any judicial proceeding, and such writ, or other legal process or order, be not released, revoked, stayed or set aside within fifteen (15) days from issuance thereof, or if any sale be made pursuant to any of the above.

(k) If the Borrower should ever be required or permitted to deduct from the payments to be made on the Loan, or any part thereof, any amount whatsoever as taxes, assessments or governmental charges in the nature thereof by reason of any present or future law of the United States or of any state, municipality or taxing authority thereof, and the Borrower fails to pay to the Lender, within fifteen (15) days after written notice from Lender, an amount sufficient so that all payments due the Lender pursuant to the terms hereof or any Loan Document shall be absolutely net of such tax, assessment or governmental charge.

(l) If there should be passed after the date hereof any law providing or changing in any way the laws now enforced with respect to the taxation of mortgages or debts secured thereby, or the manner of the collection of any such taxes, so as to affect the interest of the Lender adversely, and the Borrower fails to pay to the Lender within fifteen (15) days notice from the Lender any costs to be borne by the Lender attributable to the composition of, and/or change in, such law or laws.

14.2 If an Event of Default shall occur, Lender may at its option:

(a) Terminate any obligation to make any advances of the Loan and/or declare the entire outstanding principal balance of the Loan, together with all interest thereon, to be due and payable immediately; anything contained in this Agreement, the Note or any other Loan Document to the contrary notwithstanding;

(b) With or without accelerating the Loan, advance funds under the Note directly to third parties to cure any default by Borrower, including without limitation payments for property taxes, insurance premiums, maintenance and repair, and management fees, payment of other expenses concerning the Property, and payment of Lender's attorney's fees and other fees and expenses. All of said advances shall be deemed made under the Note and shall be payable immediately with interest at the rate set forth in the Note.

(c) Enforce any and/or all of the Loan Documents, and, by way of illustration but not by way of limitation, cause all and singular the property described in the Mortgage and/or any of the other Loan

Documents to be seized and sold under executory process as an entirety or in parcels, as the Lender may determine, in accordance with law.

(d) Exercise any other right, privilege or remedy available to Lender as may be provided by any other Loan Document, and any other security documents heretofore or hereafter executed in favor of Lender or under applicable law, including any right, privilege or remedy available at law or in equity.

14.3 All powers and remedies given by this Article 5 to the Lender shall be cumulative and not exclusive of any other right or remedy or of any other powers and remedies available to the Lender under the Loan Documents, by judicial proceedings or otherwise, to enforce the performance or observance of the covenants and agreements of the Borrower contained in this Agreement, and no delay or omission of the Lender to exercise any right or power accruing upon any default occurring shall impair any such right or power, or shall be construed to be a waiver of any such default or an acquiescence therein. Every power and remedy given by this Article 5 or by law to the Lender may be exercised from time to time, and as often as may be deemed expedient, by the Lender. No waiver of any default hereunder shall extend to or affect any other or subsequent default or impair any rights or remedies consequent thereon.

14.4 Should the Lender, at its sole option, elect to employ the services of any attorney at law to represent it in the enforcement of any obligation undertaken by the Borrower in favor of the Lender, or undertaken by any third person in favor of the Borrower in connection herewith, or to participate in any legal proceedings in any way connected herewith, as plaintiff or intervenor, if Lender is successful the Borrower does hereby agree to pay to the Lender the reasonable fees and expenses of said attorneys.

14.5 The Borrower does hereby expressly waive in favor of the Lender and its assigns, to the fullest extent allowed by law, any and all exemptions from seizure provided by any law, rule or regulation of the State of South Carolina, the United States, or any other state.

14.6 Except as otherwise expressly provided herein, the Borrower does hereby expressly waive any notice by the Lender of any Event of Default or any notice or demand by the Lender of any breach of any obligation undertaken by the Borrower in favor of the Lender.

ARTICLE 15
MISCELLANEOUS

15.1 No waiver at any time of the provisions or conditions of this Loan Agreement or of any of the other Loan Documents shall be construed as a waiver of any of the other provisions or conditions hereof or thereof nor shall a waiver of any provision or condition be construed as a right to subsequent waiver of the same provision or condition.

15.2 Unenforceability for any reason of any provision of this Agreement, or of any of the Loan Documents or other agreements between the Borrower and the Lender, shall not limit or impair the operation or validity of any other provisions of this Agreement, any of the Loan Documents or any other such agreement.

15.3 Lender shall be named as mortgagee on all insurance policies required by the Loan Documents.

15.4 In the event that by, or pursuant to, proper authority there is taken or condemned the entire Property, or any part thereof, under power of eminent domain exercised by any actual or quasi governmental authority or public utility, the Borrower hereby assigns to the Lender any and all awards that may be given, made or due the Borrower in any proceedings in connection therewith up to an amount equal to the outstanding balance of the Loan under the Loan Documents, and the amounts of such awards shall be applied by the Lender to the reduction of any indebtedness owed to it by the Borrower, and the Borrower agrees to execute any and all such further instruments of assignment of any and all such condemnation awards as may be required by the Lender to carry out the purposes of this Section 6.4. The Borrower shall give written notice of such condemnation proceeding within ten (10) days of receipt of any service or process in connection therewith. In any condemnation proceedings against the Property, the Lender hereby reserves, and the Borrower hereby acknowledges, the Lender's right to institute or intervene in any such condemnation proceedings to assert said interest. The application of condemnation proceeds and the effect of the condemnation on the Loans shall be as set forth in the Mortgage. The terms and provisions of the Mortgage shall govern in the event of any conflict with the provisions hereof.

15.5 Any notice, demand, request or other communication which any party hereto may be required or may desire to give hereunder (a "Notice" or "Notices") shall be in writing and shall be deemed to have been properly given and received: (a) if hand delivered, on the day so delivered to the

address set forth below; (b) if mailed, on the third business day after the day on which it is deposited in the United States mails in the continental United States, registered or certified mail, postage prepaid, return receipt requested, addressed as set forth below; or (c) if by Federal Express or other reputable express courier service, on the next business day after delivery to such service, addressed as set forth below:

If to Borrower:

Wando River, LLC

14 North Adgers Wharf

Charleston, South Carolina 29401

Attention:_____

With copy to:

Parker Poe Adams & Bernstein, LLP

200 Meeting Street, Suite 301

Charleston, South Carolina 29401

Attention: Matthew J. Norton, Esquire

If to Lender:

South Carolina Bank and Trust

46 Broad Street

Charleston, South Carolina 29401

Attention: August C. Claussen, III

With copy to:

Moore & Van Allen, PLLC

Post Office Box 22828

Charleston, SC 29413

Attention: W. Gregory Pearce, Esquire

or at such other address or to such other addressee as the party to be served with notice shall have furnished in writing to the party seeking or desiring to serve notice as place for the service of notice.

15.6 The Loan is made and accepted, and all instruments related thereto are executed and delivered, at Charleston, South Carolina, and this Agreement and all the Loan Documents shall be governed by, and construed in accordance with, the laws of the State of South Carolina.

15.7 The Loan shall be made without cost to the Lender. All brokerage and real estate commissions shall be payable solely by the Borrower, and all other costs, including but not limited to attorneys' fees of the Lender and the Borrower, or other interested party, other professional fees, intangible taxes and all expenses of all kinds incurred in connection with the Loans, shall be borne by the Borrower, and the Borrower agrees to indemnify the Lender and save it harmless from the payment, defense and/or expense of any claim or demand for such commissions, fees, costs, taxes and expenses, whether valid or not.

15.8 THE PARTIES HERETO AGREE THAT TIME IS OF THE ESSENCE TO THIS AGREEMENT.

15.9 The Borrower hereby specifically grants unto the Lender the right and privilege, at Lender's option, to transfer and assign to any third person all or any part of the Lender's rights to receive funds or payments hereunder.

15.10 In the event that the Borrower should, for any reason whatsoever, fail to provide, keep and maintain the insurance coverages and the policies described in this Agreement or the Mortgages in the manner indicated therein, then the Lender, if it so elects, may itself have such insurance coverage

and policies effected in such an amount and in such companies as it may deem proper and may pay the premiums therefor, and any premiums so paid shall be added to the principal sum due and owed by the Borrower to the Lender, and the Borrower covenants and agrees that any clause to the contrary contained herein notwithstanding, in the event of such payment by the Lender, the Borrower shall, within ten (10) days after payment and demand therefor by the Lender, repay the Lender the amount so paid as premiums, together with interest thereon at the rate provided for in the Note, calculated from date of such payment until said amount is repaid, but in no case shall the Lender be required to purchase, maintain and/or keep any such policies or coverages.

15.11 The Lender shall not be responsible for the solvency of any company issuing any policy of insurance in connection with this Agreement, whether or not approved by it, or for the collection of any amount due under any such policy, and shall be responsible and accountable only for such money as may be actually received by it, and then only in accordance with the terms hereof. Nothing herein contained shall be construed as making the Lender liable in any way for any loss, damage, or injury resulting from the non-insurance of any buildings, improvements and/or personal property located on the Property.

15.12 In the event that the Borrower should, for any reason, fail to pay and discharge properly any taxes, assessments, forced contributions, local assessments or governmental charges when due, or any other charges or expenses payable by the Borrower, then the Lender shall be authorized to pay the same with full subrogation to all rights of the taxing authority or other recipient by reason of such payment, and the amount so paid shall be added to the principal of the Loans and, any clause to the contrary herein notwithstanding, in the event of payment by the Lender, the Borrower covenants and agrees that within ten (10) days after payment and demand therefor by the Lender, the Borrower shall repay the amount so paid by the Lender, together with interest thereon at the rate provided for in the Note, calculated from date of such payment until said amount is repaid. Nothing herein shall be construed, however, as making the payment of said taxes, assessments, forced contributions, local assessments, governmental charges or other expenses obligatory upon the Lender or its assigns, and none and neither of them shall be liable for any loss, damage or injury resulting from the nonpayment of such taxes, assessments, forced contributions, local assessments, governmental charges or other expenses.

15.13 It is expressly agreed that any and all terms of this Agreement, the Loan Documents and all other agreements made or executed by the Borrower or others in favor of the Lender, and all rights, powers, privileges, options and remedies conferred to the Lender herein, shall inure to and be for the benefit of and may be exercised by the Lender, its successors and assigns; and the word "Lender", unless the context otherwise requires, shall also mean and include the successor or successors and the assign or assigns of the said Lender.

15.14 All obligations contained in this Agreement, the Loan Documents and all other agreements to be observed, complied with or performed by the Borrower shall be binding upon the Borrower, and upon its successor and assigns, as well as upon any person, firm or corporation hereinafter acquiring title to the Property, or any part thereof, or any personal property located thereon, by, through or under the Borrower, and the word "Borrower", unless the context clearly requires otherwise, shall also mean and include the successors and assigns of the Borrower, and any other person, firm or corporation, acquiring title to any of the Property, or any part thereof, or personal property located thereon, by, through, or under the Borrower.

15.15 Borrower submits to the jurisdiction of any court of competent jurisdiction within the State of South Carolina. Borrower agrees that any action concerning this Agreement, the Note or any other Loan Document, whether initiated by Lender, Borrower, or any other party, shall be tried only in a court of competent jurisdiction within the State of South Carolina, and Borrower waives all objections to venue. All matters arising hereunder shall be determined in accordance with the law and practice of such South Carolina court. Borrower further agrees to comply with all requirements necessary to give such court in personam jurisdiction and agrees that service of process may be accomplished by, in addition to any other lawful means, certified mail, return receipt requested, to the Borrower at Borrower's address set forth above or any address of which Lender has been notified by Borrower in writing.

15.16 This Agreement may be executed in multiple counterparts, each of which shall serve as an original for all purposes, but all copies shall constitute but one and the same Agreement, binding on all parties hereto, whether or not each counterpart is executed by all parties hereto, as long as each party hereto has executed one or more counterparts hereof.

15.17 If more than one person or entity executes this Agreement, all such parties shall be jointly and severally liable for the performance of all obligations of the Borrower hereunder.

15.18 BORROWER AND LENDER WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO A JURY TRIAL IN ANY LITIGATION CONCERNING THIS AGREEMENT, THE LOANS OR ANY LOAN DOCUMENTS AND IN ANY LITIGATION CONCERNING ANY DEFENSE, CLAIM, COUNTERCLAIM, CLAIM OR SET-OFF OR SIMILAR CLAIM OF ANY NATURE THAT BORROWER MAY ASSERT AGAINST LENDER.

IN WITNESS WHEREOF, the parties have executed this Loan Agreement as of the above-written date.

BORROWER:

Wando River, LLC

_____

_____ By: _____

Name: _____

Title: _____

LENDER:

SOUTH CAROLINA BANK AND TRUST

_____ By: _____

August C. Claussen, III

_____ Title: Senior Vice-President

EXHIBIT A

MORTGAGE AND SECURITY AGREEMENT

MORTGAGE AND SECURITY AGREEMENT dated November ____, 2007 (together with any amendments or modifications hereto in effect from time to time, the "Mortgage"), between **WANDO RIVER, LLC**, a South Carolina limited liability company, having an address of 14 North Adgers Wharf, Charleston, South Carolina 29401 ("Mortgagor") and **SOUTH CAROLINA BANK AND TRUST**, having an office at 46 Broad Street, Charleston, South Carolina 29401 ("Mortgagee").

WITNESSETH:

WHEREAS, Mortgagor is indebted to Mortgagee in the principal sum of Three Million Five Hundred Thirty Five Thousand and no/100 Dollars ($3,535,000.00) (the "**Loan**"), together with interest thereon, as evidenced by a certain Promissory Note of even date herewith (the "**Note**"); and

WHEREAS, Mortgagor is the owner of fee simple title to those certain tracts of land located in the County of Berkeley, State of South Carolina, as more particularly described in Schedule "A" attached hereto and made a part hereof (the "Real Estate"); and

WHEREAS, to induce Mortgagee to make the Loan and to secure payment of the Note and the other obligations described below, Mortgagor has agreed to execute and deliver this Mortgage.

GRANTING CLAUSES

NOW, THEREFORE, to secure to Mortgagee (i) the repayment of all sums due under this Mortgage, the Note (and all extensions, renewals, replacements and amendments thereof) and the other Loan Documents (as such term is defined in the Note, the "**Loan Documents**"); (ii) the performance of all terms, conditions and covenants set forth in the Loan Documents; (iii) the repayment of all reimbursement obligations due or that may become due under or in connection with any present or future letters of credit issued by Mortgagee for the account of Mortgagor; and (iv) all other obligations or indebtedness of Mortgagor to Mortgagee of whatever kind or character and whenever borrowed or incurred, including without limitation, principal, interest, fees, late charges and expenses, including reasonable attorneys' fees (subsections (i), (ii), (iii) and (iv) collectively, the "**Liabilities**"),

Mortgagor has mortgaged, granted and conveyed and by these presents DOES HEREBY MORTGAGE, GRANT AND CONVEY TO MORTGAGEE, ITS SUCCESSORS AND ASSIGNS, all of Mortgagor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "Property"):

(A) The Real Estate;

(B) Any and all buildings and improvements now or hereafter erected on, under or over the Real Estate (the "Improvements");

(C) Any and all fixtures, machinery, equipment and other articles of real, personal or mixed property, belonging to Mortgagor, at any time now or hereafter installed in, attached to or situated in or upon the Real Estate, or the buildings and improvements now or hereafter erected thereon, or used or intended to be used in connection with the Real Estate, or in the operation of the buildings and improvements, plant, business or dwelling situate thereon, whether or not such real, personal or mixed property is or shall be affixed thereto, and all replacements, substitutions and proceeds of the foregoing (all of the foregoing herein called the "Service Equipment"), including without limitation: (i) all appliances, furniture and furnishings; all articles of interior decoration, floor, wall and window coverings; all office, restaurant, bar, kitchen and laundry fixtures, utensils, appliances and equipment; all supplies, tools and accessories; all storm and screen windows, shutters, doors, decorations, awnings, shades, blinds, signs, trees, shrubbery and other plantings; (ii) all building service fixtures, machinery and equipment of any kind whatsoever; all lighting, heating, ventilating, air conditioning, refrigerating, sprinkling, plumbing, security, irrigating, cleaning, incinerating, waste disposal, communications, alarm, fire prevention and extinguishing systems, fixtures, apparatus, machinery and equipment; all elevators, escalators, lifts, cranes, hoists and platforms; all pipes, conduits, pumps, boilers, tanks, motors, engines, furnaces and compressors; all dynamos, transformers and generators; (iii) all building materials, building machinery and building equipment delivered on site to the Real Estate during the course of, or in connection with any construction or repair or renovation of the buildings and improvements; (iv) all parts, fittings, accessories, accessions, substitutions and replacements therefor and thereof; and (v) all files, books, ledgers, reports and records relating to any of the foregoing;

(D) Any and all leases, subleases, tenancies, licenses, occupancy agreements or agreements to lease all or any portion of the Real Estate, Improvements, Service Equipment or all or any other portion of the Property and all extensions, renewals, amendments, modifications and replacements thereof, and any options, rights of first refusal or guarantees relating thereto (collectively, the "Leases"); all rents, income, receipts, revenues, security deposits, escrow accounts, reserves, issues, profits,

awards and payments of any kind payable under the Leases or otherwise arising from the Real Estate, Improvements, Service Equipment or all or any other portion of the Property including, without limitation, minimum rents, additional rents, percentage rents, parking, maintenance and deficiency rents (collectively, the "Rents"); all of the following personal property (collectively referred to as the "Contracts"): all accounts, general intangibles and contract rights (including any right to payment thereunder, whether or not earned by performance) of any nature relating to the Real Estate, Improvements, Service Equipment or all or any other portion of the Property or the use, occupancy, maintenance, construction, repair or operation thereof; all management agreements, franchise agreements, utility agreements and deposits, building service contracts, maintenance contracts, construction contracts and architect's agreements; all maps, plans, surveys and specifications; all warranties and guaranties; all permits, licenses and approvals; and all insurance policies, books of account and other documents, of whatever kind or character, relating to the use, construction upon, occupancy, leasing, sale or operation of the Real Estate, Improvements, Service Equipment or all or any other portion of the Property;

(E) Any and all estates, rights, tenements, hereditaments, privileges, easements, reversions, remainders and appurtenances of any kind benefiting or appurtenant to the Real Estate, Improvements or all or any other portion of the Property; all means of access to and from the Real Estate, Improvements or all or any other portion of the Property, whether public or private; all streets, alleys, passages, ways, water courses, water and mineral rights relating to the Real Estate, Improvements or all or any other portion of the Property; all rights of Mortgagor as declarant or unit owner under any declaration of condominium or association applicable to the Real Estate, Improvements or all or any other portion of the Property including, without limitation, all development rights and special declarant rights; and all other claims or demands of Mortgagor, either at law or in equity, in possession or expectancy of, in, or to the Real Estate, Improvements or all or any other portion of the Property (all of the foregoing described in this subsection E herein called the "Appurtenances"); and

(F) Any and all "proceeds" of any of the above-described Real Estate, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, which term "proceeds" shall have the meaning given to it in the Uniform Commercial Code, as amended, (the "Code") of the State in which the Property is located (collectively, the "Proceeds") and shall additionally include whatever is received upon the use, lease, sale, exchange, transfer, collection or other utilization or any disposition or conversion of any of the Real Estate, Improvements, Service Equipment, Leases, Rents, Contracts and Appurtenances, voluntary or involuntary, whether cash or non-cash, including proceeds of insurance and condemnation awards, rental or lease payments, accounts, chattel paper, instruments, documents, contract rights, general intangibles, equipment and inventory.

TO HAVE AND TO HOLD the above granted and conveyed Property unto and to the proper use and benefit of Mortgagee, its successors and assigns, forever.

PROVIDED ALWAYS, and these presents are upon the express condition, that if (i) all the Liabilities, including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements secured hereunder, are paid in full, (ii) each and every representation, warranty, agreement and covenant of this Mortgage and the other Loan Documents are complied with and abided by, and (iii) any swap agreements secured hereunder have matured or been terminated, then this Mortgage and the estate hereby created shall cease and be null and void and canceled of record.

The terms of the Loan Documents are hereby made a part of this Mortgage to the same extent and with the same effect as if fully set forth herein. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Documents.

AND Mortgagor covenants and agrees with and represents to Mortgagee as follows:

16. FUTURE ADVANCES; PROTECTION OF PROPERTY. This Mortgage shall secure in accordance with Section 2-3-50, Code of Laws of South Carolina (1976) as amended, any additional loans as well as any and all present or future advances and readvances under the Liabilities made by Mortgagee to or for the benefit of Mortgagor or the Property, including, without limitation: (a) principal, interest, late charges, fees and other amounts due under the Liabilities or this Mortgage; (b) all advances by Mortgagee to Mortgagor or any other person to pay costs of erection, construction, alteration, repair, restoration, maintenance and completion of any improvements on the Property; (c) all advances made or costs incurred by Mortgagee for the payment of real estate taxes, assessments or other governmental charges, maintenance charges, insurance premiums, appraisal charges, environmental inspection, audit, testing or compliance costs, and costs incurred by Mortgagee for the enforcement and protection of the Property or the lien of this Mortgage; and (d) all reasonable legal fees, costs and other expenses incurred by Mortgagee by reason of any default or otherwise in connection with the Liabilities. Mortgagor agrees that if, at any time during the term of this Mortgage or following a foreclosure hereof (whether before or after the entry of a judgment of foreclosure), Mortgagor fails to perform or observe any covenant or obligation under this Mortgage including, without limitation, payment of any of the foregoing, Mortgagee may (but shall not be obligated to) take such steps as are reasonably necessary to remedy any such nonperformance or nonobservance and provide payment thereof. All amounts advanced by Mortgagee shall be added to the amount secured by this Mortgage and the other Loan Documents (and, if advanced after the entry of a judgment of foreclosure, by such judgment of

foreclosure), and shall be due and payable on demand, together with interest at the Default Rate set forth in the Note, such interest to be calculated from the date of such advance to the date of repayment thereof. The maximum amount of all indebtedness outstanding at any one time and secured hereby shall not exceed twice the face amount of the Note

17. REPRESENTATIONS, WARRANTIES AND COVENANTS.

17.1. Payment and Performance. Mortgagor shall (a) pay to Mortgagee all sums required to be paid by Mortgagor under the Loan Documents, in accordance with their stated terms and conditions; (b) perform and comply with all terms, conditions and covenants set forth in each of the Loan Documents by which Mortgagor is bound; and (c) perform and comply with all of Mortgagor's obligations and duties as landlord under any Leases.

17.2. Seisin and Warranty. Mortgagor hereby warrants that (a) Mortgagor is seized of an indefeasible estate in fee simple in, and warrants the title to, the Property, subject only to the matters set forth in the title insurance policy insuring this Mortgage; (b) Mortgagor has the right, full power and lawful authority to mortgage, grant, convey and assign the same to Mortgagee in the manner and form set forth herein; and (c) this Mortgage is a valid and enforceable first lien on the Property. Mortgagor hereby covenants that Mortgagor shall (a) preserve such title and the validity and priority of the lien of this Mortgage and shall forever warrant and defend the same to Mortgagee against all lawful claims whatsoever; and (b) execute, acknowledge and deliver all such further documents or assurances as may at any time hereafter be required by Mortgagee to protect fully the lien of this Mortgage.

17.3. Insurance. (a) Mortgagor shall obtain and maintain at all times throughout the term of this Mortgage the following insurance: (i) comprehensive general public liability insurance covering all operations of Mortgagor in the amount of Two Million and 00/100 Dollars ($2,000,000.00) and (ii) such other insurance as Mortgagee may reasonably require.

(b) Each insurance policy required under this Section shall: (i) be written by an insurance company authorized or licensed to do business in the state within which the Property is located having an Alfred M. Best Company, Inc. rating of "A-" or higher and a financial size category of not less than IX; (ii) be for terms of a least one year, with premium prepaid; (Iii) be subject to the reasonable approval of Mortgagee as to insurance companies, amounts, content, forms of policies and expiration dates; and (iv) name Mortgagee, its successors and assigns: (1) as an additional insured under all liability insurance policies, and (2) as the first mortgagee,

under a standard non-contributory mortgagee clause, on all property insurance policies and all loss of rents or loss of business income insurance policies.

(c) Mortgagor further agrees that each insurance policy: (i) shall provide written notice to Mortgagee prior to any policy reduction or cancellation for any reason; (ii) shall contain an endorsement or agreement by the insurer that any loss shall be payable to Mortgagee in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor which might otherwise result in forfeiture of such insurance; (iii) shall waive all rights of setoff, counterclaim, deduction or subrogation against Mortgagor; and (iv) shall exclude Mortgagee from the operation of any coinsurance clause.

(d) Prior to the expiration of any insurance policy, Mortgagor shall furnish evidence satisfactory to Mortgagee that such policy has been renewed or replaced or is no longer required.

(e) Notwithstanding the foregoing, in the event that Mortgagor fails to maintain insurance in accordance with this Section 2.3., and Mortgagee elects to obtain insurance to protect its interests hereunder, Mortgagee may obtain insurance in any amount and of any type Mortgagee deems appropriate to protect Mortgagee's interest only and Mortgagee shall have no duty or obligation to Mortgagor to maintain insurance in any greater amount or of any other type for the benefit of Mortgagor. All insurance premiums incurred or paid by Mortgagee shall be at Mortgagor's sole cost and expense in accordance with Section 1 hereof. Mortgagee's election to obtain insurance shall not be deemed to waive any Event of Default (as hereinafter defined) hereunder.

17.4. Taxes and Other Charges. Mortgagor shall promptly pay and discharge all taxes, assessments, water and sewer rents, and other governmental charges imposed upon the Property when due, but in no event after interest or penalties commence to accrue thereon or become a lien upon the Property. Notwithstanding the foregoing, Mortgagor shall have the right to contest, at its own expense, by appropriate legal proceedings conducted in good faith and with due diligence, the amount or validity of such taxes, assessments, water and sewer rents, or other governmental charges, provided that: (a) Mortgagor has established on its books or by deposit of cash with Mortgagee, at the option of Mortgagee, a reserve for the payment thereof in such amount as Mortgagee may require; and (b) such contest operates to prevent collection, stay any proceedings which may be instituted to enforce payment of such item, and prevent a sale of the Property to pay such item. Mortgagor shall promptly provide to Mortgagee, upon request, copies of receipted tax bills, canceled checks or other evidence

satisfactory to Mortgagee evidencing that such taxes, assessments, water and sewer rents, and other governmental charges have been timely paid. Mortgagor shall not claim or demand or be entitled to any credit on account of the Liabilities for any part of the taxes paid with respect to the Property or any part thereof and no deduction shall otherwise be made or claimed from the taxable value of the Property, or any part thereof, by reason of this Mortgage.

17.5. Escrows. If required by Mortgagee after an Event of Default, Mortgagor shall pay to Mortgagee at the time of each installment of principal and interest due under the Note, and commencing with the first payment due after the date of such request, a sum equal to (a) the amount of the next installment of taxes and assessments levied or assessed against the Property, and/or (b) the premiums which will next become due on the insurance policies required by this Mortgage, all in amounts as estimated by Mortgagee, less all sums already paid therefor or deposited with Mortgagee for the payment thereof, divided by the number of payments to become due before one (1) month prior to the date when such taxes and assessments and/or premiums, as applicable, will become due, such sums to be held by Mortgagee to pay the same when due. If such escrow funds are not sufficient to pay such taxes and assessments and/or insurance premiums, as applicable, as the same become due, Mortgagor shall pay to Mortgagee, upon request, such additional amounts as Mortgagee shall estimate to be sufficient to make up any deficiency. No amount paid to Mortgagee hereunder shall be deemed to be trust funds but may be commingled with general funds of Mortgagee and no interest shall be payable thereon. Upon the occurrence of an Event of Default, Mortgagee shall have the right, at its sole discretion, to apply any amounts so held against the Liabilities.

17.6. Transfer of Title. Subject to Section 9.11, without the prior written consent of Mortgagee in each instance, Mortgagor shall not cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, nor shall Mortgagor enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes: (a) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (c) if Mortgagor, or any general partner or member of Mortgagor, is a corporation, partnership, limited liability company or other business entity, the transfer (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity except for transfers to and among Affiliates (as defined in the Loan Documents); (d) if Mortgagor, or any general partner or member of Mortgagor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.

17.7. No Encumbrances. Mortgagor shall not create or permit to exist any mortgage, pledge, lien, security interest (including, without limitation, a purchase money security interest), encumbrance, attachment, levy, distraint or other judicial process on or against the Property or any part thereof (including, without limitation, fixtures and other personalty), whether superior or inferior to the lien of this Mortgage, without the prior written consent of Mortgagee. If any lien or encumbrance is filed or entered without Mortgagor's consent, Mortgagor shall have it removed of record within sixty (60) days after it is filed or entered.

17.8. Removal of Fixtures. Mortgagor shall not remove or permit to be removed from the Property any fixtures presently or in the future owned by Mortgagor as the term "fixtures" is defined by the law of the state where the Property is located (unless such fixtures have been replaced with similar fixtures of equal or greater utility and value).

17.9. Maintenance and Repair; Alterations. After Mortgagor has completed its re-development of the Property, if any, (a) Mortgagor shall (i) abstain from and not permit the commission of waste in or about the Property; (ii) keep the Property, at Mortgagor's own cost and expense, in good and substantial repair, working order and condition; (iii) make or cause to be made, as and when necessary, all repairs and replacements, whether or not insurance proceeds are available therefor; and (iv) not remove, demolish, materially alter, discontinue the use of, or, subject to Section 9.11, otherwise dispose of all or any part of the Property. All alterations, replacements, renewals or additions made pursuant hereto shall automatically become a part of the Property and shall be covered by the lien of this Mortgage.

(b) Mortgagee, and any persons authorized by Mortgagee, shall have the right, but not the obligation, to enter upon the Property at any reasonable time to inspect and photograph its condition and state of repair. After Mortgagor has completed its re-development of the Property, in the event any such inspection reveals, in the reasonable discretion of Mortgagee, the necessity for any repair, alteration, replacement, clean-up or maintenance, Mortgagor shall, at the discretion of Mortgagee after thirty (30) days prior written notice by Mortgagee, either: (i) cause such work to be effected immediately; or (ii) promptly establish an interest bearing reserve fund with Mortgagee in an amount determined by Mortgagee for the purpose of effecting such work.

17.10. Compliance with Applicable Laws. Mortgagor agrees to observe, conform and comply, and to cause its tenants to observe, conform and comply with all federal, state, county, municipal and

other governmental or quasi-governmental laws, rules, regulations, ordinances, codes, requirements, covenants, conditions, orders, licenses, permits, approvals and restrictions, including without limitation, Environmental Laws (as defined below) and the Americans with Disabilities Act of 1990 (collectively, the "Legal Requirements"), now or hereafter affecting all or any part of the Property, its occupancy or the business or operations now or hereafter conducted thereon and the personalty contained therein, within such time as required by such Legal Requirements. Mortgagor represents and warrants that it will cause the Property to be designed in compliance with all Legal Requirements applicable to the Property.

17.11. Damage, Destruction and Condemnation. (a) If all or any part of the Property shall be damaged or destroyed, or if title to or the temporary use of the whole or any part of the Property shall be taken or condemned by a competent authority for any public or quasi-public use or purpose, there shall be no abatement or reduction in the amounts payable by Mortgagor under the Loan Documents and Mortgagor shall continue to be obligated to make such payments.

(b) If all or any part of the Property is partially or totally damaged or destroyed, Mortgagor shall give prompt notice thereof to Mortgagee, and Mortgagee may make proof of loss if not made promptly by Mortgagor. Mortgagor hereby authorizes and directs any affected insurance company to make payment under such insurance to Mortgagee instead of to Mortgagor and Mortgagee jointly, and Mortgagor appoints Mortgagee as Mortgagor's attorney-in-fact to endorse any draft thereof, which appointment, being for security, is coupled with an interest and irrevocable. After an Event of Default, Mortgagee is hereby authorized and empowered by Mortgagor to settle, adjust or compromise, in consultation with Mortgagor, any claims for loss, damage or destruction to the Property. Mortgagor shall pay all costs of collection of insurance proceeds payable on account of such damage or destruction. Mortgagor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Mortgagee as security for payment of the Liabilities. Mortgagee shall have the option, in its sole discretion, of paying or applying all or any part of the insurance proceeds to: (i) reduction of the Liabilities; (ii) restoration, replacement or repair of the Property in accordance with Mortgagee's standard construction loan disbursement conditions and requirements; or (iii) Mortgagor; provided, however, that insurance proceeds shall be made available to Mortgagor for restoration and repairs so long as no more than fifty percent (50%) of the Improvements are damaged or destroyed.

(c) Immediately upon obtaining knowledge of the institution of any proceeding for the condemnation of all or any part of the Property, Mortgagor shall give notice to Mortgagee. Mortgagor shall, at its sole cost and expense, diligently prosecute any such proceeding and shall consult with Mortgagee, its attorneys and experts, and shall cooperate with it in the defense of

any such proceeding. Mortgagee may participate in any such proceeding and Mortgagor shall from time to time deliver to Mortgagee all instruments requested by it to permit such participation. Mortgagor shall not, without Mortgagee's prior written consent, enter into any agreement (i) for the taking or conveyance in lieu thereof of all or any part of the Property, or (ii) to compromise, settle or adjust any such proceeding. All awards and proceeds of condemnation are hereby assigned to Mortgagee in an amount equal to the outstanding balance of the Loan under the Loan Documents, and Mortgagor, upon request by Mortgagee, agrees to make, execute and deliver any additional assignments or documents necessary from time to time to enable Mortgagee to collect the same. Such awards and proceeds shall be paid or applied by Mortgagee, in its sole discretion, to: (i) reduction of the Liabilities; (ii) restoration, replacement or repair of the Property in accordance with Mortgagee's standard construction loan disbursement conditions and requirements; or (iii) Mortgagor; in an amount equal to the outstanding balance of the Loan under the Loan Documents.

(d) Nothing herein shall relieve Mortgagor of its duty to repair, restore, rebuild or replace the Property following damage or destruction or partial condemnation if no or inadequate insurance proceeds or condemnation awards are available to defray the cost of repair, restoration, rebuilding or replacement unless Mortgagee fails to make proceeds or awards available to Mortgagor.

17.12. Required Notices. Mortgagor shall notify Mortgagee within ten (10) days of: (a) receipt of any notice from any governmental or quasi-governmental authority relating to the structure, use or occupancy of the Property or alleging a violation of any Legal Requirement; (b) receipt of any notice from the holder of any lien or security interest in all or any part of the Property; (c) commencement of any litigation affecting or potentially affecting the financial ability of Mortgagor or the value of the Property; (d) a pending or threatened condemnation of all or any part of the Property; (e) a fire or other casualty causing damage to all or any part of the Property; (f) receipt of any notice with regard to any Release of Hazardous Substances (as such terms are defined below) or any other environmental matter affecting the Property or Mortgagor's interest therein; (g) receipt of any request for information, demand letter or notification of potential liability from any entity relating to potential responsibility for investigation or clean-up of Hazardous Substances on the Property or at any other site owned or operated by Mortgagor; or (h) receipt of any notice of the imposition of, or of threatened or actual execution on, any lien on or security interest in all or any part of the Property.

17.13. Books and Records; Inspection. Mortgagor shall keep and maintain (a) complete and accurate books and records, in accordance with generally accepted accounting principles consistently applied, reflecting all items of income and expense in connection with the operation of the Property, and (b) copies of all written contracts, leases and other agreements affecting the Property. Mortgagee

or its designated representatives shall, upon reasonable prior notice to Mortgagor, have (a) the right of entry and free access to the Property during business hours (which may be without notice in any case of emergency) to inspect the Property, and (b) the right to examine and audit all books, contracts and records of Mortgagor relating to the Property.

17.14. Right to Reappraise. Mortgagee shall have the right to conduct or have conducted by an independent appraiser acceptable to Mortgagee appraisals of the Property in form and substance satisfactory to Mortgagee at the sole cost and expense of Mortgagor; provided, however, that Mortgagor shall not be obligated to bear the expense of such appraisals so long as (a) no Event of Default exists, and (b) such appraisals are not required by applicable law, rule or regulation of any governmental authority having jurisdiction over Mortgagee. The cost of such appraisals, if chargeable to Mortgagor as aforesaid, shall be added to the Liabilities and shall be secured by this Mortgage in accordance with the provisions of Section 1 hereof.

18. SECURITY AGREEMENT. This Mortgage constitutes a security agreement under the Code and shall be deemed to constitute a fixture financing statement. Mortgagor hereby grants to Mortgagee a security interest in the personal and other property (other than real property) included in the Property, and all replacements of, substitutions for, and additions to, such property, and the proceeds thereof. Mortgagor shall, at Mortgagor's own expense, execute, deliver, file and refile any financing or continuation statements or other security agreements Mortgagee may require from time to time to perfect, confirm or maintain the lien of this Mortgage with respect to such property. A photocopy of an executed financing statement shall be effective as an original. Without limiting the foregoing, Mortgagor hereby irrevocably appoints Mortgagee attorney-in-fact for Mortgagor to execute, deliver and file such instruments for or on behalf of Mortgagor at Mortgagor's expense, which appointment, being for security, is coupled with an interest and shall be irrevocable.

19. ASSIGNMENT OF LEASES.

19.1. Mortgagor hereby absolutely, presently and unconditionally conveys, transfers and assigns to Mortgagee all of Mortgagor's right, title and interest, now existing or hereafter arising, in and to the Leases and Rents. Notwithstanding that this assignment is effective immediately, so long as no Event of Default exists, Mortgagor shall have the privilege under a revocable license granted hereby to operate and manage the Property and to collect, as they become due, but not prior to accrual, the Rents. Mortgagor shall receive and hold such Rents in trust as a fund to be applied, and Mortgagor hereby covenants and agrees that such Rents shall be so applied, first to the operation, maintenance and repair of the Property and the payment of interest, principal and other sums becoming due under

the Liabilities, before retaining and/or disbursing any part of the Rents for any other purpose. The license herein granted to Mortgagor shall automatically, without notice or any other action by Mortgagee, terminate upon the occurrence of an Event of Default, and all Rents subsequently collected or received by Mortgagor after an Event of Default which is not subsequently cured shall be held in trust by Mortgagor for the sole and exclusive benefit of Mortgagee. Nothing contained in this Section 4.1, and no collection by Mortgagee of Rents, shall be construed as imposing on Mortgagee any of the obligations of the lessor under the Leases.

19.2. Mortgagor shall timely perform all of its obligations under the Leases. Mortgagor represents and warrants that: (a) Mortgagor has title to and full right to assign presently, absolutely and unconditionally the Leases and Rents; (b) no other assignment of any interest in any of the Leases or Rents has been made; (c) there are no leases or agreements to lease all or any portion of the Property now in effect.

19.3. Mortgagor shall not, without the prior written consent of Mortgagee: (a) enter into any lease of all or any portion of the Property except in the ordinary course of business; (b) amend, modify, terminate or accept a surrender of any Lease; or (c) collect or accept rent from any tenant of the Property for a period of more than one month in advance. Any of the foregoing acts, if done without the prior written consent of Assignee in each instance, shall be null and void.

20. DECLARATION OF NO OFFSET. Mortgagor represents to Mortgagee that Mortgagor has no knowledge of any offsets, counterclaims or defenses to the Liabilities either at law or in equity. Mortgagor shall, within three (3) days upon request in person or within seven (7) days upon request by mail, furnish to Mortgagee or Mortgagee's designee a written statement in form satisfactory to Mortgagee stating the amount due under the Liabilities and whether there are offsets or defenses against the same, and if so, the nature and extent thereof.

21. ENVIRONMENTAL MATTERS.

21.1. Definitions. As used herein, "Environmental Laws" shall mean all existing or future federal, state and local statutes, ordinances, regulations, rules, executive orders, standards and requirements, including the requirements imposed by common law, concerning or relating to industrial hygiene and the protection of health and the environment including but not limited to: (a) those relating to the generation, manufacture, storage, transportation, disposal, release, emission or discharge of Hazardous Substances (as hereinafter defined); (b) those in connection with the construction, fuel

supply, power generation and transmission, waste disposal or any other operations or processes relating to the Property; and (c) those relating to the atmosphere, soil, surface and ground water, wetlands, stream sediments and vegetation on, under, in or about the Property. Any terms mentioned herein which are defined in any Environmental Law shall have the meanings ascribed to such terms in said laws; provided, however, that if any of such laws are amended so as to broaden any term defined therein, such broader meaning shall apply subsequent to the effective date of such amendment.

21.2. Representations, Warranties and Covenants. Mortgagor represents, warrants, covenants and agrees as follows:

(a) Except as disclosed to Mortgagee, to the best of Mortgagor's knowledge, neither Mortgagor nor the Property or any occupant thereof is in violation of or subject to any existing, pending or threatened investigation or inquiry by any governmental authority pertaining to any Environmental Law. Mortgagor shall not cause or permit the Property to be in violation of, or do anything which would subject the Property to any remedial obligations under, any Environmental Law. Mortgagor shall promptly notify Mortgagee in writing of any existing, pending or threatened investigation or inquiry by any governmental authority in connection with any Environmental Law. In addition, Mortgagor shall provide Mortgagee with copies of any and all material written communications with any governmental authority in connection with any potential or actual violation of any Environmental Law, concurrently with Mortgagor's giving or receiving of same.

(b) Mortgagor has inspected the Property and to the best of Mortgagor's knowledge,, except as disclosed in the environmental reports delivered to Mortgagee, there has been no release, spill, discharge, leak, disposal or emission (individually a "Release" and collectively, "Releases") of any Hazardous Material, Hazardous Substance or Hazardous Waste, including gasoline, petroleum products, explosives, toxic substances, solid wastes and radioactive materials (collectively, "Hazardous Substances") at, upon, under or within the Property. The use which Mortgagor or any other occupant of the Property makes or intends to make of the Property will not result in Release of any Hazardous Substances on or to the Property. During the term of this Mortgage, if Mortgagor finds a Release has occurred, Mortgagor shall remove or remediate the same promptly upon discovery at its sole cost and expense.

(c) To the best of Mortgagor's knowledge, the Property has never been used by the present or previous owners and/or operators nor will be used in the future to refine, produce, store, handle, transfer, process, transport, generate, manufacture, heat, treat, recycle or dispose of Hazardous Substances.

(d) To the best of Mortgagor's knowledge, the Property: (i) is being and has been operated in compliance with all Environmental Laws, and all permits required thereunder have been obtained and complied with in all material respects; and (ii) does not have any Hazardous Substances present excepting small quantities of petroleum and chemical products, in proper storage containers, that are necessary for the construction or operation of the commercial business of Mortgagor and its tenants, and the usual waste products therefrom ("Permitted Substances").

(c) Mortgagor will and will cause its tenants to operate the Property in compliance with all Environmental Laws and, other than Permitted Substances, will not place or permit to be placed any Hazardous Substances on the Property.

(d) To the best of Mortgagor's knowledge, no lien has been attached to or threatened to be imposed upon the Property, and there is no basis for the imposition of any such lien based on any governmental action under Environmental Laws. Mortgagor has not, and will not, be involved in operations at the Property which could lead to the imposition of environmental liability on Mortgagor, or the creation of an environmental lien on the Property. In the event that any such lien is filed, Mortgagor shall, within (30) days from the date that the Mortgagor is given notice of such lien (or within such shorter period of time as is appropriate in the event that steps have commenced to have the Property sold), either: (i) pay the claim and remove the lien from the Property; or (ii) furnish a cash deposit, bond or other security satisfactory in form and substance to Mortgagee in an amount sufficient to discharge the claim out of which the lien arises.

21.3. Right to Inspect and Cure. Mortgagee shall have the right to conduct or have conducted by its agents or contractors such environmental inspections, audits and tests as Mortgagee shall deem necessary or advisable from time to time at the sole cost and expense of Mortgagor; provided, however, that Mortgagor shall not be obligated to bear the expense of such environmental inspections, audits and tests so long as (a) no Event of Default exists, and (b) Mortgagee has no cause to believe in its sole reasonable judgment that there has been a Release or threatened Release of Hazardous Substances at the Property by Mortgagor or that Mortgagor is in violation of any Environmental Law. The reasonable cost of such inspections, audits and tests, if chargeable to Mortgagor as aforesaid, shall be added to the Liabilities and shall be secured by this Mortgage. Mortgagor shall, and shall cause each tenant of the Property to, cooperate with such inspection efforts; such cooperation shall include, without limitation, supplying all information requested concerning the operations conducted and Hazardous Substances located at the Property. In the event that Mortgagor fails to comply with any Environmental Law, Mortgagee may, in addition to any of its other remedies under this Mortgage, cause the Property to be in compliance with such laws and the cost of such

compliance shall be added to the sums secured by this Mortgage in accordance with the provisions of Section 1 hereof.

22. EVENTS OF DEFAULT. Each of the following shall constitute a default (each, an "Event of Default") hereunder:

22.1. Non-payment when due of any sum required to be paid to Mortgagee under any of the Loan Documents, including without limitation, principal and interest which is not cured within five (5) days after written notice from Mortgagee;

22.2. A breach of any covenant contained in Sections 2.3. or 2.4. which is not cured within fifteen (15) days after written notice from Mortgagee or a breach of 2.6. or 2.7. hereof;

22.3. A breach by Mortgagor of any other term, covenant, condition, obligation or agreement under this Mortgage, and the continuance of such breach beyond the applicable cure periods set forth in the Loan Agreement;

22.4. An Event of Default under any of the other Loan Documents;

23. REMEDIES. If an Event of Default shall have occurred, Mortgagee may take any of the following actions:

23.1. Acceleration. Mortgagee may declare the entire amount of the Liabilities immediately due and payable, without presentment, demand, notice of any kind, protest or notice of protest, all of which are expressly waived, notwithstanding anything to the contrary contained in any of the Loan Documents. Mortgagee may charge and collect interest from the date of default on the unpaid balance of the Liabilities, at the Default Rate set forth in the Note. In addition, any and all accelerations of any portion of the remaining principal balance of the Liabilities (including, without limitation, foreclosure by Mortgagee under this Mortgage) shall be subject to the Prepayment Consideration (as defined and described in the Note), if any.

23.2. Possession. Mortgagee may enter upon and take possession of the Property, with or without legal action, lease the Property, collect therefrom all rentals and, after deducting all costs of collection and administration expense, apply the net rentals to any one or more of the following items in such manner and in such order of priority as Mortgagee, in Mortgagee's sole discretion, may elect: the payment of any sums due under any prior lien, taxes, water and sewer rents, charges and claims, insurance premiums and all other carrying charges, to the maintenance, repair or restoration of the Property, or on account of the Liabilities. Mortgagee is given full authority to do any act which Mortgagor could do in connection with the management and operation of the Property. This covenant is effective either with or without any action brought to foreclose this Mortgage and without applying for a receiver of such rents. If Mortgagor does not vacate and surrender the Property then Mortgagor may be evicted by summary proceedings.

23.3. Foreclosure. Mortgagee may institute any one or more actions of mortgage foreclosure against all or any part of the Property, or take such other action at law, equity or by contract for the enforcement of this Mortgage and realization on the security herein or elsewhere provided for, as the law may allow, and may proceed therein to final judgment and execution for the entire unpaid balance of the Liabilities. The unpaid balance of any judgment shall bear interest at the greater of (a) the statutory rate provided for judgments, or (b) the Default Rate. Without limiting the foregoing, Mortgagee may foreclose this Mortgage and exercise its rights as a secured party for all or any portion of the Liabilities which are then due and payable, subject to the continuing lien of this Mortgage for the balance not then due and payable. In case of any sale of the Property by judicial proceedings, the Property may be sold in one parcel or in such parcels, manner or order as Mortgagee in its sole discretion may elect. Mortgagor, for itself and anyone claiming by, through or under it, hereby agrees that Mortgagee shall in no manner, in law or in equity, be limited, except as herein provided, in the exercise of its rights in the Property or in any other security hereunder or otherwise appertaining to the Liabilities or any other obligation secured by this Mortgage, whether by any statute, rule or precedent which may otherwise require said security to be marshalled in any manner and Mortgagor, for itself and others as aforesaid, hereby expressly waives and releases any right to or benefit thereof. The failure to make any tenant a defendant to a foreclosure proceeding shall not be asserted by Mortgagor as a defense in any proceeding instituted by Mortgagee to collect the Liabilities or any deficiency remaining unpaid after the foreclosure sale of the Property.

23.4. Appointment of Receiver. Mortgagee may petition a court of competent jurisdiction to appoint a receiver of the Property. Such appointment may be made either before or after sale, without notice, without regard to the solvency or insolvency of Mortgagor at the time of application for such receiver, without regard to the then value of the Property or whether the Property shall be then occupied as a homestead or not, and without regard to whether Mortgagor has committed waste or allowed deterioration of the Property, and Mortgagee or any agent of Mortgagee may be appointed as such receiver. Mortgagor hereby agrees that Mortgagee has a special interest in the Property and

absent the appointment of such receiver the Property shall suffer waste and deterioration and Mortgagor further agrees that it shall not contest the appointment of a receiver and hereby so stipulates to such appointment pursuant to this paragraph. Such receiver shall have the power to perform all of the acts permitted Mortgagee pursuant to Section 8.2 above and such other powers which may be necessary or customary in such cases for the protection, possession, control, management and operation of the Property during such period.

23.5. Rights as a Secured Party. Mortgagee shall have, in addition to other rights and remedies available at law or in equity, the rights and remedies of a secured party under the Code. Mortgagee may elect to foreclose such of the Property as then comprise fixtures pursuant either to the law applicable to foreclosure of an interest in real estate or to that applicable to personal property under the Code. To the extent permitted by law, Mortgagor waives the right to any stay of execution and the benefit of all exemption laws now or hereafter in effect.

23.6. Excess Monies. Mortgagee may apply on account of the Liabilities any unexpended monies still retained by Mortgagee that were paid by Mortgagor to Mortgagee: (a) for the payment of, or as security for the payment of taxes, assessments or other governmental charges, insurance premiums, or any other charges; or (b) to secure the performance of some act by Mortgagor.

23.7. Other Remedies. Mortgagee shall have the right, from time to time, to bring an appropriate action to recover any sums required to be paid by Mortgagor under the terms of this Mortgage, as they become due, without regard to whether or not any other Liabilities shall be due, and without prejudice to the right of Mortgagee thereafter to bring an action of mortgage foreclosure, or any other action, for any default by Mortgagor existing at the time the earlier action was commenced. In addition, Mortgagee shall have the right to set-off all or any part of any amount due by Mortgagor to Mortgagee under any of the Liabilities, against any indebtedness, liabilities or obligations owing by Mortgagee in any capacity to Mortgagor, including any obligation to disburse to Mortgagor any funds or other property on deposit with or otherwise in the possession, control or custody of Mortgagee.

24. MISCELLANEOUS.

24.1. Notices. All notices and communications under this Mortgage shall be in writing and shall be given in accordance with the provisions of the Loan Agreement.

24.2. Remedies Cumulative. The rights and remedies of Mortgagee as provided in this Mortgage or in any other Loan Document shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Mortgagee at law or in equity. The failure, at any one or more times, of Mortgagee to assert the right to declare the Liabilities due, grant any extension of time for payment of the Liabilities, take other or additional security for the payment thereof, release any security, change any of the terms of the Loan Documents, or waive or fail to exercise any right or remedy under any Loan Document shall not in any way affect this Mortgage or the rights of Mortgagee.

24.3. No Implied Waiver. Mortgagee shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Mortgagee, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy on a subsequent event.

24.4. Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Mortgage shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

24.5. Binding Effect. The covenants, conditions, waivers, releases and agreements contained in this Mortgage shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns and are intended and shall be held to be real covenants running with the land; provided, however, that this Mortgage cannot be assigned by Mortgagor without the prior written consent of Mortgagee, and any such assignment or attempted assignment by Mortgagor shall be void and of no effect with respect to Mortgagee.

24.6. Modifications. This Mortgage may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

24.7. Commercial Loan. Mortgagor represents and warrants that the loans or other financial accommodations included as Liabilities secured by this Mortgage were obtained solely for the purpose of carrying on or acquiring a business or commercial investment and not for residential, consumer or household purposes.

24.8. Governing Law. This Mortgage shall be governed by and construed in accordance with the substantive laws of the State of South Carolina without reference to conflict of laws principles.

24.9. Joint and Several Liability. If Mortgagor consists of more than one person or entity, the word "Mortgagor" shall mean each of them and their liability shall be joint and several.

24.10. Non-Merger. In the event Mortgagee shall acquire title to the Property by conveyance from Mortgagor or as a result of foreclosure, this Mortgage shall not merge in the fee estate of the Property but shall remain and continue as an existing and enforceable lien for the Liabilities secured hereby until the same shall be released of record by Mortgagee in writing.

[SIGNATURE PAGE ATTACHED]

IN WITNESS WHEREOF, Mortgagor, intending to be legally bound, has duly executed and delivered this Mortgage and Security Agreement [under seal] as of the day and year first above written.

MORTGAGOR:

Wando River, LLC

_____

_____ By:_____

Name:_____

Title:_____

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Before me, the undersigned Notary Public, personally appeared, **Wando River, LLC,** by _____, its _____, who executed the foregoing instrument this _____ day of November, 2007, and acknowledged that (s)he executed the same.

_____

Notary Public for South Carolina

My Commission Expires:

SCHEDULE A

DESCRIPTION OF PROPERTY

PROMISSORY NOTE

$3,535,000.00 Charleston, South Carolina

November ____, 2007

FOR VALUE RECEIVED, WANDO RIVER, LLC, (the "Borrower"), hereby promises to pay to the order of **SOUTH CAROLINA BANK AND TRUST** (the **"Bank"**), at its offices at 46 Broad Street, Charleston, South Carolina, or such other place as Bank shall designate in writing from time to time, the principal sum of Three Million Five Hundred Thirty Five Thousand and 00/100 ($3,535,000.00) Dollars (the **"Loan"**) or so much thereof as may be advanced pursuant to the Loan Agreement of even date herewith between Borrower and Bank (the **"Loan Agreement"**), in United States Dollars, together with interest thereon as hereinafter provided The Loan Agreement is hereby incorporated herein by reference

1 **INTEREST RATE** Interest shall be charged on the outstanding principal balance from the date hereof at a rate equal to _____ and ____/100 percent (_____%) per annum until December 1, 2007 after which time the interest rate (the "Interest Rate") may change as described in Section 2 below (the Variable Rate subsection). Interest shall be calculated daily on the basis of the actual number of days elapsed over a 360 day year

2 **VARIABLE RATE.**

The Interest Rate may change during the term of this transaction

(1) Index. Beginning with the first Change Date (as defined in Subsection 2(3) below), the Interest Rate will be based on the following index (the **"Index"**) London Interbank Offered Rate 30 day (LIBOR) as published in the Wall Street Journal on the first business day of each month.

The "Current Index" is the most recent Index figure available on each Change Date. Bank does not guaranty by selecting the Index that the Interest Rate on this Note will be the same rate Bank charges on any other loans or class of loans Bank makes to Borrower or other borrowers If the Index is no longer available, Bank will substitute a similar index. Bank will give Borrower notice of Bank's choice

(2) Change Date. Each date on which the Interest Rate may change is called a "Change Date" The Interest Rate may change December 1, 2007 and on the first business day of each month thereafter.

(3) Calculation of Change. On each Change Date, Bank will calculate the Interest Rate, which will be the Current Index plus one and 85/100 (1.85%) percent. The result of this calculation will be rounded to the nearest .001 percent. This will be the Interest Rate until the next Change Date. The new Interest Rate will become effective on each Change Date

3. PAYMENT OF PRINCIPAL AND INTEREST. Interest only on the outstanding principal balance shall be due and payable in arrears on the ____ day of each month commencing on December ____, 2007 In any event, all principal and accrued interest shall be due and payable on April 30, 2010.

4. APPLICATION OF PAYMENTS. Except as otherwise specified herein, each payment or prepayment, if any, made under this Note shall be applied to pay late charges, accrued and unpaid interest, principal, escrows (if any), and any other fees, costs and expenses which Borrower is obligated to pay under this Note, in such order as Bank may elect from time to time in its sole discretion.

5 TENDER OF PAYMENT. All payments on this Note are payable on or before 2 00 p.m on the due date thereof, at the office of Bank specified above and shall be credited on the date the funds become available lawful money of the United States Notwithstanding the foregoing and subject to the terms and conditions of the Loan Agreement, payments of interest on the Loan from any interest reserve to be established under the Loan Agreement shall be made in a manner satisfactory to Borrower and Lender or as a direct charge by Bank, without notice to or further authorization from Borrower, against such interest reserve, with Borrower obligated to pay all interest on the Loan in excess of the amounts available under the interest reserve pursuant to the provisions of the immediately preceding sentence. All sums payable to Bank which are due on a day on which Bank is not open for business shall be paid on the next succeeding business day and such extended time shall be included in the computation of interest.

6. LATE CHARGE. In the event that any installment of principal or interest required to be made by Borrower under this Note shall not be received by Bank within ten (10) days after its due date, Borrower shall pay to Bank, on demand, a late charge of five percent (5%) of such delinquent payment. The foregoing right is in addition to, and not in limitation of, any other rights which Bank may have upon Borrower's failure to make timely payment of any amount due hereunder.

7 PREPAYMENT. The principal amount of this Note may be prepaid in whole or in part at any time, and from time to time, without premium or penalty. Any prepayment shall include accrued and unpaid interest to the date of prepayment on the principal amount prepaid and all other sums due and payable hereunder

8. SECURITY FOR THE NOTE.

8.1 This Note is executed and delivered in accordance with a commercial transaction described in the Loan Agreement As security for the payment of the monies owing under this Note, Borrower has delivered or has caused to be delivered to Bank the following (each a **"Loan Document"** and collectively with this Note, the Loan Agreement, and any other guaranty, document, certificate or instrument executed by Borrower or any other obligated party in connection with the Loan, together with all amendments, modifications, renewals or extensions thereof, the **"Loan Documents"**) (a) a Mortgage and Security Agreement (the **"Mortgage"**) on certain real property and the improvements situated thereon in the County of Berkeley, State of South Carolina, as more fully described in the Mortgage (the **"Property"**), (b) an Assignment of Contracts (the **"Assignment of Contracts"**), and (c) Guaranty Agreements (the **"Guaranty"**) by Kiawah Resort Associates, L.P and L Russell Bennett

8 2 Borrower hereby grants to Bank a continuing security interest in all property of Borrower, now or hereafter in the possession of Bank, as security for the payment of this Note and any other liabilities of Borrower to Bank, which security interest shall be enforceable and subject to all the provisions of this Note, as if such property were specifically pledged hereunder.

9 DEFAULT RATE From and after the Maturity Date or from and after the occurrence of an Event of Default hereunder, irrespective of any declaration of maturity, all amounts remaining unpaid or thereafter accruing hereunder, shall, at Bank's option, bear interest at a default rate of four percent (4%) per annum above the interest rate then in effect as set forth herein (the **"Default Rate"**), or the highest permissible rate under applicable usury law, whichever is less The Default Rate of interest shall be payable upon demand, but in no event later than when scheduled interest payments are due, and shall also be charged on the amounts owed by Borrower to Bank pursuant to any judgments entered in favor of Bank with respect to this Note

10. COVENANTS

10 1 Indemnification

10 1 1 Borrower hereby indemnifies and agrees to defend and hold harmless Bank, its officers, employees and agents (collectively, the **"Indemnified Parties"**), from and against any and all losses, damages, or liabilities and from any suits, claims or demands, including reasonable attorneys' fees incurred in investigating or defending such claim, suffered by any of them and caused by, arising out of, or in any way connected with the Loan Documents or the transactions contemplated therein (unless and to the extent determined by a final judgment of a court of competent jurisdiction to have been caused by the gross negligence or willful misconduct of any of the Indemnified Parties) including, without limitation (i) disputes with any architect, general contractor, subcontractor, materialman or supplier, or on account of any act or omission to act by Bank in connection with the Property, (ii) losses, damages, expenses or liabilities sustained by Bank in connection with any environmental inspection, monitoring, sampling or cleanup of the Property required or mandated by any applicable environmental law, (iii) claims by any tenant or any other party arising under or in connection with any lease of all or any portion of the Property, (iv) any untrue statement of a material fact contained in information submitted to Bank by Borrower or the omission of any material fact necessary to be stated therein in order to make such statement not materially misleading or incomplete, (v) the failure of Borrower to perform any obligations herein required to be performed by Borrower, and (vi) the ownership, construction, occupancy, operation, use or maintenance of the Property.

10 1.2. In case any action shall be brought against Bank, its officers, employees or agents, in respect to which indemnity may be sought against Borrower, Bank or such other party shall promptly notify Borrower, and Borrower shall assume (i) the defense thereof, including the employment of counsel selected by Borrower and reasonably satisfactory to Bank, (ii) the payment of all costs and expenses and (iii) the right to negotiate and consent to settlement Bank shall have the right, at its sole option, to employ separate counsel in any such action and to participate in the defense thereof, all at Borrower's sole cost and expense Borrower shall not be liable for any settlement of any such action effected without its consent (unless Borrower fails to defend such claim), but if settled with Borrower's consent, or if there be a final judgment for the claimant in any such action, Borrower agrees to indemnify and hold harmless Bank from and against any loss or liability by reason of such settlement or judgment (unless and to the extent determined by a final judgment of a court of competent jurisdiction to have been caused by the gross negligence or willful misconduct of any of the Indemnified Parties)

10.1.3. The provisions of this Section 10 shall survive the repayment or others satisfaction of the Liabilities.

11 EVENTS OF DEFAULT. Each of the following shall constitute an event of default hereunder (an **"Event of Default"**) (a) the failure of Borrower to pay any amount of principal or interest hereunder when due and payable for a period of five (5) days after written notice from Bank, or (b) the occurrence of any other default in any term, covenant or condition hereunder or any Event of Default under the Mortgage or any other Loan Document not cured within the cure periods as set forth in the Loan Agreement.

12. REMEDIES If an Event of Default exists, Bank may exercise any right, power or remedy permitted by law or as set forth herein or in the Loan Agreement, the Mortgage or any other Loan

Document including, without limitation, the right to declare the entire unpaid principal amount hereof and all interest accrued hereon, and all other sums secured by the Mortgage or any other Loan Document, to be, and such principal, interest and other sums shall thereupon become, immediately due and payable

13 MISCELLANEOUS.

13 1 Disclosure of Financial Information Bank is hereby authorized to disclose any financial or other information about Borrower to any regulatory body or agency having jurisdiction over Bank and to any present, future or prospective participant or successor in interest in any loan or other financial accommodation made by Bank to Borrower. The information provided may include, without limitation, amounts, terms, balances, payment history, return item history and any financial or other information about Borrower.

13.2. Integration This Note and the other Loan Documents constitute the sole agreement of the parties with respect to the transaction contemplated hereby and supersede all oral negotiations and prior writings with respect thereto.

13.3 Attorneys' Fees and Expenses. If Bank retains the services of counsel by reason of a claim of a default or an Event of Default hereunder or under any of the other Loan Documents, or on account of any matter involving this Note, or for examination of matters subject to Bank's approval under the Loan Documents, all costs of suit and all reasonable attorneys' fees and such other reasonable expenses so incurred by Bank shall be paid by Borrower, on demand, and shall be deemed part of the obligations evidenced hereby.

13 4. No Implied Waiver. Bank shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Bank, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy in a subsequent event. After any acceleration of, or the entry of any judgment on, this Note, the acceptance by Bank of any payments by or on behalf of Borrower on account of the indebtedness evidenced by this Note shall not cure or be deemed to cure any Event of Default or reinstate or be deemed to reinstate the terms of this Note absent an express written agreement duly executed by Bank and Borrower.

13 5 Waiver. Borrower, jointly and severally, waives demand, notice, presentment, protest, demand for payment, notice of dishonor, notice of protest and diligence of collection of this Note except as set forth in Section 11 above Borrower consents to any and all extensions of time, renewals, waivers, or modifications that may be granted by Bank with respect to the payment or other provisions of this Note, and to the release of any collateral, with or without substitution Borrower agrees that makers, endorsers, guarantors and sureties may be added or released without notice and without affecting Borrower's liability hereunder . The liability of Borrower shall not be affected by the failure of Bank to perfect or otherwise

obtain or maintain the priority or validity of any security interest in any collateral The liability of Borrower shall be absolute and unconditional and without regard to the liability of any other party hereto

13.6. No Usurious Amounts. Anything herein contained to the contrary notwithstanding, Borrower does not agree and shall not be obligated to pay interest hereunder at a rate which is in excess of the maximum rate permitted by law. If by the terms of this Note, Borrower is at any time required to pay interest at a rate in excess of such maximum rate, the rate of interest under this Note shall be deemed to be immediately reduced to such maximum legal rate and the portion of all prior interest payments in excess of such maximum legal rate shall be applied to and shall be deemed to have been payments in reduction of the outstanding principal balance. Borrower agrees that in determining whether or not any interest payable under this Note exceeds the highest rate permitted by law, any non-principal payment, including without limitation, late charges, shall be deemed to the extent permitted by law to be an expense, fee or premium rather than interest.

13.7 Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Note shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

13 8 Binding Effect. The covenants, conditions, waivers, releases and agreements contained in this Note shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns, provided, however, that this Note cannot be assigned by Borrower without the prior written consent of Bank, and any such assignment or attempted assignment by Borrower shall be void and of no effect with respect to Bank

13.9 Modifications This Note may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any such waiver, change, modification or discharge is sought

13 10. Sales or Participations Bank may from time to time sell or assign, in whole or in part, or grant participations in, the Loan, this Note and/or the obligations evidenced thereby. The holder of any such sale, assignment or participation, if the applicable agreement between Bank and such holder so provides, shall be (a) entitled to all of the rights, obligations and benefits of Bank, and (b) deemed to hold and may exercise the rights of setoff or banker's lien with respect to any and all obligations of such holder to Borrower, in each case as fully as though Borrower were directly indebted to such holder. Bank shall give notice to Borrower of such sale, assignment or participation, however, the failure to give such notice shall not affect any of Bank's or such holder's rights hereunder

13 11. Jurisdiction Borrower hereby consents that any action or proceeding against it be commenced and maintained in any court within the State of South Carolina by service of process on any

manager, and Borrower agrees that the courts of such State shall have jurisdiction with respect to the subject matter hereof and the person of Borrower and all collateral securing the obligations of Borrower. Borrower agrees not to assert any defense to any action or proceeding initiated by Bank based upon improper venue or inconvenient forum

13.12. Notices All notices and communications under this Note shall be in writing and shall be given as specified in the Loan Agreement.

13.13. Governing Law. This Note shall be governed by and construed in accordance with the substantive laws of the State of South Carolina without reference to conflict of laws principles

13.14. Joint and Several Liability If there is more than one Borrower, the word "Borrower" shall mean each of them and their liability shall be joint and several

13 15 Continuing Enforcement If, after receipt of any payment of all or any part of this Note, Bank is compelled or agrees, for settlement purposes, to surrender such payment to any person or entity for any reason (including, without limitation, a determination that such payment is void or voidable as a preference or fraudulent conveyance, an impermissible setoff, or a diversion of trust funds), then this Note and the other Loan Documents shall continue in full force and effect or be reinstated, as the case may be, and Borrower shall be liable for, and shall indemnify, defend and hold harmless Bank with respect to, the full amount so surrendered. The provisions of this Section shall survive the cancellation or termination of this Note and shall remain effective notwithstanding the payment of the obligations evidenced hereby, the release of any security interest, lien or encumbrance securing this Note or any other action which Bank may have taken in reliance upon its receipt of such payment Any cancellation, release or other such action shall be deemed to have been conditioned upon any payment of the obligations evidenced hereby having become final and irrevocable

13 16 Waiver of Jury Trial BORROWER AND BANK AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY BANK OR BORROWER, ON OR WITH RESPECT TO THIS NOTE OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. BANK AND BORROWER EACH HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND INTELLIGENTLY AND WITH THE ADVICE OF THEIR RESPECTIVE COUNSEL, WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, BORROWER WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. BORROWER ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS NOTE AND THAT BANK WOULD NOT

EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS NOTE.

IN WITNESS WHEREOF, Borrower, intending to be legally bound, has duly executed and delivered this Note as of the day and year first above written

BORROWER

Wando River, LLC

By:_____

Name _____

Title _____

GUARANTY AGREEMENT

THIS GUARANTY dated November ____, 2007 (together with any amendments or modifications hereto in effect from time to time, the "Guaranty"), made by L. RUSSELL BENNETT, having an office at _____, Charleston, South Carolina, 29401 ("Guarantor"), in favor of SOUTH CAROLINA BANK AND TRUST, having an office at 46 Broad Street, Charleston, South Carolina, 29401 ("Bank").

To induce Bank to make loans, extensions of credit or other financial accommodations to Wando River, LLC ("Borrower"), now or in the future, to secure the observance, payment and performance of the Liabilities (as defined below), and with full knowledge that Bank would not make the said loans, extensions of credit or financial accommodations without this Guaranty Agreement, which shall be construed as a contract of suretyship, Guarantor, jointly and severally and unconditionally agrees as follows:

25. LIABILITIES GUARANTEED.

Guarantor, jointly and severally, hereby guarantees and becomes surety to Bank for the full, prompt and unconditional payment of the Liabilities (as defined below), when and as the same shall become due, whether at the stated maturity date, by acceleration or otherwise, and the full, prompt and unconditional performance of each term and condition to be performed by Borrower under the Loan Documents (as defined below). This Guaranty is a primary obligation of Guarantor and shall be a continuing inexhaustible Guaranty. This is a guaranty of payment and not of collection. Bank may require Guarantor to pay and perform its liabilities and obligations under this Guaranty and may proceed immediately against Guarantor without being required to bring any proceeding or take any action against Borrower, any other guarantor or any other person, entity or property prior thereto, the liability of Guarantor hereunder being joint and several, and independent of and separate from the liability of Borrower, any other guarantor or person, and the availability of other collateral security for the Note and the other Loan Documents.

Notwithstanding anything herein to the contrary, Guarantor's obligations hereunder shall not exceed the sum of (i) 25% of the outstanding principal balance of the Liabilities as of the date of the occurrence of an Event of Default (without giving effect to any payments made by or on behalf of Borrower or to the proceeds of any collateral securing the Liabilities), plus (ii) all accrued and unpaid interest thereon and all other fees, expenses and other sums due and owing under the Loan Documents.

26. DEFINITIONS.

26.1. "Note" means that certain Promissory Note of even date herewith in the principal amount of Three Million Five Hundred Thirty Five Thousand and 00/100 ($3,535,000.00) Dollars from Borrower to Bank.

26.2. "Loan Documents" shall have the meaning set forth in the Note. The terms of the Loan Documents are hereby made a part of this Guaranty to the same extent and with the same effect as if fully set forth herein.

26.3. "Liabilities" means, collectively: (i) the repayment of all sums due under the Note (and all extensions, renewals, replacements and amendments thereof) and the other Loan Documents; (ii) the performance of all terms, conditions and covenants set forth in the Loan Documents; (iii) the repayment of all reimbursement obligations due or that may become due under or in connection with

any present or future letters of credit issued by Bank for the account of Borrower; and (iv) all other obligations or indebtedness of Borrower to Bank whenever borrowed or incurred, including without limitation, principal, interest, fees, late charges and expenses, including attorneys' fees.

26.4. All capitalized terms not otherwise defined herein shall have the meaning ascribed to them in the Loan Documents.

27. REPRESENTATION AND WARRANTIES. Guarantor represents and warrants to Bank as follows:

27.1. Organization, Powers. Guarantor (i) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (ii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party.

27.2. Execution of Guaranty. This Guaranty and each other Loan Document to which Guarantor is a party have been duly executed and delivered by Guarantor. Execution, delivery and performance of this Guaranty and each other Loan Document to which Guarantor is a party will not: (i) violate any of its organizational documents, provision of law, order of any court, agency or instrumentality of government, or any provision of any indenture, agreement or other instrument to which it is a party or by which it or any of its properties is bound; (ii) result in the creation or imposition of any lien, charge or encumbrance of any nature, other than the liens created by the Loan Documents; and (iii) require any authorization, consent, approval, license, exemption of, or filing or registration with, any court or governmental authority.

27.3. Obligations of Guarantor. This Guaranty and each other Loan Document to which Guarantor is a party are the legal, valid and binding obligations of Guarantor, enforceable against it in accordance with their terms, except as the same may be limited by bankruptcy, insolvency, reorganization or other laws or equitable principles relating to or affecting the enforcement of creditors' rights generally. The loans or credit accommodations made by Bank to Borrower and the assumption by Guarantor of its obligations hereunder and under any other Loan Document to which Guarantor is a party will result in material benefits to Guarantor. This Guaranty was entered into by Guarantor for commercial purposes.

27.4. Litigation. There is no action, suit, or proceeding at law or in equity or by or before any governmental authority, agency or other instrumentality now pending or, to the knowledge of Guarantor, threatened against or affecting Guarantor or any of its properties or rights which, if adversely determined, would materially impair or affect: (i) the value of any collateral securing the Liabilities; (ii) Guarantor's right to carry on its business substantially as now conducted (and as now contemplated); (iii) its financial condition; or (iv) its capacity to consummate and perform its obligations under this Guaranty or any other Loan Document to which Guarantor is a party.

27.5. No Defaults. Guarantor is not in material default in the performance, observance or fulfillment of any of the obligations, covenants or conditions contained herein or in any material agreement or instrument to which it is a party or by which it or any of its properties is bound that would materially impair its ability to perform its obligations under the Guaranty.

27.6. No Untrue Statements. No Loan Document or other document, certificate or statement furnished to Bank by or on behalf of Guarantor contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained herein and therein not misleading. Guarantor acknowledges that all such statements, representations and warranties shall be deemed to have been relied upon by Bank as an inducement to make the Loan to Borrower.

28. NO LIMITATION OF LIABILITY.

28.1 Without incurring responsibility to Guarantor, and without impairing or releasing the obligations of Guarantor to Bank, and without reducing the amount due under the terms of this Guaranty, Bank may at any time and from time to time, without the consent of or notice to Guarantor, upon any terms or conditions, and in whole or in part:

28.1.1. Change the manner, place or terms of payment of (including, without limitation, the interest rate and monthly payment amount), and/or change or extend the time for payment of, or renew or modify, any of the Liabilities, any security therefor, or any of the Loan Documents evidencing same, and the Guaranty herein made shall apply to the Liabilities and the Loan Documents as so changed, extended, renewed or modified;

28.1.2. Sell, exchange, release, surrender, realize upon or otherwise deal with in any manner and in any order, any property securing the Liabilities;

28.1.3. Exercise or refrain from exercising any rights against Borrower or other obligated parties (including Guarantor) or against any security for the Liabilities;

28.1.4. Settle or compromise any Liabilities, whether in a proceeding or not, and whether voluntarily or involuntarily, dispose of any security therefor (with or without consideration), and subordinate the payment of any of the Liabilities, whether or not due, to the payment of liabilities owing to creditors of Borrower other than Bank and Guarantor;

28.1.5. Apply any sums it receives, by whomever paid or however realized, to any of the Liabilities;

28.1.6. Add, release, settle, modify or discharge the obligation of any maker, endorser, guarantor, surety, obligor or any other party who is in any way obligated for any of the Liabilities;

28.1.7. Accept any additional security for the Liabilities; and/or

28.1.8. Take any other action which might constitute a defense available to, or a discharge of, Borrower or any other obligated party (including Guarantor) in respect of the Liabilities.

28.2. The invalidity, irregularity or unenforceability of all or any part of the Liabilities or any Loan Document, or the impairment or loss of any security therefor, whether caused by any action or inaction of Bank, or otherwise, shall not affect, impair or be a defense to Guarantor's obligations under this Guaranty.

29. LIMITATION ON SUBROGATION. Until such time as the Liabilities are paid in full, Guarantor waives any present or future right to which Guarantor is or may become entitled to be subrogated to Bank's rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank against Borrower or any security which Bank now has or hereafter acquires, whether or not such claim, right or remedy arises under contract, in equity, by statute, under common law or otherwise. If, notwithstanding such waiver, any funds or property shall be paid or transferred to Guarantor on account of such subrogation, contribution,

reimbursement, or indemnification at any time when all of the Liabilities have not been paid in full, Guarantor shall hold such funds or property in trust for Bank and shall forthwith pay over to Bank such funds and/or property to be applied by Bank to the Liabilities.

30. Covenants.

6.1 Financial Statements; Compliance Certificate.

6.1.1. Guarantor shall furnish to Bank the following financial information:

(a) Not later than one hundred twenty (120) days after the end of each fiscal year, annual financial statements of Guarantor including, without limitation, a balance sheet, profit and loss statement and statement of cash flow, a reconciliation of net worth, a listing of all contingent liabilities, notes to financial statements and any other information requested by Bank, consistent with previous year's financial statements.

(b) Not later than thirty (30) days after filing with the Internal Revenue Service, a true and complete copy of the federal tax returns, including all schedules.

(c) Such other information respecting the operations of Guarantor as Bank may from time to time reasonably request.

30.1.2 Guarantor shall furnish to Bank, with each set of financial statements described herein, a compliance certificate signed by Guarantor's chief financial officer certifying that to the best of his knowledge: (i) all representations and warranties of Guarantor set forth in this Guaranty or any other Loan Document remain true and correct in all material respects; (ii) none of the covenants of Guarantor contained in this Guaranty or any other Loan Document has been breached; and (iii) to its knowledge, no event has occurred which, with the giving of notice or the passage of time, or both, would constitute an Event of Default under this Guaranty or any other Loan Document. In addition, Guarantor shall promptly notify Bank of the occurrence of any default, Event of Default, adverse litigation or material adverse change in its financial condition.

30.2. Subordination of Other Debts. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank have been paid in full on or prior to such date, and (ii) no event which is or, with the passage of time or giving of notice or both, could become an Event of Default shall have occurred and be continuing; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Liabilities.

30.3. Security for Guaranty. Guarantor hereby grants to Bank a continuing security interest in all property of Guarantor, now or hereafter in the possession of Bank, as security for the performance of this Guaranty, which security interest shall be enforceable and subject to all the provisions of this Guaranty, as if such property were specifically pledged hereunder.

31. EVENTS OF DEFAULT.

Each of the following shall constitute a default (each, an "Event of Default") hereunder:

31.1 Non-payment when due, taking into consideration cure periods, if any, of any sum required to be paid to Bank under any of the Loan Documents or of any of the other Liabilities;

31.2. A breach by Guarantor of any other term, covenant, condition, obligation or agreement under this Guaranty, and the continuance of such breach for a period of fifteen (15) days after written notice thereof shall have been given to Guarantor;

31.3. Any representation or warranty made by Guarantor in this Guaranty shall prove to be false, incorrect or misleading in any material respect as of the date when made;

31.4. Intentionally Deleted

31.5: An Event of Default under any of the Loan Documents.

32. REMEDIES.

32.1. Upon an Event of Default, all liabilities of Guarantor hereunder shall become immediately due and payable without demand or notice and, in addition to any other remedies provided by law, Bank may:

32.1.1. Enforce the obligations of Guarantor under this Guaranty.

32.1.2. To the extent not prohibited by and in addition to any other remedy provided by law, setoff against any of the Liabilities any sum owed by Bank in any capacity to Guarantor whether due or not.

32.1.3. Perform any covenant or agreement of Guarantor in default hereunder (but without obligation to do so) and in that regard pay such money as may be required or as Bank may reasonably deem expedient. Any costs, expenses or fees, including reasonable attorneys' fees and costs, incurred by Bank in connection with the foregoing shall be included in the Liabilities guaranteed hereby, and shall be due and payable on demand, together with interest at the Default Rate (as defined and described in the Note), such interest to be calculated from the date of such advance to the date of repayment thereof. Any such action by Bank shall not be deemed to be a waiver or release of Guarantor hereunder and shall be without prejudice to any other right or remedy of Bank.

32.2. Settlement of any claim by Bank against Borrower, whether in any proceeding or not, and whether voluntary or involuntary, shall not reduce the amount due under the terms of this Guaranty, except to the extent of the amount actually paid by Borrower or any other obligated party and legally retained by Bank in connection with the settlement (unless otherwise provided for herein).

33. MISCELLANEOUS.

33.1. Disclosure of Financial Information. Bank is hereby authorized to disclose any financial or other information about Guarantor to any regulatory body or agency having jurisdiction over Bank or to any present, future or prospective participant or successor in interest in any loan or other financial accommodation made by Bank to Borrower or Guarantor. The information provided may include, without limitation, amounts, terms, balances, payment history, return item history and any financial or other information about Guarantor.

33.2. Remedies Cumulative. The rights and remedies of Bank, as provided herein and in any other Loan Document, shall be cumulative and concurrent, may be pursued separately, successively or together, may be exercised as often as occasion therefor shall arise, and shall be in addition to any other rights or remedies conferred upon Bank at law or in equity. The failure, at any one or more times, of Bank to exercise any such right or remedy shall in no event be construed as a waiver or release thereof. Bank shall have the right to take any action it deems appropriate without the necessity of resorting to any collateral securing this Guaranty.

33.3. Integration. This Guaranty and the other Loan Documents constitute the sole agreement of the parties with respect to the transaction contemplated hereby and supersede all oral negotiations and prior writings with respect thereto.

33.4. Attorneys' Fees and Expenses. If Bank retains the services of counsel by reason of a claim of a default or an Event of Default hereunder or under any of the other Loan Documents, or on account of any matter involving this Guaranty, or for examination of matters subject to Bank's approval under the Loan Documents, all costs of suit and all reasonable attorneys' fees and such other reasonable expenses so incurred by Bank shall forthwith, on demand, become due and payable and shall be secured hereby.

33.5. No Implied Waiver. Bank shall not be deemed to have modified or waived any of its rights or remedies hereunder unless such modification or waiver is in writing and signed by Bank, and then only to the extent specifically set forth therein. A waiver in one event shall not be construed as continuing or as a waiver of or bar to such right or remedy on a subsequent event.

33.6. Waiver. Guarantor waives notice of acceptance of this Guaranty and notice of the Liabilities and waives notice of default, non-payment, partial payment, presentment, demand, protest, notice of protest or dishonor, and all other notices to which Guarantor might otherwise be entitled or which might be required by law to be given by Bank. Guarantor waives the right to marshaling of Borrower's assets or any stay of execution and the benefit of all exemption laws, to the extent permitted by law, and any other protection granted by law to guarantors, now or hereafter in effect with respect to any action or proceeding brought by Bank against it. Guarantor irrevocably waives all claims of waiver, release, surrender, alteration or compromise and the right to assert against Bank any defenses, set-offs, counterclaims, or claims that Guarantor may have at any time against Borrower or any other party liable to Bank.

33.7. No Third Party Beneficiary. Except as otherwise provided herein, Guarantor and Bank do not intend the benefits of this Guaranty to inure to any third party and no third party (including Borrower) shall have any status, right or entitlement under this Guaranty.

33.8. Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Guaranty shall not render any other provision invalid or unenforceable. In lieu of any invalid or unenforceable provision, there shall be added automatically a valid and enforceable provision as similar in terms to such invalid or unenforceable provision as may be possible.

33.9. Binding Effect. The covenants, conditions, waivers, releases and agreements contained in this Guaranty shall bind, and the benefits thereof shall inure to, the parties hereto and their respective heirs, executors, administrators, successors and assigns; provided, however, that this Guaranty cannot be assigned by Guarantor without the prior written consent of Bank, and any such assignment or attempted assignment by Guarantor shall be void and of no effect with respect to the Bank.

33.10. Modifications. This Guaranty may not be supplemented, extended, modified or terminated except by an agreement in writing signed by the party against whom enforcement of any waiver, change, modification or discharge is sought.

33.11. Sales or Participations. Bank may from time to time sell or assign, in whole or in part, or grant participations in the Loan, the Note and/or the obligations evidenced thereby. The holder of any such sale, assignment or participation, if the applicable agreement between Bank and such holder so provides, shall be: (a) entitled to all of the rights, obligations and benefits of Bank; and (b) deemed to

hold and may exercise the rights of setoff or banker's lien with respect to any and all obligations of such holder to Guarantor, in each case as fully as though Guarantor were directly indebted to such holder. Bank may in its discretion give notice to Guarantor of such sale, assignment or participation; however, the failure to give such notice shall not affect any of Bank's or such holder's rights hereunder.

33.12. Jurisdiction. Guarantor irrevocably appoints each and every owner, partner and/or officer of Guarantor as its attorneys upon whom may be served, by regular or certified mail at the address set forth above, any notice, process or pleading in any action or proceeding against it arising out of or in connection with this Guaranty or any other Loan Document; and Guarantor hereby consents that any action or proceeding against it be commenced and maintained in any court within the State of South Carolina by service of process on any such owner, partner and/or officer; and Guarantor agrees that the courts of such State shall have jurisdiction with respect to the subject matter hereof and the person of Guarantor and all collateral securing the obligations of Guarantor. Guarantor agrees not to assert any defense to any action or proceeding initiated by Bank based upon improper venue or inconvenient forum.

33.13. Notices. All notices and communications under this Guaranty shall be in writing and shall be given by either (a) hand-delivery, (b) first class mail (postage prepaid), or (c) reliable overnight commercial courier (charges prepaid), to the addresses listed in this Guaranty. Notice shall be deemed to have been given and received: (i) if by hand delivery, upon delivery; (ii) if by mail, three (3) calendar days after the date first deposited in the United States mail; and (iii) if by overnight courier, on the date scheduled for delivery. A party may change its address by giving written notice to the other party as specified herein.

33.14. Governing Law. This Guaranty shall be governed by and construed in accordance with the substantive laws of the State of South Carolina without reference to conflict of laws principles.

33.15. Joint and Several Liability. Subject to the provisions of Section 1 hereof, if Guarantor consists of more than one person or entity, the word "Guarantor" shall mean each of them and their liability shall be joint and several. The liability of Guarantor shall also be joint and several with the liability of any other guarantor under any other guaranty.

33.16. Continuing Enforcement. If, after receipt of any payment of all or any part of the Liabilities, Bank is compelled or agrees, for settlement purposes, to surrender such payment to any person or entity for any reason (including, without limitation, a determination that such payment is void

or voidable as a preference or fraudulent conveyance, an impermissible setoff, or a diversion of trust funds), then this Guaranty shall continue in full force and effect or be reinstated, as the case may be, and Guarantor shall be liable for, and shall indemnify, defend and hold harmless Bank with respect to the full amount so surrendered. The provisions of this Section shall survive the termination of this Guaranty and shall remain effective notwithstanding the payment of the Liabilities, the cancellation of the Note, this Guaranty or any other Loan Document, the release of any security interest, lien or encumbrance securing the Liabilities or any other action which Bank may have taken in reliance upon its receipt of such payment. Any cancellation, release or other such action shall be deemed to have been conditioned upon any payment of the Liabilities having become final and irrevocable.

33.17. Waiver of Jury Trial. GUARANTOR AND BANK AGREE THAT, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY SUIT, ACTION OR PROCEEDING, WHETHER CLAIM OR COUNTERCLAIM, BROUGHT BY BANK OR GUARANTOR ON OR WITH RESPECT TO THIS GUARANTY OR ANY OTHER LOAN DOCUMENT OR THE DEALINGS OF THE PARTIES WITH RESPECT HERETO OR THERETO, SHALL BE TRIED ONLY BY A COURT AND NOT BY A JURY. BANK AND GUARANTOR EACH HEREBY KNOWINGLY, VOLUNTARILY, INTENTIONALLY AND INTELLIGENTLY, AND WITH THE ADVICE OF THEIR RESPECTIVE COUNSEL, WAIVE, TO THE EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT TO A TRIAL BY JURY IN ANY SUCH SUIT, ACTION OR PROCEEDING. FURTHER, GUARANTOR WAIVES ANY RIGHT IT MAY HAVE TO CLAIM OR RECOVER, IN ANY SUCH SUIT, ACTION OR PROCEEDING, ANY SPECIAL, EXEMPLARY, PUNITIVE, CONSEQUENTIAL OR OTHER DAMAGES OTHER THAN, OR IN ADDITION TO, ACTUAL DAMAGES. GUARANTOR ACKNOWLEDGES AND AGREES THAT THIS SECTION IS A SPECIFIC AND MATERIAL ASPECT OF THIS GUARANTY AND THAT BANK WOULD NOT EXTEND CREDIT TO BORROWER IF THE WAIVERS SET FORTH IN THIS SECTION WERE NOT A PART OF THIS GUARANTY.

IN WITNESS WHEREOF, Guarantor, intending to be legally bound, has duly executed and delivered this Guaranty Agreement as of the day and year first above written.

_____(SEAL)

L. Russell Bennett

SECOND AMENDMENT TO AGREEMENT

This is the Second Amendment (this "Second Amendment") to that certain Agreement dated August 25, 2004 (as amended or modified, the "Investor Agreement") among and between, on the one hand, Kiawah Resort Associates, L.P. ("KRA") and L. Russell Bennett ("Bennett" and, together with KRA, the "Investors") and, on the other hand, Wando River, LLC (the "Company"), Alan J. Sheppard ("Sheppard"), and Julian Reed Simmons, III ("Simmons"). The effective date of this Second Amendment is _____, 2007. Except as otherwise provided herein, capitalized terms used herein shall have the same meaning as in the Investor Agreement.

BACKGROUND

A. The Investor Agreement provides for, among other things, guarantees by KRA and Bennett of the Loan for the development of the Property.

B. The Company, Sheppard, and Simmons desire to refinance the Loan with a $3,535,000 loan (the "New Loan") from South Carolina Bank and Trust Company, N.A. (the "New Lender") on the terms outlined in that certain Loan Commitment dated October 18, 2007 from the New Lender.

C. The New Lender requires that seventy-five percent (75%) of the New Loan be guaranteed by KRA and that twenty-five percent (25%) of the New Loan be guaranteed by Bennett (the "New Guaranty").

D. The Investors have agreed to provide the New Guaranty under the terms and conditions set forth herein.

NOW THEREFORE for valuable consideration, and intending to be legally bound, the parties agree to amend the Investor Agreement as follows:

1. References to the "Lender", the "Loan", and the "Guaranty" in the Investor Agreement shall hereafter be deemed to refer to the "New Lender", the "New Loan", and the "New Guaranty", each as defined in this Second Amendment, respectively.

2. The Investors shall execute and deliver to the New Lender at closing of the New Loan the New Guaranty in the form attached hereto at Exhibit A.

3. Commencing on date of the closing of the New Loan, the guarantee fee set forth in Section 2.1.2 of the Investor Agreement shall accrue at a rate of seven and one half percent (7.5%) per annum.

3. The remaining funds in the Escrow, including those funds received from DR Horton relating to its efforts to purchase the Property, shall be used to pay interest on the New Loan and any other amounts owed to the New Lender, prior to the draw of additional funds under the New Loan for the payment of such amounts.

4. Section 2.3 of the Investor Agreement shall be deleted in its entirety and the following shall be substituted in lieu thereof:

"2.3 No distributions shall be made by the Company to its members until all amounts due Investors have been fully paid, unless otherwise approved by Investors."

5. Section 4.2 of the Investor Agreement shall be deleted in its entirety and the following shall be substituted in lieu thereof:

"4.2 This Agreement shall terminate at such time as the Investors' liability on the New Guaranty ends and all payments due under this Agreement and the Warrant have been made."

6. Section 5.1.8 of the Investor Agreement shall be deleted in its entirety and the following shall be substituted in lieu thereof:

"5.1.8 The Company shall not make any distributions, payments, loans or advances to any member or related party except for distributions permitted pursuant to Section 2.3 hereof."

7. The following is added to the end of Section 6.1 of the Investor Agreement as a new Section 6.1.7:

"6.1.7 The failure of the Company to make any payment under the Warrant when due."

8. Sheppard, Simmons, and the Company shall cause the sale of the Property to a third party on or before June 30, 2008 on terms approved in writing by the Investors in advance in their sole discretion. Failure to do so shall immediately constitute a Default under the Investor Agreement without any requirement for notice or further action by the Investors notwithstanding anything in the Investment Agreement to the contrary. Upon receipt of the terms and conditions of any such sale proposed by Sheppard, Simmons, and/or the Company, either or both of the Investors (individually or collectively, the "Purchasing Investor") may exercise the right of first refusal that is hereby granted to them and elect to purchase the Property on those same terms and conditions by delivering written notice to Sheppard, Simmons, and the Company within fifteen (15) days of receipt of written notice of such terms and conditions. Closing documentation shall be prepared by the Investors' counsel.

9. The following Sections are added to the Investor Agreement as new Sections 10.6, 10.7, and 10.8, respectively:

"10.6 Governing Law and Amendments. This Agreement shall be construed and enforced under the laws of the State of South Carolina applicable to contracts to be wholly performed in such State. No amendment or modification hereof shall be effective except in a writing executed by each of the parties hereto.

10.7. Time is of the Essence. Time is of the essence with respect to performance of the obligations of the parties hereunder.

10.8 WAIVER OF JURY TRIAL. EACH PARTY HERETO HEREBY WAIVES, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY IN ANY LEGAL PROCEEDING DIRECTLY OR INDIRECTLY ARISING OUT OF OR RELATING TO THIS AGREEMENT OR THE TRANSACTIONS CONTEMPLATED HEREBY (WHETHER BASED ON CONTRACT, TORT OR ANY OTHER THEORY). EACH PARTY HERETO (A) CERTIFIES THAT NO REPRESENTATIVE, AGENT OR ATTORNEY OF ANY OTHER PARTY HAS REPRESENTED, EXPRESSLY OR OTHERWISE, THAT SUCH OTHER PARTY WOULD NOT, IN THE EVENT OF LITIGATION, SEEK TO ENFORCE THE FOREGOING WAIVER AND (B) ACKNOWLEDGES THAT IT AND THE OTHER PARTIES HERETO HAVE BEEN INDUCED TO ENTER INTO THIS AGREEMENT BY, AMONG OTHER THINGS, THE MUTUAL WAIVERS AND CERTIFICATIONS IN THIS SECTION."

10. The Company shall pay to the Investors upon the execution of this Second Amendment an additional commitment fee in the amount of $3,850.00.

11. The parties hereto confirm that, other than the original commitment fee set forth in Section 2.1.1 of the Investor Agreement, which was paid at execution of the First Amendment, and the additional commitment fee to be paid in accordance with Section 10 of this Second Amendment, all

amounts due to the Investors under the Investor Agreement and the Warrant have not been paid and remain outstanding.

12. Except as amended herein, the Investor Agreement shall remain in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

KIAWAH RESORT ASSOCIATES, L.P.

By: D & W Investments, Inc.

Its: General Partner

By: _____

Charles P. Darby, III

Its: President

TWD INVESTMENTS, LLC

By: _____

Charles P. Darby, III

Its: Manager

_____

L. Russell Bennett, individually

WANDO RIVER, LLC

_____

By: Alan J. Sheppard

Its: Manager

_____

Alan J. Sheppard, individually

_____

Julian Reed Simmons, III, individually

Attachment L

CAROLINA FIRST

1021 Anna Knapp Boulevard Mount P
29

January 10, 2008

Wando River LLC
462 Commonwealth Road
Mount Pleasant, SC 29466

RE: Loan Number: 5120838701

Dear Sirs/Madams,

Please be advised that the outstanding loan balance was paid in full on December 28, 2007 at out Mount Pleasant Branch. Please let me know if you have any questions or if I can be of furth assistance.

Sincerely,

Brian Kornahrens
Assistant Vice-President
Branch Manager

Attachment M

December 31, 2007

NOTICE OF DEFAULT

VIA FEDERAL EXPRESS

Alan J. Sheppard
462 Commonwealth Road
Mount Pleasant, South Carolina 29466

Julian Reed Simmons, III
462 Commonwealth Road
Mount Pleasant, South Carolina 29466

Wando River, LLC
462 Commonwealth Road
Mount Pleasant, South Carolina 29466

RE: Agreement dated August 25, 2004 (as amended, the "Agreement") among Kiawah Re Associates, L.P. ("KRA"), L. Russell Bennett ("Bennett" and, together with KRA, "Investors"), Wando River, LLC (the "Company"), Alan J. Sheppard, and Julian R Simmons and the Warrant dated August 25, 2004 between the Company and Investors (as amended, the "Warrant" and, together with the Agreement, the "Inves Documents"), each as amended by the First Amendment to Agreement dated as December 31, 2006; all capitalized terms used in this letter which are not expres defined herein are used in the same manner as ascribed to them in the Agreement

Dear Sirs:

Notice is hereby provided to you of the following:

1. At the time of sending this Notice, Carolina First Bank informs us that Borrower has not repaid the loan to Carolina First Bank evidenced by that certain Promiss Note dated December 30, 2006. As such, the execution and recordation of the First Mortga and Security Agreement dated December 28, 2007 and recorded on December 28, 2007 in Bo

R, Volume 7073, at Page 120, made by the Company for the benefit of Edward J. Westbrook constitutes a default under Section 5.1.5 of the Agreement.

2. We are in receipt of the letter from Robert S. Dodds delivered on your behalf on December 28, 2007 stating that the Company does not agree to our proposed valuation of the Property for the purpose of establishing the Put Price. As such, we propose that Charleston Area Appraisals, LLC be engaged to appraise the Property in accordance with Section 7 of the Warrant. If you do not confirm your acceptance of such appraiser on or before January 7, 2008, the Investors will engage an appraiser who is a member of the Appraisal Institute and designated by Pratt-Thomas Gumb & Company to appraise the Property pursuant to Section 7 of the Warrant.

3. Per Section 5 of the Agreement, please immediately deliver to us copies of all documents relating to the mortgage to Edward J. Westbrook or any refinancing or repayment of the Loan, including all notes, security instruments, and closing statements.

4. Please note that nothing herein shall release the Company, Sheppard, or Simmons from any of their respective obligations or liabilities under the Investor Documents (including, without limitation, all prohibitions against the issuance or redemption of any Membership Interest in the Company or the sale of or grant of a mortgage over the Property), or waive any rights or remedies the Investors have, or will have, against the Company, Sheppard, or Simmons, or waive any other default by Company, Sheppard, or Simmons under the Investor Documents.

Kiawah Resort Associates, L.P.

By: _____
Name: Ronald P. Owens
Title: Authorized Signatory

L. Russell Bennett
by: Ronald C. Owens
Authorized Signatory

cc: L. Russell Bennett (via email)
Townsend P. Clarkson (via email)
Charles P. Darby, III (via email)
Ronald C. Owens (via email)
Bryan Pyne (via email)
Matthew J. Norton (via email)
Paul VanWagenen (via email)
Robert Dodds (via email)

Attachment N

LOAN NUMBER	LOAN NAME	ACCT. NUMBER	NOTE DATE	INITIALS
	WANDO RIVER, LLC		08/25/04	625
NOTE AMOUNT	INDEX (w/Margin)	RATE	MATURITY DATE	LOAN PURPOSE
$3,150,000.00	Carolina First Bank Prime Rate	4.500%	03/04/06	Commercial

Creditor Use Only

PROMISSORY NOTE

(Commercial - Single Advance - Variable Rate)

DATE AND PARTIES. The date of this Promissory Note (Note) is August 25, 2004. The parties and their addresses are:

LENDER:
CAROLINA FIRST BANK
276 East Bay Street
Charleston, South Carolina 29413
Telephone: (843) 577-4600

BORROWER:
WANDO RIVER, LLC
a South Carolina Limited Liability Company
462 COMMONWEALTH RD
MT PLEASANT, South Carolina 29466

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

A. Pronouns. The pronouns "I," "me," and "my" refer to each Borrower signing this Note, individually and together with their heirs, successors and assigns, and each other person or legal entity (including guarantors, endorsers, and sureties) who agrees to pay this Note. "You" and "Your" refer to the Lender, with its participants or syndicators, successors and assigns, or any person or company that acquires an interest in the Loan.

B. Note. Note refers to this document, and any extensions, renewals, modifications and substitutions of this Note.

C. Loan. Loan refers to this transaction generally, including obligations and duties arising from the terms of all documents prepared or submitted for this transaction such as applications, security agreements, disclosures or notes, and this Note.

D. Property. Property is any property, real, personal or intangible, that secures my performance of the obligations of this Loan.

E. Percent. Rates and rate change limitations are expressed as annualized percentages.

2. PROMISE TO PAY. For value received, I promise to pay you or your order, at your address, or at such other location as you may designate, the principal sum of $3,150,000.00 (Principal) plus interest from August 25, 2004 on the unpaid Principal balance until this Note matures or this obligation is accelerated.

3. INTEREST. Interest will accrue on the unpaid Principal balance of this Note at the rate of 4.500 percent (Interest Rate) until August 26, 2004, after which time it may change as described in the Variable Rate subsection.

A. Interest After Default. If you declare a default under the terms of this Loan, including for failure to pay in full at maturity, you may increase the Interest Rate otherwise payable as described in this section. In such event, interest will accrue AT CAROLINA FIRST BANK PRIME RATE + 4.00%. For the purposes of this note, the term "Prime Rate" shall mean the interest rate announced, from time to time, by Carolina First Bank, at its principal office in Greenville, SC, or by its corporate successor, as the Prime Rate (which rate is only a benchmark, is purely discretionary, and is not necessarily the best or lowest rate charged borrowing customers of Carolina First Bank).

B. Maximum Interest Amount. Any amount assessed or collected as interest under the terms of this Note or obligation will be limited to the Maximum Lawful Amount of interest allowed by state or federal law. Amounts collected in excess of the Maximum Lawful Amount will be applied first to the unpaid Principal balance. Any remainder will be refunded to me.

C. Statutory Authority. The amount assessed or collected on this Note is authorized by the South Carolina usury laws under S.C. Code Ann. §§ 37-3-508, 37-3-105 and 37-10-101 et. seq.

D. Accrual. During the scheduled term of this Loan interest accrues using an Actual/360 days counting method.

E. Variable Rate. The Interest Rate may change during the term of this transaction.

(1) Index. Beginning with the first Change Date, the Interest Rate will be based on the following index: For the purposes of this note, the term "Prime Rate" shall mean the interest rate announced, from time to time, by Carolina First Bank, at its principal office in Greenville, SC, or by its corporate successor, as the Prime Rate (which rate is only a benchmark, is purely discretionary, and is not necessarily the best or lowest rate charged borrowing customers of Carolina First Bank).

The Current Index is the most recent index figure available on each Change Date. You do not guaranty by selecting this index, or the margin, that the Interest Rate on this Note will be the same rate you charge on any other loans or class of loans you make to me or other borrowers. If this index is no longer available, you will substitute a similar index. You will give me notice of your choice.

(2) Change Date. Each date on which the Interest Rate may change is called a Change Date. The Interest Rate may change August 26, 2004 and daily thereafter.

(3) Calculation Of Change. On each Change Date, you will calculate the Interest Rate, which will be the Current Index. The result of this calculation will be rounded to the nearest .001 percent. Subject to any limitations, this will be the Interest Rate until the next Change Date. The new Interest Rate will become effective on each Change Date. The Interest Rate and other charges on this Note will never exceed the highest rate or charge allowed by law for this Note.

(4) Effect Of Variable Rate. A change in the Interest Rate will have the following effect on the payments: The amount of scheduled payments and the amount of the final payment will change.

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

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

Loan Origination. A/n/i Loan Origination fee of $15,750.00 payable from separate funds on or before today's date.

Document Preparation. A/n/i Document Preparation fee of $188.00 payable from separate funds on or before today's date.

I understand and agree that some payments to third parties as part of this transaction may also involve money retained by you or paid back to you as commissions or other remuneration.

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

A. Late Charge. If a payment is more than 20 days late, I will be charged 5.000 percent of the Unpaid Portion of Payment or $25.00, whichever is greater. I will pay this late charge promptly but only once for each late payment.

6. PURCHASE MONEY LOAN. You may include the name of the seller on the check or draft for this Note.

7. PAYMENT. I agree to pay this Note in installments of accrued interest beginning October 4, 2004, and then on the 4th day of each month thereafter. I agree to pay the entire unpaid Principal and any accrued but unpaid interest on March 4, 2006.

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

Each payment I make on this Note will be applied first to interest that is due then to principal that is due, and finally to any charges that I owe other than principal and interest. If you and I agree to a different application of payments, we will describe our agreement on this Note. The actual amount of my final payment will depend on my payment record.

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

9. LOAN PURPOSE. The purpose of this Loan is TO PURCHASE 23.682 ACRES OF LAND LOCATED IN BERKELEY COUNTY SC.

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

Document Name	Parties to Document
Mortgage - 23.682 ACRES HIGHWAY 41 AT WANDO RIVER	WANDO RIVER, LLC

after the applicable grace period set forth in the Loan Agreement governing the Loan, dated as of even date herewith.

11. DEFAULT. I will be in default if any of the following occur:

A. Payments. I fail to make a payment in full when due.

B. Insolvency. I make an assignment for the benefit of creditors or become insolvent, either because my liabilities exceed my assets or I am unable to pay my debts as they become due.

C. Business Termination. I merge, dissolve, reorganize, end my business or existence, or a partner or majority owner dies or is declared legally incompetent.

D. Failure to Perform. I fail to perform any condition or to keep any promise or covenant of this Note.

E. Other Documents. A default occurs under the terms of any other transaction document.

F. Other Agreements. I am in default on any other debt or agreement I have with you.

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

H. Judgment. I fail to satisfy or appeal any judgment against me.

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

J. Name Change. I change my name or assume an additional name without notifying you before making such a change.

K. Property Transfer. I transfer all or a substantial part of my money or property.

L. Property Value. The value of the Property declines or is impaired.

M. Material Change. Without first notifying you, there is a material change in my business, including ownership, management, and financial conditions.

N. Insecurity. You reasonably believe that you are insecure.

Attachment O

PARKER POE
PARKER POE ADAMS & BERNSTEIN L.L.P.
Attorneys and Counselors at Law

Ellis R. Leyemann
Partner
Telephone: 843.727.2649
Direct Fax: 843.727.2689
ellisleyemann@parkerpoe.com

200 Meeting Street (29401)
Suite 301
Post Office Box 160
Charleston, SC 29402-0160
Telephone: 843.727.2650
Fax: 843.727.2660
www.parkerpoe.com

February 28, 2008

VIA ELECTRONIC MAIL AND U.S. MAIL

Robert S. Dodds, Esq.
Cisa & Dodds, LLP
858 Lowcountry Boulevard, Suite 101
Mt. Pleasant, SC 29465

Re: Amounts Due to Kiawah Resort Associates, L.P. and L. Russell Bennett at Closing of Pending Sale of Wando River tract identified as TMS Number 269-00-00-035 ("Tract A" containing 10.331 acres highland and 3.024 acres marsh, for a total of 13.355 acres, more or less) and TMS Number 269-00-00-036 ("Tract B" containing 10.322 acres highland and 0.005 acres marsh, for a total of 10.327 acres, more or less)

Dear Robert:

I have received your letter dated February 26, 2008.

While I understand that you wish to expedite the proposed sale, there are several issues that must be resolved and memorialized within the proposed escrow agreement before we can proceed. These issues include:

1) Payment to Kiawah Resort Associates, L.P. and Mr. Bennett of all undisputed amounts at the time of closing;

2) Explanation of the specific nature of any "dispute" as to the amounts due (in light of the fact that the amounts were calculated pursuant to the terms of the relevant contracts), and specific itemization of any alleged amounts that are "in dispute;"

3) Stipulation as to who will serve as the arbitrator in this case; and

4) Stipulation as to the date, time and location when the binding arbitration will be held (within the next 30 days).

Due to the unexplained nature of the alleged dispute, it is inappropriate for your clients to receive any proceeds from the closing, as would occur under your escrow proposal. My clients will be entitled to attorney's fees, costs, and pre-judgment interest upon obtaining an award against your clients through the arbitration. As a result, the amount due to my clients after litigation will exceed the amount currently due.

Unless the scope of the alleged dispute is substantially narrowed, it is not possible to gauge the duration or level of activity inherent in the litigation. However, if we can define the scope of whatever dispute allegedly exists, then your clients and my clients could receive proceeds at closing, while escrowing only those funds that are possibly in dispute pending the arbitration award.

It is probably not necessary for me to say this, but it is important for everyone to remember that your clients are the cause of these circumstances. In early January, you assured us by letter that Waudo River, LLC would comply with all of its obligations. Not only did that not happen, but we have also seen nothing to indicate that they ever intended to comply. Furthermore, shortly after receiving your written assurance, we discovered ongoing efforts to circumvent the rights and interests of my clients through a rushed sale of the property at below market value.

Notwithstanding these facts, my clients remain willing to cooperate with the proposed sale and forego their pending interests in the property *provided that* we all agree to proceed on terms that are fair, reasonable and ironclad.

Please respond to the four issues listed above at your first convenience. In the meantime, I will initiate the preparation of a written escrow agreement that will incorporate the necessary stipulations and we will continue to give this matter prompt attention.

With best regards, I remain

Sincerely,

Ellis R. Leesmann

ERL:clv

cc: J. Lynn McCants, Esq.
Leonard Long
Townsend Clarkson
Ron Owens
L. Russell Bennett
Matthew J. Norton, Esq.
Paul Van Wagenen, Esq.

CLT 1110667v1

Attachment P

LIVING WITH NATURE | Two North Adger's Wharf | Charleston, South Carolina | 29401 |

Kiawah Island

Charles P. Darby, III
Chairman and CEO
Kiawah Development Partners, Inc.

April 10, 2008

VIA MAIL AND E-MAIL

Mr. Alan Sheppard
462 Commonwealth Road
Mt. Pleasant, South Carolina 29466

Mr. Bobby Sheppard
1177 Moss Bluff
Mt. Pleasant, South Carolina 29464

Mr. Eddie Sheppard
1657 Sewee Fort Road
Mt. Pleasant, South Carolina 29466

Dear Alan, Bobby and Eddie:

I want to touch base with all of you to try and explain where I think we are presently. In short, what started out as trying to help some good friends has now escalated into a difficult situation. This all originated because you needed our help. At this point, it is fair to say that things did not turn out as anyone expected.

Over the past four years, we have gone above and beyond our obligations. We have extended you every assistance that we could. In return, all we wanted was good faith communication and for everyone to live up to their promises. However, it appears that is not what we received.

As you know, we have completed all of the necessary steps to exercise our put rights under the warrant. At the instruction of your attorney, we obtained an independent appraisal of the property by a neutral appraiser in order to verify the exact amount due to us. During this process, there was no mention of the fact that you had a contract on the property and were pushing towards an expedited closing at a substantially discounted price. On the contrary, we received assurances that you would uphold your obligations and pay us what we are owed. We took you at your word.

Based on our written agreement and the independent appraisal, we calculated the amount due and gave you formal written notice of that fact. The calculation is as follows:

Amounts Due under the Warrant
Per Section 7 of the Warrant.

Fair Market Value (Based on Appraisal)	$	7,900,000
Less Loan Amount		(3,150,000)
Priority Equity		(550,000)
Net Value of Company Assets		4,200,000
Warrant Percentage		40.0%
Put Price		1,680,000

Amounts Due Under the Agreement

Guaranty Fee		557,294
Total Amount Due Kiawah/Bennett	$	2,237,294

You were contractually obligated to provide payment of this amount within 10 days. Here is what happened instead: (1) We did not receive payment; (2) we did not hear from you at all; and (3) we found out that you were attempting to avoid your obligations and fire sale the property.

At that point, we took the steps that we had to take and told out attorneys to make the appropriate filings. If that process runs its course, you will be required to pay the total amount due with interest plus all of the money that it costs us to complete the legal process.

I have no doubts whatsoever about the strength of our position. However, I do not think that any of us want to spend our time and money verifying what we already know. I also recognize that you have been put in a difficult position and, as before, I want to help resolve it if I can. Therefore, to get this behind us and to prevent you from suffering any *financial loss*, and continued strain on our friendship, we are willing to offer the following proposal as a settlement:

Proposed Settlement Amounts Due under the Warrant

Per Section 7 of the Warrant.

Adjusted Value	$	6,570,000
Less Loan Amount		(3,150,000)
Priority Equity		(550,000)
Net Value of Company Assets		2,870,000
Warrant Percentage		40.0%
Put Price		1,148,000

Amounts Due Undor the Agreement

Guaranty Fee		557,294
Cost of collection/Bank Fees/Invoices		120,000
Total Amount Due Kiawah/Bennett	$	1,825,294

As you can see, this is more than $400,000 less than what the agreements provide that we are owed. So that we can move things forward, this offer must be accepted by you in writing within the next five days. This amount must be paid at closing. As an alternative, if you do not accept this offer, we are also willing to escrow $2,200,000 of the funds from the closing and proceed immediately to binding arbitration on a set date with a set arbitrator. This would allow a neutral third party to review the facts and decide what is owed. However, we will be pursuing the entire amount that is owed us plus interest and costs.

In addition, you need to know that my agreement with Rusty is that either party has the ability to buy the interests of the other in the agreement and warrant. If we do not work out this settlement, Rusty has indicated that he will purchase our interest and pursue all remedies available to collect the full amounts due. Going forward, I do not want to be involved and risk continued injury to our relationship.

I hope you understand this is the best proposal I can offer and I hope you will accept it.

Sincerely yours,

Charles P. Darby, III

/lb

Attachment Q

Summary of Terms and Conditions
March 10, 2005

Note: The terms and conditions presented below do not constitute any form of binding contract but rather are solely for the purpose of outlining those terms pursuant to which a definitive agreement may ultimately be entered into.

Purpose: Outline terms and conditions for KRA/Bennett to guarantee a loan to develop a tract of land off Highway 41 in Berkeley County, South Carolina.

Conditions Precedent:

1. Zoning Approval for 61 units — 40 ?
2. Presales to equal loan amount plus 10%
3. Dock Permit for at least 1,300 ln. ft.
4. Loan is not to exceed $6.2 million
5. Review and approval of loan terms and lender
6. Acceptable Loan to Value
7. Others to be determined

Deal Economics

1. Payment of Commitment Fee at loan closing on development loan- $63,000
2. Payment of Guarantee Fee at 1st closing of lots after repayment of loan
3. Return of Equity $650,000 + taxes when cash is available and the loan is fully repaid. This would be needed presumed tax liability for equity owners.
4. Distribution of commercial land for portion of warrant compensation
5. Distribution of Townhouse land to Equity Group
6. Payment of Warrant/Upside

Key Points

1. Equity is 9% of Total Capital
2. KRA/Bennett are providing most of the capital.

Redpath development fee

Equity

No down payment on lot 154

Attachment R

6. U.S. DEPARTMENT OF HOUSING & URBAN DEVELOPMENT SETTLEMENT STATEMENT	B. TYPE OF LOAN 1. ☐ FHA 2. ☐ FmHA 3. ☐ CONV. UNINS. 4. ☐ VA 5. ☐ CONV. INS. 6. FILE NUMBER: 01-16 7. LOAN NUMBER: 8. MORTGAGE INSURANCE CASE NUMBER:

C. NOTE: This form is furnished to give you a statement of actual settlement costs. Amounts paid to and by the settlement agent are shown. Items marked "(p.o.c.)" were paid outside the closing; they are shown here for informational purposes and are not included in the totals.

D. NAME AND ADDRESS OF BORROWER:	E. NAME AND ADDRESS OF SELLER:	F. NAME AND ADDRESS OF LENDER:
Wanna B, LLC 2669 Partial Landing Mt. Pleasant, SC 29466	Wanna Ring LLC 462 Commonwealth Road Mt. Pleasant, SC 29464	

G. PROPERTY LOCATION: Lot #1 Berkeley County Tract 6 & 8, 21.66 Acres TMS #269-00-00-0006 TMS #269-00-00-0015	H. SETTLEMENT AGENT: 843-971-7691 J. Lynn McCants PLACE OF SETTLEMENT 782 Johnnie Dodds Blvd. Mt. Pleasant, SC 29464	I. SETTLEMENT DATE: June 26, 2018

J. SUMMARY OF BORROWER'S TRANSACTION		K. SUMMARY OF SELLER'S TRANSACTION	
100. GROSS AMOUNT DUE FROM BORROWER:		400. GROSS AMOUNT DUE TO SELLER:	
101. Contract Sales Price	$ 756,666.66	401. Contract Sales Price	$ 756,666.66
102. Personal Property		402. Personal Property	
103. Settlement Charges to Borrower (line 1400)	$ 5,151.66	403.	
104.		404.	
105.		405.	
Adjustments for items paid by Seller in advance		Adjustments for items Paid by Seller in advance	
106. Taxes - Tract 6 to		406. Taxes - Tract 6 to	
107. Taxes - Tract 8 to		407. Taxes - Tract 8 to	
108. Assessments to		408. Assessments to	
109.		409.	
110.		410.	
111.		411.	
112.		412.	
120. GROSS AMOUNT DUE FROM BORROWER	$ 761,151.66	420. GROSS AMOUNT DUE TO SELLER	$ 756,666.66
200. AMOUNTS PAID BY OR IN BEHALF OF BORROWER:		500. REDUCTIONS IN AMOUNT DUE TO SELLER:	
201. Deposit or earnest money		501. Excess Deposit (see instructions)	
202. Principal amount of new Loan(s)		502. Settlement Charges to Seller (line 1400)	94,211.87
203. Existing loan(s) taken subject to		503. Existing loan(s) taken subject to	
204. Deposit with Escrow Agent	2,666,666.66	504. Payoff of first Mortgage to Evans & Westbrook	1,126,136.27
205. Interest on Deposit	12,967.74	505. Payoff of second Mortgage	
206. Payoff due to Westbrook	1,126,136.27	506.	
207.		507. Charitable Fund Donation	666,666.66
208.		508.	
209.		509.	
Adjustments for items unpaid by Seller		Adjustments for items unpaid by Seller	
210. Taxes - Tract 6 01/01/18 to 06/26/18	9,333.33	510. Taxes - Tract 6 01/01/18 to 06/26/18	9,333.33
211. Taxes - Tract 8 01/01/18 to 06/26/18	7,916.69	511. Taxes - Tract 8 01/01/18 to 06/26/18	7,916.69
212. Assessments to		512. Assessments to	
213.		513.	
214.		514.	
215.		515.	
216.		516.	
217.		517. Corporate Payment to Ellwood Recordation	1,266.66
218.		518. Appraisal Fee Reimbursement to Ellwood Recordation	1,266.66
219.		519.	
220. TOTAL PAID BY/FOR BORROWER	$ 3,816,666.66	520. TOTAL REDUCTION AMOUNT DUE SELLER	$ 811,341.15
300. CASH AT SETTLEMENT FROM/TO BORROWER:		600. CASH AT SETTLEMENT TO/FROM SELLER:	
301. Gross Amount Due From Borrower (line 120)	$ 761,151.66	601. Gross Amount Due To Seller (line 420)	$ 756,666.66
302. Less Amount Paid By/For Borrower (line 220)	($ 3,816,666.66)	602. Less Reductions Due Seller (line 520)	($ 811,341.15)
303. CASH (☐ FROM ☐ TO) BORROWER	$ 111,515.00	603. CASH (☐ TO ☐ FROM) SELLER	$ 116,754.81

The undersigned hereby acknowledges receipt of a completed copy of pages 1&2 of this statement & any attachments referred to herein.
I HAVE CAREFULLY REVIEWED THE HUD-1 SETTLEMENT STATEMENT AND TO THE BEST OF MY KNOWLEDGE AND BELIEF, IT IS A TRUE AND ACCURATE STATEMENT OF ALL RECEIPTS AND DISBURSEMENTS MADE ON MY ACCOUNT OR BY ME IN THIS TRANSACTION. I FURTHER CERTIFY THAT I HAVE RECEIVED A COPY OF THE HUD-1 SETTLEMENT STATEMENT.

Borrower: Wanna B, LLC

By: _____
Evans & Westbrook, Member

Seller: Wanna Ring LLC

By: _____
Glen J. Sheppard, Member

TO THE BEST OF MY KNOWLEDGE, THE HUD-1 SETTLEMENT STATEMENT WHICH I HAVE PREPARED IS A TRUE AND ACCURATE ACCOUNT OF THE FUNDS WHICH WERE RECEIVED AND HAVE BEEN OR WILL BE DISBURSED BY THE UNDERSIGNED AS PART OF THE SETTLEMENT OF THIS TRANSACTION.

_____
J. Lynn McCants
Settlement Agent

WARNING: IT IS A CRIME TO KNOWINGLY MAKE FALSE STATEMENTS TO THE UNITED STATES ON THIS OR ANY SIMILAR FORM. PENALTIES UPON CONVICTION CAN INCLUDE A FINE AND IMPRISONMENT. FOR DETAILS SEE: TITLE 18 U.S. CODE SECTION 1001 & SECTION 1010

L. SETTLEMENT CHARGES

700. TOTAL COMMISSION: Division Price @ %		
Division of Commission (line 700) as Follows:		
701. $ to		
702. $ to		
703. Commission Paid at Settlement		
704. to		
800. ITEMS PAYABLE IN CONNECTION WITH LOAN:		
801. Loan Origination Fee % to		
802. Loan Discount % to		
803. Appraisal Fee to		
804. Credit Report to		
805. Lender's Inspection Fee to		
806. Mortgage Ins. App. Fee to		
807. Assumption Fee to		
808.		
809.		
810.		
811.		
900. ITEMS REQUIRED BY LENDER TO BE PAID IN ADVANCE		
901. Interest From to @ $ /day for days		
902. MIP Total for the Loan for months to		
903. Hazard Insurance Premium for 1.0 years to		
904.		
905.		
1000. RESERVES DEPOSITED WITH LENDER		
1001. Hazard Insurance months @ $ per month		
1002. Mortgage Insurance months @ $ per month		
1003. Taxes - Trust 6 months @ $ per month		
1004. Taxes - Trust 8 months @ $ per month		
1005. Assessments months @ $ per month		
1006. months @ $ per month		
1007. months @ $ per month		
1008. months @ $ per month		
1100. TITLE CHARGES		
1101. Settlement or Closing Fee to		
1102. Abstract or Title Search to Ostrey Report	1,200.00	
1103. Title Examination to		
1104. Title Insurance Binder to Pinnacle Title Agency	50.00	
1105. Document Preparation to		
1106. Notary Fees to Law Offices of C. C. Parsons III, P.C.		50,000.00
1107. Attorney's Fees to J. Lyn McCune	1,200.00	
(Includes above items numbers:)		
1108. Title Insurance to Pinnacle Title Agency	600.00	
(Includes above items numbers:)		
1109. Lender's Coverage $		
1110. Owner's Coverage $ 3,750,000.00 $ 0.00		
1111. Payoff Assignment to David S. Hunter		6,000.00
1112.		
1113.		
1200. GOVERNMENT RECORDING AND TRANSFER CHARGES		
1201. Recording Fees: Deed $ 15.00 ; Mortgage $; Releases $ 10.00	6.00	10.00
1202. City/County Tax/Stamps: Deed ; Mortgage		
1203. State Tax/Stamps: Deed ; Mortgage 21,375.00		21,375.00
1204.		
1205.		
1300. ADDITIONAL SETTLEMENT CHARGES		
1301. Survey to		
1302. Pest Inspection to		
1303. 2007 Taxes - Trust 8 to Berkeley County Treasurer		16,356.87
1304. Deed Permit Endorsement Fee to DHEC - OCRM	100.00	
1305. Courier fee pay off documents to Fed Ex/Mail Boxes ETC		50.00
1400. TOTAL SETTLEMENT CHARGES (Enter on Lines 103, Section J and 502, Section K)	56,150.00	94,231.87

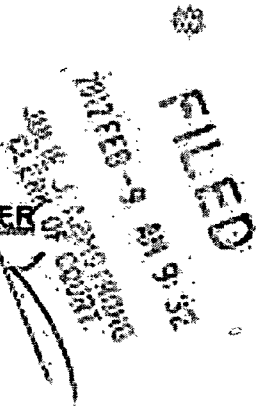
I/We acknowledge receipt of a completed copy of this two page Settlement Statement.

J. Lyn McCune
Settlement Agent

Certified to be a true copy.

Attachment S

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON TD BANK, N.A., successor by merger to CAROLINA FIRST BANK, Plaintiff, vs. KIAWAH RESORT ASSOCIATES, L.P. And L. RUSSELL BENNETT, Defendants.	)	IN THE COURT OF COMMON PLEAS FOR THE NINTH JUDICIAL CIRCUIT CASE NO.: 2011-CP-10-4173 **CONSENT ORDER**



WHEREAS the Plaintiff has filed a motion for attachment requesting a warrant of attachment be issued for Defendant Bennett's real and personal property as security for the satisfaction of any judgment it may obtain in the present action and for an injunction enjoining and restraining Defendant Bennett "from damaging, diminishing, removing, concealing, transferring, converting or taking any action whatsoever which would place any assets, whether real or personal, tangible or intangible, beyond the jurisdiction of this Court"; and,

WHEREAS Defendant Bennett denies that there is legal or factual basis for either attaching his real and personal property or issuing an injunction as requested by Plaintiff, and disputes the assertions made against him; and

WHEREAS Plaintiff and Defendant Bennett have resolved and settled the pending motion for attachment on the terms set forth herein;

Now, therefore, Defendant Bennett hereby agrees to the following which also constitutes the order of this Court punishable by contempt;

For the duration of this action, Defendant Bennett shall not make any gift, grant, alienation, bargain, transfer, and conveyance of lands, tenements, or hereditaments, goods and chattels or any of them, or of any lease, rent, commons, or other profit or charge out of the same, by writing or otherwise, for any fraudulent intent or purpose to defraud, or attempt to defraud, creditors and others of their just and lawful actions, suits, debts, accounts, damages, penalties, and forfeitures. Any such transfer must be deemed and taken to be clearly and utterly void, frustrate and of no effect, any pretense, color, feigned consideration, expressing of use, or any other matter or thing to the contrary notwithstanding. Defendant Bennett will not transfer any of his assets of material value without receiving valuable consideration in return and, for the duration of this action, will retain assets of a value greater than the amount of any judgment that might be rendered against him in this matter. Transactions, transfers, conveyances, or payments in the normal course of business or to satisfy legitimate obligations to creditors in whole or in part shall not be considered fraudulent or made with intent to defraud.

AND IT IS SO ORDERED.

2/6, 2012
Charleston, South Carolina

Circuit Judge

Attachment T

B

AMERICAN ARBITRATION ASSOCIATION

Sheppard H. Davis, Jr., Windgolf Limited Partnership of Charleston and David Driscoll, Trustee of the 2002 Davis Gift Trust

Claimants,

vs

Kiawah Resort Associates, L.P., Carolyn Realty, LLC, Andell Partners, LLC, D&W Investments, Inc. and TWD Investments, LLC,

Respondents.

ARBITRATION DEMAND

(Commercial arbitration rules)

(Declaratory judgment)

Claimants Windgolf Limited Partnership of Charleston ("Windgolf"), Sheppard H. Davis, Jr. ("Davis") and David Driscoll, Trustee of the 2002 Davis Gift Trust ("Driscoll") (collectively "Claimants"), hereby submit their demand for arbitration, as follows:

SUMMARY OF CLAIMS

Claimants own 2.8125% in KRA, a limited partnership and numerous spin off entities that own, develop and sell real estate primarily in South Carolina, St. Kitts and Ireland. Claimants have exercised their right to sell their interest in KRA to Respondents, the majority owners of KRA. The Respondents have breached their continuing and statutory duties under the parties' agreements and have engaged in a pattern of bad faith conduct to both delay and to avoid their obligations to purchase Claimants' interest. Respondents have refused to provide requested KRA information that Respondents are obligated to provide by contract and statute. Respondents have also declared their intent not to purchase certain interests that they are obligated to purchase and they have declared their intent to deduct from the purchase price items that are not properly deductible. Claimants seek an award that their claims are arbitrable and

directing Respondents to abide by their summary and contractual obligations to complete the valuation and purchase of Chimanis' interest in a timely manner, as described in more detail below.

PARTIES

1. Windgolf is a South Carolina limited partnership with its principal place of business in South Carolina. Windgolf is a limited partner in Kiawah Resort Associates, L.P. and several related entities, as described below.

2. Davis is a resident of Charleston County, South Carolina, is president of Windgolf's general partner and is a limited partner of Windgolf.

3. Driscoll is a resident of New York and is the trustee for the 2002 Davis Gift Trust. The 2002 Davis Gift Trust is a shareholder in Kiawah Development Partners II, Inc., an entity more fully described below.

4. Respondent Kiawah Resort Associates, L.P. ("KRA LP") is a Delaware limited partnership with its principal place of business in South Carolina.

5. Respondent Carolyn Realty, LLC ("Carolyn") is a South Carolina limited liability company with its principal place of business in South Carolina. Carolyn is a limited partner in Kiawah Resort Associates, L.P. Carolyn is owned and/or controlled by Charles P. Darby, III ("Darby").

6. Respondent Ardell Partners, LLC ("Ardell") is a South Carolina limited liability company with its principal place of business in South Carolina. Ardell is controlled by Darby and/or members of the Darby family. Ardell is a limited partner in KRA Development, LP ("KRAD") and a member of KRA Deanley, LLC ("Deanley"), two entities more fully

described below. In addition, Andell is a signatory to certain purchase and sale agreements for KRAD, Doonbeg and Kiawah Island Real Estate, LLC ("KIRE").

7. Respondent D&W Investments, Inc. ("D&W") is a South Carolina corporation with its principal place of business in South Carolina. D&W is a general and limited partner of KRA LP. D&W is controlled by Darby.

8. Respondent TWD Investments, LLC ("TWD") is a South Carolina limited liability company with its principal place of business in South Carolina. TWD is a general partner of KRA LP. TWD is controlled by Darby.

ARBITRATION AGREEMENT

9. On January 1, 1997, Weidgolf, Carolyn, D&W and several other entities entered into the Second Amended and Restated Agreement of Limited Partnership of Kiawah Resort Associates, L.P. ("KRA LP Partnership Agreement"). The KRA LP Partnership Agreement requires arbitration of the following:

> Any controversy, claim or dispute of whatever nature arising among the Partners or among or between one or more Partners and the Partnership, including but not limited to those arising out of or relating to this Agreement, or the construction, interpretation, performance, breach, termination, enforceability or validity of this Agreement, whether such claim existed prior to or arises on or after the date of this Agreement ...

10. The parties subsequently executed the First Amendment to the Second Amended and Restated Agreement of Limited Partnership of Kiawah Resort Associates, L.P., dated October 21, 2009, by which TWD acquired its interest as general and limited partner in KRA LP.

11. On January 1, 1998, Weidgolf, Andell and several other entities entered into the Agreement of Limited Partnership of KRA Development, L.P. ("KRAD Partnership Agreement"). The KRAD Partnership Agreement requires arbitration of disputes described with

nearly the identical breadth as the arbitration provisions set forth in the KRA LP Partnership Agreement.

12. The activities of KRA LP and its affiliates companies including KRAD, involve the development of properties in foreign countries and the use of consultants, engineers, financial institutions, contractors, products and services from many states and foreign countries and therefore involve interstate commerce. The applicable arbitration provisions are governed by the Federal Arbitration Act.

13. The disputes described below are arbitrable pursuant to the provisions set forth in the KRA LP Partnership Agreement and KRAD Partnership Agreement.

STATEMENT OF FACTS

A. Formation of the KRA LP Partnership Agreement

14. KRA LP was formed on June 19, 1992 to own, develop, manage, operate, improve, maintain, expand, finance, and otherwise deal with real property that KRA LP owned and subsequently purchased. Initially, KRA LP was formed to own, develop and operate the real estate and related operations that exist on Kiawah Island, South Carolina.

15. At the time of its formation, the following entities were members of KRA LP:

a. MS South Carolina Corporation ("MSSCC");
b. D&W Investments Inc. ("D&W");
c. The Morgan Stanley Real Estate Fund, L.P. ("MSREF");
d. The Morgan Stanley Real Estate Co-Investment Partnership II, L.P. ("MSRECIP");
e. Seaside Partners LP ("Seaside"); and
f. KI Management, Inc. ("KI").

16. Davis was a limited partner of Seaside.

17. The Seaside Partners' partnership agreement provided Davis with the right to sell all of his interest in Seaside to Seaside.

18. In 1996, the partners in KRA LP and Seaside decided to restructure KRA LP so as to eliminate Seaside and to distribute Seaside's interest in KRA LP to Seaside's partners so that they would be limited partners in KRA LP. Carolyn was formed to hold the Darby family's interest in KRA LP. Carolyn is owned and/or controlled by Darby. At the time of the restructure, Davis, KRA LP and Darby agreed that Davis' right to sell his interest in Seaside would survive the restructure and that he would have the right to sell his interest in KRA LP to Darby and his family or an entity owned by Darby and his family.

19. By operation of the January 1, 1997 KRA LP Partnership Agreement, the respective interests of MSSCC, MSREF, and MSREFCIP were redeemed, and Seaside's interest in the partnership was distributed to successor organizations formed by Seaside's limited partners, including: Carolyn, Windgolf, Associated Metals, Inc. and Long Family Associates, L.P.

20. As set forth above, TWD acquired its partnership interest on October 21, 1999, such that the present ownership of KRA LP is as follows:

General Partners	Interest
D&W	1.0000%
TWD	9.0000%
Limited Partners	**Interest**
Carolyn	52.7337%
Associated	12.0779%
LFA	17.7378%
KI	8.5000%
Windgolf	2.8125%
TWD	5.1181%

B. Formation of Related Entities

21. Beginning in 1998, in order to further protect its partners from liability and to manage the consequences of KRA LP's operations, the partners of KRA LP formed numerous entities in the subsequent years, with each entity designed to manage, provide services or own a specific property holding or interest of KRA LP.

22. These entities include the following:

a. Kiawah Island Real Estate, LLC ("KIRE") – Formed December 30, 1998;

b. KRA Development, LP ("KRAD") – Formed January 1, 1998;

c. KRA Boonsboro, LLC ("Boonsboro") – Formed November 4, 1999;

d. Kiawah Development Partners, Inc. ("KDP") – Formed December 14, 1995;

e. Kiawah Development Partners, II, Inc. ("KDP II") – Formed September 20, 2002;

f. Kiawah St. Kitts Holdings, LLC ("KSK") – Formed July 9, 2007;

g. Bear Island Holding, LLC ("BIH") – Formed December 16, 1999.

These entities will be collectively referred to as the "KRA LP Related Entities." KRA LP and the KRA LP Related Entities are hereinafter sometimes referred to as "KRA".

23. KRA LP and certain KRA LP Related Entities each wholly own several subsidiary entities through which KRA LP's operations are conducted.

24. All of the KRA LP Related Entities are operated under the umbrella of KRA LP, which reports the financial performance of the domestic KRA LP Related Entities on a consolidated basis.

25. KRA LP and the KRA LP Related Entities all have at least two things in common: (a) they are effectively controlled by Darby and/or other members of the Darby family,

and (b) Windgolf, Davis and/or the 2008 Davis Gift Trust own a 2.8125% equity interest in the entities.

C. Purchase and Sale Agreements

26. At the time of executing the KRA LP Partnership Agreement on January 1, 1997, Carolyn, Windgolf and KRA LP executed a Purchase and Sale Agreement by which Windgolf, as successor to Davis' interest, was given the right to require Carolyn to purchase his interest in KRA LP.

27. The Purchase and Sale Agreement grants Windgolf the option to require Carolyn to purchase its entire interest in KRA LP and also grants Carolyn the right to purchase Windgolf's entire interest in KRA LP upon written demand.

28. Subsequent to the formation of KRA LP, the managing partners in KRA LP agreed it would be advantageous to spin off certain operations and/or functions of KRA LP into separate entities. The partners agreed that Claimants' and the Darby family's right to put or call Claimants' interests would exist with respect to KRA LP and with regard to any subsequent entities spun off from KRA LP. In furtherance of that agreement, Windgolf and Andell entered into purchase and sale agreements ("Andell Purchase and Sale Agreements") for the following KRA LP Related Entities: Kiawah Island Real Estate, LLC ("KIRE"), KRA Development, LP ("KRAD") and KRA Boonbeg ("Boonbeg").

29. The Andell Purchase and Sale Agreements provide that Windgolf and Andell each have the right respectively to put or call Windgolf's interests. The Andell Purchase and Sale Agreements are virtually identical to the KRA LP Purchase and Sale Agreement except that the Andell agreements provide that none of the purchase and sale options may be exercised unless all of the options are simultaneously exercised.

Attachment U

ESCROW AGREEMENT

THIS ESCROW AGREEMENT, dated as of August 25, 2004 ("Escrow Agreement"), is by and between Wando River, LLC, a South Carolina limited liability company ("Depositor") and Kiawah Capital, L.L.C., a South Carolina limited liability company, as Escrow Agent hereunder ("Escrow Agent").

BACKGROUND

A. Depositor is required, as a condition of the Agreement by and between Kiawah Resort Associates, L.P. and Russell Bennett, on the one hand, and Wando River, LLC, Alan J. Sheppard and Julian Reed Simmons, III, on the other hand, dated as of even date herewith (the "Agreement") to deposit certain amounts necessary to fund interest, development planning costs and developer fees related to the acquisition of approximately 20.653 acres of real property located on the Wando River on Highway 41 in Berkeley County, South Carolina, as such amounts are set forth on Exhibit A attached hereto and incorporated herein (the "Expenses"). Depositor has agreed to deposit up to $300,000 as provided in the Agreement to pay the Expenses in a segregated escrow account to be held by Escrow Agent at Carolina First Bank.

B. Escrow Agent has agreed to accept, hold, and disburse the funds deposited with it in accordance with the terms of this Escrow Agreement.

C. In order to establish the escrow of funds and to effect the payment of the Expenses, the parties hereto have entered into this Escrow Agreement.

STATEMENT OF AGREEMENT

NOW THEREFORE, for good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto, for themselves, their successors and assigns, hereby agree as follows:

1. Definitions. The following terms shall have the following meanings when used herein:

"Escrow Funds" shall mean the funds deposited with Escrow Agent pursuant to this Escrow Agreement, together with any interest and other income thereon, which funds shall include, without limitation, the initial sum of One Hundred Thirty-Two Thousand Three Hundred Seventy and 67/100 Dollars ($132,370.67).

"Escrow Period" shall mean the period commencing on the date hereof and ending on April 1, 2006.

2. Appointment of and Assistance by Escrow Agent. Depositor hereby appoints Escrow Agent to serve as escrow agent hereunder. Escrow Agent hereby accepts such appointment and,

upon receipt of the Escrow Funds in accordance with Section 3 below, agrees to hold and disburse the Escrow Funds in accordance with this Escrow Agreement.

3. Creation of Escrow Funds. In addition to the initial deposit hereinbefore enumerated, on or before August 30, 2004, Depositor will transfer an additional sum of One Hundred Fifty Thousand and No/100 Dollars ($150,000.00) to Escrow Agent, by wire transfer or deposit of immediately available funds, to the following account:

Carolina First Bank
ABA# 053902197
Account # 7100506743
ATTN: Chris Claussen

For Kinsale Capital, LLC, as escrow agent for Wando River, LLC

4. Disbursements of Escrow Funds. On the dates set forth in Exhibit A and in accordance with the terms of the Agreement, Escrow Agent shall disburse the Escrow Funds in payment of the Expenses.

5. Suspension of Performance; Disbursement Into Court. If, at any time, there shall exist any dispute with respect to the holding or disposition of any portion of the Escrow Funds or any other obligations of Escrow Agent hereunder, or if at any time Escrow Agent is unable to determine, to Escrow Agent's sole satisfaction, the proper disposition of any portion of the Escrow Funds or Escrow Agent's proper actions with respect to its obligations hereunder, or if the Depositor has not within 30 days of the furnishing by Escrow Agent of a notice of resignation pursuant to Section 7 hereof, appointed a successor Escrow Agent to act hereunder, then Escrow Agent may, in its sole discretion, take either or both of the following actions:

a. suspend the performance of any of its obligations (including without limitation any disbursement obligations) under this Escrow Agreement until such dispute or uncertainty shall be resolved to the sole satisfaction of Escrow Agent or until a successor Escrow Agent shall have been appointed (as the case may be);

b. petition (by means of an interpleader action or any other appropriate method) any court of competent jurisdiction in any venue convenient to Escrow Agent, for instructions with respect to such dispute or uncertainty, and to the extent required by law, pay into such court, for holding and disposition in accordance with the instructions of such court, all funds held by it in the Escrow Funds, after deduction and payment to Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder.

Escrow Agent shall have no liability to Depositor or any other person with respect to any such suspension of performance or disbursement into court, specifically including any liability or claimed liability that may arise, or be alleged to have arisen, out of or as a result of any delay in the disbursement of funds held in the Escrow Funds or any delay in or with respect to any other action required or requested of Escrow Agent.

6. Investment of Funds. Escrow Agent shall invest the Escrow Funds in money market accounts.

7. Resignation and Removal of Escrow Agent. Escrow Agent may resign from the performance of its duties hereunder at any time by giving ten (10) days' prior written notice to the Depositor or may be removed, with cause, by the Depositor by furnishing a written direction to Escrow Agent, at any time, by the giving of ten (10) days' prior written notice to Escrow Agent. Such resignation or removal shall take effect upon the appointment of a successor Escrow Agent as provided hereinbelow. Upon any such notice of resignation or removal, the Depositor shall appoint a successor Escrow Agent hereunder, which shall be a commercial bank, trust company or other financial institution with a combined capital and surplus in excess of $10,000,000. Upon the acceptance in writing of any appointment as Escrow Agent hereunder by a successor Escrow Agent, such successor Escrow Agent shall thereupon succeed to and become vested with all the rights, powers, privileges and duties of the retiring Escrow Agent, and the retiring Escrow Agent shall be discharged from its duties and obligations under this Escrow Agreement, but shall not be discharged from any liability for actions taken as Escrow Agent hereunder prior to such succession. After any retiring Escrow Agent's resignation or removal, the provisions of this Escrow Agreement shall inure to its benefit as to any actions taken or omitted to be taken by it while it was Escrow Agent under this Escrow Agreement. The retiring Escrow Agent shall transmit all records pertaining to the Escrow Funds and shall pay all funds held by it in the Escrow Funds to the successor Escrow Agent, after making copies of such records as the retiring Escrow Agent deems advisable and after deduction and payment to the retiring Escrow Agent of all fees and expenses (including court costs and attorneys' fees) payable to, incurred by, or expected to be incurred by the retiring Escrow Agent in connection with the performance of its duties and the exercise of its rights hereunder.

8. Liability of Escrow Agent.

a. Escrow Agent shall have no liability or obligation with respect to the Escrow Funds except for Escrow Agent's willful misconduct or gross negligence. Escrow Agent's sole responsibility shall be for the safekeeping, and disbursement of the Escrow Funds in accordance with the terms of this Escrow Agreement. Escrow Agent shall have no implied duties or obligations and shall not be charged with knowledge or notice of any fact or circumstance not specifically set forth herein. Escrow Agent may rely upon any instrument, not only as to its due execution, validity and effectiveness, but also as to the truth and accuracy of any information contained therein, which Escrow Agent shall in good faith believe to be genuine, to have been signed or presented by the person or parties purporting to sign the same and to conform to the provisions of this Escrow Agreement. In no event shall Escrow Agent be liable for incidental, indirect, special, consequential or punitive damages. Escrow Agent shall not be obligated to take any legal action or commence any proceeding in connection with the Escrow Funds, any account in which Escrow Funds are deposited, this Escrow Agreement or the Underlying Agreement, or to appear in, prosecute or defend any such legal action or proceeding. Escrow Agent may consult legal counsel selected by it in the event of any dispute or question as to the construction of any of the provisions hereof or of any other agreement or of its duties hereunder, or relating to any dispute involving any party hereto, and shall incur no liability and shall be fully indemnified from any liability whatsoever in acting in accordance with the opinion or instruction of such counsel.

Depositor shall promptly pay, upon demand, the reasonable fees and expenses of any such counsel.

(b) The Escrow Agent is authorized, in its sole discretion, to comply with orders issued or process entered by any court with respect to the Escrow Funds, without determination by the Escrow Agent of such court's jurisdiction in the matter. If any portion of the Escrow Funds is at any time attached, garnished or levied upon under any court order, or in case the payment, assignment, transfer, conveyance or delivery of any such property shall be stayed or enjoined by any court order, or in case any order, judgment or decree shall be made or entered by any court affecting such property or any part thereof, then and in any such event, the Escrow Agent is authorized, in its sole discretion, to rely upon and comply with any such order, writ, judgment or decree which it is advised by legal counsel selected by it is binding upon it without the need for appeal or other action; and if the Escrow Agent complies with any such order, writ, judgment or decree, it shall not be liable to any of the parties hereto or to any other person or entity by reason of such compliance even though such order, writ, judgment or decree may be subsequently reversed, modified, annulled, set aside or vacated.

9. Indemnification of Escrow Agent. From and at all times after the date of this Escrow Agreement, Depositor shall, to the fullest extent permitted by law and to the extent provided herein, indemnify and hold harmless Escrow Agent and each director, officer, employee, attorney, agent and affiliate of Escrow Agent (collectively, the "Indemnified Parties") against any and all actions, claims (whether or not valid), losses, damages, liabilities, costs and expenses of any kind or nature whatsoever (including without limitation reasonable attorneys' fees, costs and expenses) incurred by or asserted against any of the Indemnified Parties from and after the date hereof, whether direct, indirect or consequential, as a result of or arising from or in any way relating to any claim, demand, suit, action or proceeding (including any inquiry or investigation) by any person, including without limitation Depositor, whether threatened or initiated, asserting a claim for any legal or equitable remedy against any person under any statute or regulation, including, but not limited to, any federal or state securities laws, or under any common law or equitable cause or otherwise, arising from or in connection with the negotiation, preparation, execution, performance or failure of performance of this Escrow Agreement or any instrument contemplated hereby, whether or not any such Indemnified Party is a party to any such action, proceeding, suit or the target of any such inquiry or investigation; *provided, however*, that no Indemnified Party shall have the right to be indemnified hereunder for any liability finally determined by a court of competent jurisdiction, subject to no further appeal, to have resulted solely from the gross negligence or willful misconduct of such Indemnified Party. If any such action or claim shall be brought or asserted against any Indemnified Party, such Indemnified Party shall promptly notify Depositor in writing, and Depositor shall assume the defense thereof, including the employment of counsel and the payment of all expenses. Such Indemnified Party shall, in its sole discretion, have the right to employ separate counsel (who may be selected by such Indemnified Party in its sole discretion) in any such action and to participate in the defense thereof, and the fees and expenses of such counsel shall be paid by such Indemnified Party, except that Depositor shall be required to pay such fees and expenses if (a) Depositor agrees to pay such fees and expenses, or (b) Depositor shall fail to assume the defense of such action or proceeding or shall fail, in the sole discretion of such Indemnified Party, to employ counsel satisfactory to the Indemnified Party in any such action or proceeding, (c) Depositor is the plaintiff in any such action or proceeding or (d) the named or potential parties to any such action

to jurisdictions wherein any jurisdictional requirement pertains, and indemnified Party and Depositor, and Indemnified Party shall have been advised by counsel that there may be one or more legal defenses available to it which are different from or additional to those available to Depositor. Depositor shall be liable to pay fees and expenses of counsel pursuant to the preceding sentence, except that any obligation to pay under clause (a) shall apply only to the party so agreeing. All such fees and expenses payable by Depositor pursuant to the foregoing sentence shall be paid from time to time as incurred, both in advance of and after the final disposition of such action or claim. All of the foregoing losses, damages, costs and expenses of the Indemnified Parties shall be payable by Depositor upon demand by such Indemnified Party. The obligations of Depositor under this Section 8 shall survive any termination of this Escrow Agreement, and the resignation or removal of Escrow Agent shall be independent of any obligation of the Escrow Agent.

10. Fees and Expenses of Escrow Agent. Escrow Agent shall not charge any fees for its services hereunder although Depositor shall reimburse Escrow Agent for all of its reasonable out-of-pocket expenses, including attorneys' fees, travel expenses, telephone and facsimile transmission costs, postage (including express mail and overnight delivery charges), copying charges and the like. All of the reimbursement obligations set forth in this Section 10 shall be payable by Depositor upon demand by Escrow Agent. The obligations of Depositor under this Section 10 shall survive any termination of this Escrow Agreement and the resignation or removal of Escrow Agent. Escrow Agent is authorized to, and may, disburse to itself from the Escrow Funds, from time to time, the amount of any reimbursement of out-of-pocket expenses due and payable hereunder (including any amount to which Escrow Agent or any Indemnified Party is entitled to seek indemnification pursuant to Section 9 hereof). Escrow Agent shall notify the Depositor of any disbursement from the Escrow Funds to itself or any Indemnified Party in respect of any reimbursement hereunder and shall furnish to the Depositor copies of all related invoices and other statements. Depositor hereby grants to Escrow Agent and the Indemnified Parties a security interest in and lien upon the Escrow Funds and all funds therein to secure all obligations hereunder to the right to offset the amount of any reimbursement due any of them hereunder (including any claim for indemnification pursuant to Section 9 hereof) against the Escrow Funds. If for any reason funds in the Escrow Funds are insufficient to cover such disbursement, Depositor shall promptly pay such amounts to Escrow Agent or any Indemnified Party upon receipt of an itemized invoice.

11. Representations and Warranties.

Depositor makes the following representations and warranties to Escrow Agent:

i) Depositor is a limited liability company duly organized, validly existing, and in good standing under the laws of the State of South Carolina, and has full power and authority to execute and deliver this Escrow Agreement and to perform its obligations hereunder;

ii) This Escrow Agreement has been duly approved by all necessary corporate action of Depositor, including any necessary shareholder approval, has been executed by duly authorized officers of Depositor, and constitutes a valid and binding agreement of Depositor, enforceable in accordance with its terms;

(iii) The execution, delivery, and performance by Depositor of this Escrow Agreement will not violate, conflict with, or cause a default under the articles of incorporation or bylaws of Depositor, any applicable law or regulation, any court order or administrative ruling or decree to which Depositor is a party or any of its property is subject, or any agreement, contract, indenture, or other binding arrangement to which Depositor is a party or any of its property is subject.

(iv) Alan Sheppard has been duly appointed to act as the representative of Depositor hereunder and have full power and authority to execute, deliver, and perform this Escrow Agreement, to execute and deliver any written direction, to amend, modify or waive any provision of this Agreement and to take any and all other actions of the Depositor under this Agreement, all without further consent or direction from, or notice to, Depositor or any other party.

(v) No party other than the parties hereto have, or shall have, any lien, claim or security interest in the Escrow Funds or any part thereof. No financing statement under the Uniform Commercial Code is on file in any jurisdiction claiming a security interest in or describing (whether specifically or generally) the Escrow Funds or any part thereof.

(vi) All of the representations and warranties of Depositor contained herein are true and complete as of the date hereof and will be true and complete at the time of any disbursement from the Escrow Funds.

12. Consent to Jurisdiction and Venue. In the event that any party hereto commences a lawsuit or other proceeding relating to or arising from this Agreement, the parties hereto agree that the courts located in Charleston County, South Carolina shall have the sole and exclusive jurisdiction over any such proceeding. Any of these courts shall be proper venue for any such lawsuit or judicial proceeding and the parties hereto waive any objection to such venue. The parties hereto consent to and agree to submit to the jurisdiction of any of the courts specified herein and agree to accept service of process to vest personal jurisdiction over them in any of these courts.

13. Notice. All notices and other communications hereunder shall be in writing and shall be deemed to have been validly served, given or delivered five (5) days after deposit in the United States mails, by certified mail with return receipt requested and postage prepaid, when delivered personally, one (1) day after delivery to any overnight courier, or when transmitted by facsimile transmission facilities, and addressed to the party to be notified as follows:

If to Depositor at:	Wando River, LLC 462 Commonwealth Road Mount Pleasant, SC 29464 Attn: Alan Sheppard Telephone: 843- Facsimile: 843-_____
If to the Escrow Agent at:	Kiawah Capital, LLC 18 South Adger's Wharf Charleston, SC 29401 Attn: Ritt Owens

Telephone: 843-722-1506
Facsimile: 843-722-7122

or to such other address as each party may designate for itself by like notice.

14. Amendment or Waiver. This Escrow Agreement may be changed, waived, discharged or terminated only by a writing signed by the Depositor and Escrow Agent. No delay or omission by any party in exercising any right with respect hereto shall operate as a waiver. A waiver on any one occasion shall not be construed as a bar to, or waiver of, any right or remedy on any future occasion.

15. Severability. To the extent any provision of this Escrow Agreement is prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Escrow Agreement.

16. Governing Law. This Escrow Agreement shall be construed and interpreted in accordance with the internal laws of the State of South Carolina without giving effect to the conflict of laws principles thereof.

17. Entire Agreement. This Escrow Agreement constitutes the entire agreement between the parties relating to the holding, investment and disbursement of the Escrow Funds and sets forth in their entirety the obligations and duties of Escrow Agent with respect to the Escrow Funds.

18. Binding Effect. All of the terms of this Escrow Agreement, as amended from time to time, shall be binding upon, inure to the benefit of and be enforceable by the respective heirs, successors and assigns of Depositor and Escrow Agent.

19. Execution in Counterparts. This Escrow Agreement and any written direction may be executed in two or more counterparts, which when so executed shall constitute one and the same agreement or direction.

20. Termination. Upon the first to occur of the disbursement of all amounts in the Escrow Funds pursuant to written directions or the disbursement of all amounts in the Escrow Funds into court pursuant to Section 5 hereof, this Escrow Agreement shall terminate and Escrow Agent shall have no further obligation or liability whatsoever with respect to this Escrow Agreement or the Escrow Funds.

21. Dealings. The Escrow Agent and any stockholder, director, officer or employee of the Escrow Agent may buy, sell, and deal in any of the securities of the Depositor and become pecuniarily interested in any transaction in which the Depositor may be interested, and contract and lend money to the Depositor and otherwise act as fully and freely as though it were not Escrow Agent under this Agreement. Nothing herein shall preclude the Escrow Agent from acting in any other capacity for the Depositor or for any other entity.

[SIGNATURES APPEAR ON FOLLOWING PAGE]

IN WITNESS WHEREOF, the parties hereto have caused this Escrow Agreement to be executed under seal as of the date first above written.

WANDO RIVER, LLC

By: _____
Name: _____
Title: _____

ELAWAH CAPITAL, LLC
as Escrow Agent

By: _____
Name: _____
Title: _____

[redacted] LLC
Escrow Budget
25-Aug-04

Exhibit A

Closing Cost - Closing Statement			$ 25,006.26
Pioneer Tax - Credit			$ (7,377.02)
Other Closing Cost			$ 40,000.00
Development Planning Cost			$ 25,000.00
Property Tax 1-15-2005			$ 11,250.00
Interest	$150,000	0.05	$ 157,500.00
**Developer Fee			$ 78,620.67
Total			$ 390,000.00

**Subject to ongoing monthly review. Paid monthly over the first year in arrear

Exhibit A

29th October 2012

'To The Presiding Judge' Stephanie P. McDonald

State of South Carolina; The Circuit Court of the Ninth Judicial Circuit

Alan Joseph Sheppard

My name is Julian Reed Simmons and I was the developing partner with Alan Sheppard and Wando River LLC.

Early in September 2006 Mr. Sheppard asked that I attend a meeting with him to go and see Mr. Darby and Mr. Bennet. Mr. Sheppard informed me that Mr. Darby Mr. Bennet had decided that they would like our $500,000 deposit it in their account. Something Wando River LLC had no intention of complying with. When Mr. Sheppard and I arrived at the meeting Mr. Bennett and Mr. Owens were present. Right away they began talking about the $500,000 that was being held in escrow by our attorney in Columbia, Bill Higgins. Mr. Bennet asked what our intentions were for the funds and I notified him that we were going to develop the property and pay our bills since your group stop our developer fees right after we started this project. Mr. Owens's first says that's not going to work when Mr. Bennett says "let me tell you what you're going to do, you're going to put that money into our account or you going to have a problem keeping the money or the property". After we argued about their position on taking our $500,000 needed for our loan on our own account, Mr. Sheppard and I thought it best if we left. Mr. Sheppard went to see Mr. Trentholm Walker, the attorney negotiating the release between Wando River LLC and DR Horton and made sure that under no circumstances does Mr. Bennet or Mr. Darby take our funds.

Regardless of all the action Mr. Sheppard took to secure the $500,000, Mr. Higgins would ignore Wando River LLCs attorneys its members and hold the funds until we were in default and finally released them to Mr. Bennet and Mr. Darby's Governors Cay account under KRA, directly against all the directions he had consented to earlier at the specific instructions of attorney Mr. Walker and our Managing Member, Alan Sheppard.

Since I grew up with Mr. Darby, our group had decided that I would go to Mr. Darby's office and confront him about the escrow money and see what was actually going on. After I got there Mr. Darby and I were having a heated discussion about the work that our group had done and the commitments for the $500,000. I informed Mr. Darby that our group had secured a loan to take care of all of the development fees for them and everything needed to complete the project for our group, Wando River LLC. I also told him that he does not have to guarantee our loan any further. At this point Mr. Darby told me that he" took the escrow funds so Alan and I would not run off to the islands and blow it". I was shock and told Mr. Darby that the funds were made out to Wando River LLC and that our LLC has to sign the check prior to it being deposited and we have no intention of doing that. Then Mr. Darby told me "he doesn't need a signature to wire funds into his account". We got into a bit of an argument and I decided it was again, best if I leave as he clearly had other plans for our money and our property.

I can attest that to the best of my knowledge and belief that the following is a true statement of the facts noted above

Thanking you.

10/29/2012

My commission expires 8/5/2017
Charleston County
South Carolina

Julian Reed Simmons
Age57
640 Pelzer Dr., Mt. Pleasant SC 29466
843-452-8844

Exhibit B

IN THE STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT OF RANDY BATES

I, Randy Bates, first being duly sworn, says and deposes, as follows:

My name is Randy Bates, and I reside at 167 Cooper River Drive, Mt. Pleasant, SC 29464. I am a investor and also develop real estate. I was invited by Alan Sheppard to invest in the Wando River Project.

I was a member of the Wando River LLC when it purchased the subject tract of land, sought financing, and secured a guarantor for the loan. In 2006, it became apparent to me and the members of the Wando River LLC that we needed to replace the guarantor and secure financing on our own. Having the financial wherewithall, I agreed to get financing and act as guarantor for a $6 million dollar loan, provided that the Wando River LLC committed $500,000.00 from monies received in a settlement with D.R. Horton to be used as part of the financing and held in the Wando River LLC bank account. Alan Sheppard assured me that these funds would be forthcoming. However, in the summer of 2006, Alan Sheppard informed me that the attorney for Rusty Bennett and KRA held the funds in the KRA Account and refused to turn these funds over to him. I informed Alan Sheppard that without these funds, I could not continue processing the loan or act as guarantor.

I was ready, willing, and able to proceed as guarantor, but the failure of Alan Sheppard to secure the $500,000.00 made it impossible for me to take this role. My net worth would support the loan with Wachovia and references are available at your request.

Randy Bates

Sworn to and subscribed before me
this 16th day of July, 2008.

Notary of Public of South Carolina
My Commission Expires: 2-9-2009

Exhibit C

AFFIDAVIT

State of South Carolina
County of Charleston

BEFORE ME, the undersigned Notary, [illegible] on this 22th day of October, 2012, personally appeared Robert Edward Sheppard, known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I Robert Edward Sheppard of Mt Pleasant SC had a conversation with Buddy Darby on September 15, 2008 at a volleyball tournament. In that conversation, Buddy Darby stated he could not give the $500,00 in earnest money from the O'll Horton case to Alan Sheppard and Reed Simmons with the Wando River LLC because they would "take the money, run to some island and blow it all".

[signature]
[illegible] of Affiant

Robert Edward Sheppard

Mt. Pleasant, SC 29466

Subscribed and sworn to before me, this 22nd day of October, 2012

[signature]
[illegible] of Notary

[signature]
[illegible] of Notary My Commission Expires
December 07, 2018

Exhibit D

Mount Pleasant Pediatrics, P.A.

Sandra L. Powell, M.D., F.A.A.P.
Robert C. Weaver, M.D., F.A.A.P.
Neill M. Herring, M.D., F.A.A.P.
Matthew P. Davis, M.D., F.A.A.P.

October 24, 2012

To: Stephanie P. McDonald, Presiding Judge
South Carolina Ninth Judicial Circuit Court

Re: Alan Joseph Sheppard

It is my privilege to provide a character reference for Alan Sheppard. He is well known to me for over 10 years as a neighbor, friend, and as the physician for his children.

As a friend and neighbor he has helped me (an older single woman) on many occasions over the years. I always know that I can depend on him in an emergency. As a friend I know him to be honest, ethical, reliable and of good moral character. As his children's Pediatrician I have observed him to be a loving parent, who has a gentle and caring heart, good parenting skills, and provides an excellent roll model for his children.

I can offer without reservation an opinion that he would be honest and ethical in his business dealings because he is a good, decent, honest, ethical man.

Sincerely yours,

Sandra L. Powell, M.D., FAAP
Mount Pleasant Pediatrics
DOB: November 28, 1948

Notary Signature Tracy W. Swails Date 10-24-12

Commission Expiration 8-8-22

State of South Carolina

TRACY W. SWAILS NOTARY PUBLIC SOUTH CAROLINA

1041 Johnnie Dodds Blvd., Unit 5-A
Mount Pleasant, South Carolina 29464
Telephone 843-881-0007

Exhibits E

Supporting Affidavits

AFFIDAVIT

State of South Carolina
County of Charleston

BEFORE ME, the undersigned Notary, Cathy T. Keller, on this 22th day of October, 2012, personally appeared Edward B. Sheppard Jr., known to me to be a credible person and of lawful age, who being by me first duly sworn, on his oath, deposes and says:

I Edward B. Sheppard Jr. of Mt Pleasant SC was at the Charleston County Court of Common Pleas Motion Hearing on December 9, 2010 for the case number-2009CP1005838 styled Alan Sheppard, plaintiff, et al VS William O Higgins. I witnessed that both the Defendant's attorney and the Plaintiff's attorney were arguing over the date concerning the statute of limitations. I witnessed that the plaintiff, Alan Sheppard, was representing himself pro se and attorney Amy Campbell was representing the interest of the plaintiff Wando River LLC. I also witnessed that Alan sheppard was never given an opportunity to speak at this hearing.

X _____
[signature of affiant]

Edward B. Sheppard Jr.

Mt. Pleasant, SC 29466

Subscribed and sworn to before me, this 22nd day of October, 2012.

Catherine B. Keller
[signature of Notary]
Catherine B. Keller
[typed name of Notary] 11/14/19

24th October 2012

'To The Presiding Judge' Stephanie P. McDonald

State of South Carolina, The Circuit Court of the Ninth Judicial Circuit

Alan Joseph Sheppard

My name is Edward White Jr. and was born and raised here in Charleston South Carolina. I grew up on the Isle of Palms before moving into Mount Pleasant. I am a dentist and have been involved in preserving nature and wildlife in the Lowcountry and have served on several boards and organizations.

I met Alan Sheppard sometime in 1999, the year that he adopted his two children, and I moved into the same neighborhood, Darrell Creek. With three kids of my own and a place on the water, Alan and I found much in common that included a long list of mutual friends. Alan was a fast friend and we shared many passions. Alan was and is interested in conservation in the beverage industry and natural landscapes. Alan mentioned to me in mid 2004 that he had put a contract on a large waterfront property adjacent to the Wando Hwy 41 bridge. I immediately expressed that I would be very interested in assisting if an opportunity arose.

In typical Alan fashion, he immediately put the project together, and we began to develop the property with a small group of individuals; Wando River LLC, and a financial group as guarantors. Right after closing, Alan let everyone know that he and an associate, Cotton Harness, had acquired a marina permit on this property. This development changed the value of this property in everyone's mind. Alan primarily dealt with parties interested in developing the property and there was much interest. There was a financial group that was involved very early and several other contracts came in quickly. My memory is that our group decided to take the contract for $12.5 million with DR Horton and avoid the conflict with the financial group who clearly targeted the property. Around March 2006 DR Horton pulled out of the contract and left approximately $500,000 on the table. Wando River LLC was going to use this $500,000 to finance the project ourselves but the money never made it into our account. There was much continued interest from many parties.

Alan was the primary negotiating partner and he worked hard with council to maintain the best interest of the group, but it became apparent that the deal making was not done. It was an exciting time and we expected the property to be developed in a manner that would benefit the community and us. We envisioned a project that was now being called the new gateway to Mount Pleasant. This did not occur and Alan knows the details far better than I do. It seemed to involve promises and dealings that did not come true involving many parties who had an interest in the property in some way. At the end of the day, what should have been a sure thing evaporated into a messy situation that still does not feel right. Alan can describe the exact inner workings of this deal and should be relied on to do so.

Thank you,

Edward White Jr. DMD

3705 Station Point Court

Mt Pleasant SC 29466

10/27/12

My commission expires 8/9/2017
Charleston County
South Carolina

24th October 2012

To The Presiding Judge' Stephanie P. McDonald

State of South Carolina, The Circuit Court of the Ninth Judicial Circuit

My brother in law, Gerald O. told me about what his cousin Alan Sheppard was going through with Buddy Darby and I told him that it sounded very familiar to my dealings with the Beach Company. I called Alan, and after speaking with him, it became eerily apparent that the struggles he was facing bore virtually an exact resemblance to the aggressive business tactics that I faced with Buddy Darby/KIA and Charlie Way/The Beach Company and I was compelled to inform the court.

Here is an abbreviated version of my business partnership with them. January of 1995 I left IBM, wrote a sixty page business plan over a two month period and secured investors Buddy Darby, Greenbax LLC (Piggly Wiggly subsidiary), and Jack Rhinehart. After I had left IBM in December, I was anxious to get started, but for no known reason, things were delayed until July. My operating partner and I were uneasy about signing a two year non-compete, and having to put up $50,000 ourselves. At the last minute Buddy Darby said he couldn't come up with the money, but The Beach Company CEO, Charlie Way would invest. I agreed to the 2 year non-compete, to pay the money up front, and a reduced salary because I was out of work for six months and in need of income, and they knew it.

After we were profitable in the first year, and it was apparent that we were going to be extremely successful, (We did $20,000,000/year in revenue for many years) Charlie Way told me and my partner, in a board meeting, that they were going to give us a $20,000 a year salary increase, but we needed to change the LLC partnership from a Member/Member partnership agreement, to a Managed/ Member partnership for tax reasons. I later found out that there was no tax reason to change. Foolishly we agreed, partly because we had been under paid for the first two years and we needed the money; and they knew it, and mostly because I trusted Charlie Way. Shortly thereafter, he brought in his long time business associate, Michele Creel, and the Managed Member,LLC gave her complete control.

After several years of relentless harassment by Michele Creel and Charlie Way, I then went to Robert Rosen, of Rosen & Rosen, law firm. Robert told me to give the LLC agreement to Scott Barnes, Attorney, Law School Professor, and LLC expert. He reviewed it and told me there was a trap in it. I was unfamiliar with the concept of traps in a partnership agreement, and his explanation was that the Buy/Sell Agreement detailed in the LLC partnership agreement stated that you must first dissociate form the firm to execute the Buy/Sell agreement. He said, according to SC Code, Article such and such that it clearly states that no member can dissociate

from an LLC. If you did, you would lose all rights, and essentially everything. They were pushing hard for me to dissociate. I almost did, the letter to dissociate was sent to Michele Creel, not David Hawkins, therefore it wasn't acted on by David. This "Trap" was a shock to me, once they knew, I know it was a trap, they wanted to settle, for a fraction of what my share was worth. I refused to accept their offer. I had 12 years of very hard work vested with IBM in preparation for this business, it was my idea, and the timing was perfect. It was built on my business relationships, and partnerships, and 14 years involvement with the company (Systems & Services, LLC), and I just couldn't take a second rate offer.

The net result was that during the prime of my business life, (Age 40 to 54) they all made millions, in guarantee fees, Cisco reward points for merchandise, and trips worth $300,000/year, upgrades and ownership of the 8,000 sq. ft. office/warehouse facility, and much, much, more, and I got approximately $150,000.

I can attest that all of the above is true and factual records of events.

Thomas N. Kuppens

Thomas N. Kuppens
Age 57
571 Island Walk East
Mt. Pleasant, S.C. 29464
(843) 884-5260
Owner/CEO Home Care Plus, LLC
tkuppens@home-care-plus.com

Sworn to and Subscribed Before, Me
This 1 Day of Nov 2012
Signed: _____
Michael Bisnett
Notary Public of South Carolina
My Commission Expires: 11/18/2014

STATE OF SOUTH CAROLINA)
) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT
)
CASE NO.: 2011-CP-10-4173

TD BANK, N.A., successor by merger to CAROLINA FIRST BANK,

Plaintiff,

v.

KIAWAH RESORT ASSOCIATES, L.P. and L. RUSSELL BENNETT,

Defendants.

AFFIDAVIT OF MICHAEL ROSE

FILED
2012 OCT 11 AM 11:57
JULIE J. ARMSTRONG
CLERK OF COURT
BY

I, Michael Rose, being first duly sworn depose and say that the following statements are true and correct under penalty of perjury:

1. That I am a Vice President at TD Bank, N.A., successor by merger to Carolina First Bank ("Plaintiff"), and my office is located in Charleston, South Carolina;

2. That I am familiar with the loan that is the subject of this action and have had an opportunity to review the applicable loan and credit files and all related documents that were kept by Plaintiff in its official records;

3. That on or about August 11, 2005, Kiawah Governor's Cay, LLC ("Kiawah Governor's Cay") executed and delivered to Plaintiff a negotiable Promissory Note in the original principal amount of Eight Million Three Hundred Thousand and No/100 Dollars ($8,300,000.00) (as amended from time to time, the "Note"). A true and correct copy of the Note is attached to the Complaint in this matter as Exhibit "A";

4. That on or about May 15, 2010, Kiawah Governor's Cay and Plaintiff executed the most recent amendment to the Note in the form of a Note Renewal and Modification Agreement (the "Amendment"), with interest to accrue on the principal amount outstanding as provided

therein (the "Interest Rate"). A true and correct copy of the Amendment is attached to the Complaint in this matter as Exhibit "B";

5. That on or about August 11, 2005, and in connection with the Note, Kiawah Governor's Cay and Plaintiff entered into that certain Loan Agreement, as amended by that certain Loan Agreement and Note Modification Agreement, dated November 1, 2007 (as amended from time to time, the "Loan Agreement"). A true and correct copy of the Loan Agreement is attached to the Complaint in this matter as Exhibit "C";

6. That on or about August 11, 2005, to secure the payment of the Note and the indebtedness evidenced thereby, and all other indebtedness of Kiawah Governor's Cay to Plaintiff, and as additional consideration for the Note, Kiawah Resort Associates executed and delivered to Plaintiff for value that certain Guaranty Agreement pursuant to which Kiawah Resort Associates continually and unconditionally guaranteed payment and performance of all obligations under the Note and all other indebtedness of Kiawah Governor's Cay to Plaintiff (the "Kiawah Resort Associates Guaranty"), provided, however, that the Kiawah Resort Associates Guaranty is limited to seventy-five percent (75%) of the aggregate principal balance of such indebtedness as of the date of a default plus additional fees and costs as more particularly set forth therein. A true and correct copy of the Kiawah Resort Associates Guaranty is attached to the Complaint in this matter as Exhibit "D";

7. That on or about August 11, 2005, to secure the payment of the Note and the indebtedness evidenced thereby, and all other indebtedness of Kiawah Governor's Cay to Plaintiff, and as additional consideration for the Note, Russell Bennett ("Bennett") executed and delivered to Plaintiff for value that certain Guaranty Agreement pursuant to which Bennett continually and unconditionally guaranteed payment and performance of all obligations under

the Note and all other indebtedness of Kiawah Governor's Cay to Plaintiff (the "Bennett Guaranty" and, together with the Kiawah Resort Associates Guaranty, the "Guaranties"), provided, however, that the Bennett Guaranty is limited to twenty-five percent (25%) of the aggregate principal balance of such indebtedness as of the date of a default plus additional fees and costs as more particularly set forth therein. A true and correct copy of the Bennett Guaranty is attached to the Complaint in this matter as Exhibit "E";

8. That the Note matured on May 15, 2011 and an outstanding amount was due and owing on the Note on the date of maturity.

9. That the conditions of the Note and the Loan Agreement have each been breached and violated in that Kiawah Governor's Cay has failed to make the required payments when due under the Note;

10. That due demand has been made for the payment of said indebtedness, and that Kiawah Governor's Cay, Kiawah Resort Associates, and Bennett have refused to make same, following which and in accordance with the terms of the Loan Documents, Plaintiff has elected to accelerate and has declared the full amount due and payable;

11. That Kiawah Governor's Cay, Kiawah Resort Associates, and Bennett have failed to pay such amounts demanded and due which are more fully described hereinbelow;

12. That the Guaranties and the related loan documents provide for recovery by Plaintiff of costs and reasonable attorneys' fees from the obligors and such documents have been placed in the hands of Moore & Van Allen PLLC, Attorneys for Plaintiff, for collection;

13. That as of September 27, 2012, the full amount due and Payable to Plaintiff on the Kiawah Resort Associates Guaranty is Three Million Six Hundred Seventeen Thousand Two Hundred and 71/100 Dollars ($3,617,200.71) and the full amount due and Payable to Plaintiff on

the Note and all other indebtedness of Kiawah Governor's Cay to Plaintiff (the "Bennett Guaranty" and, together with the Kiawah Resort Associates Guaranty, the "Guaranties"), provided, however, that the Bennett Guaranty is limited to twenty-five percent (25%) of the aggregate principal balance of such indebtedness as of the date of a default plus additional fees and costs as more particularly set forth therein. A true and correct copy of the Bennett Guaranty is attached to the Complaint in this matter as Exhibit "E";

8. That the Note matured on May 15, 2011 and an outstanding amount was due and owing on the Note on the date of maturity.

9. That the conditions of the Note and the Loan Agreement have each been breached and violated in that Kiawah Governor's Cay has failed to make the required payments when due under the Note;

10. That due demand has been made for the payment of said indebtedness, and that Kiawah Governor's Cay, Kiawah Resort Associates, and Bennett have refused to make same, following which and in accordance with the terms of the Loan Documents, Plaintiff has elected to accelerate and has declared the full amount due and payable;

11. That Kiawah Governor's Cay, Kiawah Resort Associates, and Bennett have failed to pay such amounts demanded and due which are more fully described hereinbelow;

12. That the Guaranties and the related loan documents provide for recovery by Plaintiff of costs and reasonable attorneys' fees from the obligors and such documents have been placed in the hands of Moore & Van Allen PLLC, Attorneys for Plaintiff, for collection;

13. That as of September 27, 2012, the full amount due and Payable to Plaintiff on the Kiawah Resort Associates Guaranty is Three Million Six Hundred Seventeen Thousand Two Hundred and 71/100 Dollars ($3,617,200.71) and the full amount due and Payable to Plaintiff on

the Bennett Guaranty is One Million Two Hundred Five Thousand Seven Hundred Thirty-Three and 57/100 Dollars ($1,205,733.57);

14. That Kiawah Resort Associates and Bennett inaccurately allege that Plaintiff approached Bennett and Ron Owens ("Owens") with a proposal that Kiawah Governor's Cay refinance the Note at a discount of 10% to 40% in an effort to remove the loan from Plaintiff's books;

15. That Plaintiff did not approach Bennett and Owens with such a proposal, but rather, Bennett and Owens approached Plaintiff to discuss proposals for dealing with the upcoming maturity of the Note, including options for refinancing the Note at a discount, and Plaintiff responded that Plaintiff would consider whatever proposal Bennett and Owens brought to Plaintiff on a case-by-case basis; and

16. That Bennett and Owens submitted a proposal to refinance the Note to Plaintiff, but no agreement was reached by the parties, and that no writing was signed by the Plaintiff which contains Plaintiff's agreement to any of the material terms and conditions of Bennett and Owens' proposal.

FURTHER AFFIANT SAYETH NAUGHT.

Michael Rose

Sworn to and Subscribed to me
this the 27th day of September, 2012.

Notary Public: South Carolina
My Commission Expires: 07-29-2014

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON TD BANK, N.A., successor by merger to CAROLINA FIRST BANK, Plaintiff, v. KIAWAH RESORT ASSOCIATES, L.P. and L. RUSSELL BENNETT, Defendants.	)	IN THE COURT OF COMMON PLEAS NINTH JUDICIAL CIRCUIT CIVIL ACTION NO.: 2011-CP-10-4173 **AFFIDAVIT OF MICHAEL ROSE**

Personally appeared before me, Michael Rose, who being duly sworn deposes and says as follows:

1. That he is Vice President at Plaintiff TD Bank, N.A., successor by merger to Carolina First Bank ("Plaintiff").

2. That as of May 26, 2011, the Defendants, including Defendant L. Russell Bennett ("Bennett"), are justly and truly indebted to Plaintiff in the total sum of Three Million Two Hundred Thirty-Two Thousand Nine Hundred Eighty and 07/100 Dollars ($3,232,980.07), plus interest, late charges, attorneys' fees and costs (the "Debt"), and that Plaintiff is entitled to an attachment against Bennett, upon the following grounds:

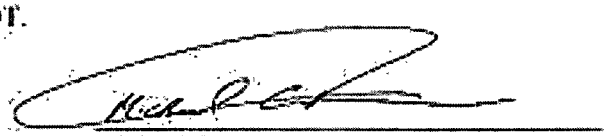
(a) That Plaintiff is informed and reasonably believes that Bennett has assigned, disposed of or secreted or is about to assign, dispose of or secrete his property with the intent to defraud Plaintiff and to avoid payment of the Debt; and

(b) That Plaintiff's reasonable belief is based on Michael Rose's face-to-face meeting with Bennett on July 20, 2011, in which Bennett represented that he would secrete his assets and would hide and/or dispose of his assets in order to prevent Plaintiff from collecting on

Bennett's guaranty of the Debt.

3. That Plaintiff has asserted causes of action against Defendants for recovery of the Debt.

FURTHER AFFIANT SAYETH NOT.



Michael Rose

Sworn to before me this
16 day of September 2011

Notary Public for SC
My commission expires: 7/27/2015

Carla S. Ducote
NOTARY PUBLIC
State of South Carolina
My Commission Expires
July 27, 2019

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	NINTH JUDICIAL CIRCUIT
COUNTY OF CHARLESTON	)	CIVIL ACTION NO.: 2011-CP-10-4173
TD BANK, N.A., successor by merger to CAROLINA FIRST BANK,	)	**AFFIDAVIT OF JEFFREY MUMM**
Plaintiff,	)	
v.	)	
KIAWAH RESORT ASSOCIATES, L.P. and L. RUSSELL BENNETT,	)	
Defendants.	)	

Personally appeared before me, Jeffrey Mumm, who being duly sworn deposes and says as follows:

1. That he is Vice President at Plaintiff TD Bank, N.A., successor by merger to Carolina First Bank ("Plaintiff").

2. That as of May 26, 2011, the Defendants, including Defendant L. Russell Bennett ("Bennett"), are justly and truly indebted to Plaintiff in the total sum of Three Million Two Hundred Thirty-Two Thousand Nine Hundred Eighty and 07/100 Dollars ($3,232,980.07), plus interest, late charges, attorneys' fees and costs (the "Debt"), and that Plaintiff is entitled to an attachment against Bennett, upon the following grounds:

(a) That Plaintiff is informed and reasonably believes that Bennett has assigned, disposed of or secreted or is about to assign, dispose of or secrete his property with the intent to defraud Plaintiff and to avoid payment of the Debt; and

(b) That Plaintiff's reasonable belief is based on Jeffrey Mumm's face-to-face meeting with Bennett on July 20, 2011, in which Bennett represented that he would secrete his assets and would hide and/or dispose of his assets in order to prevent Plaintiff from collecting on

Bennett's guaranty of the Debt

3 That Plaintiff has asserted causes of action against Defendants for recovery of the Debt

FURTHER AFFIANT SAYETH NOT

Jeffrey Mumm

Sworn to before me this
31st day of ~~September~~ August 2011

Notary Public for Greenville County, South Carolina
My commission expires: May 5, 2018

STATE OF SOUTH CAROLINA)
)
COUNTY OF: CHARLESTON)
)
IN THE MATTER OF:ALAN SHEPPARD VS)
WILLIAM HIGGINS ET AL
)

IN THE CIRCUIT COURT

MOTION FOR NEW TRIAL

CASE NUMBER: 2011CP1004537

MOTION FOR A NEW TRIAL

Rule 60(b)

TO adequately address question of fraud in the REPLY TO MOTION AND SUPPORTING MEMORANDUM Dated October 29, 2012, to develop the record accordingly and make the court aware of all of the circumstances AND MOVE THE COURT FOR AN ORDER TAKING "JUDICAL NOTICE" OF THIS FRAUD the existence of a "planned and fraudulent scheme,"

Outside the court the same cause supports claims beyond a reasonable doubt. Here in the civil case the court does not find the same facts prove the same claims by the preponderance of the evidence. Historically similar cases in like circumstance did meet these fundamental requirements. Which calls into question procedural due process, and where this case finds itself in the balancing test in violation of the Fifth Amendment of the Constitution of the United States

To develop the record accordingly the circumstances so require,
Court must be aware of all of the circumstances before it acts.
that fraud will not prevail, that substance will not give way to form, that technical considerations will not prevent substantial justice from being done
Thus, the parties must be allowed to develop the record accordingly.

Applicant: ALAN SHEPPARD

FILED
2013 FEB 27 PM 12:09
JULIE J. ARMSTRONG
CLERK OF COURT
BY

Executed this 25 day of January, 2013.

Signature:	Alan Sheppard	Signature:	
Name:	ALAN SHEPPARD	Name:	
Address:	462 Commonwealth Rd	Address:	
	MtPleasant SC 29466		
Telephone (O):	843-224-9169	Telephone (O):	
(H):		(H):	

ORDER FOR NEW TRIAL

IT IS HEREBY ORDERED that the NEW TRIAL ☐ GRANTED ☒ DENIED

Executed this 20th day of February, 2013

P. McDonald
, Circuit Court Judge

FORM #352PC (1/89)
62-3-704, 62-3-706, 62-3-804, 62-3-1003

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON	)THE COURT OF GENERAL SESSIONS)
Alan Sheppard, PLAINTIFF, VS. William O. Higgins, et. al. DEFENDANTS.	) CASE NO. 2011-CP-10-4537

TRANSCRIPT OF RECORD

APRIL 25, 2012

CHARLESTON, SOUTH CAROLINA

B E F O R E:

The Honorable Stephanie P. McDonald

APPEARANCES:

ORIGINAL

Alan Sheppard, Pro Se, Plaintiff

Ellis Lesemann, Attorney for the Defendants
On behalf of Russell Bennett, Ronald Owens, Charles Darby, and Kiawah Resort and Associates

John Julius Pringle, Jr., Attorney for the Defendant
On behalf of William Higgins

John Lynn McCants, Esquire

Phyllis Norton, CVR, Nationally Certified Verbatim Court Reporter
100 Broad Street, Suite 236, Charleston, SC 29401
(843) 958-5083 PNorton@sccourts.org

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EXHIBITS - None Proffered

CERTIFICATION OF TRANSCRIPT - See Page 54

A transcript certified by the court reporter will bear an original signature on the attached certification sheet. Please contact the court reporter for additional certified transcripts.

Certification will satisfy Rule 80, Stenographic Report of Transcript as Evidence.

THE COURT: If y'all could go ahead and let my court reporter know everybody's name and who all y'all represent.

MR. LESEMANN: Sure. It is Ellis Lesemann on behalf of defendants Russell Bennett, Ronald Owens, Charles Darby, and Kiawah Resort and Associates.

MR. PRINGLE: And Jack Pringle on behalf of defendant William Higgins. And I guess at an appropriate time I would like to mention that Mr. -- one of the motions is listed separately from my motion which is part of the same case.

THE COURT: Okay. Well, do we want to just go ahead and do them all now?

MR. PRINGLE: That would be certainly the ---

THE COURT: Okay. Great.

MR. PRINGLE: --- preference.

THE COURT: Okay.

MR. MCCANTS: And, Your Honor, my name is Lynn McCants, attorney. I am here on behalf of Lynn McCants the defendant.

MR. SHEPPARD: I am Alan Sheppard. I am going to represent myself pro se. And one of my partners, Reed Simmons.

THE COURT: Mr. Simmons is just here for moral support?

MR. SHEPPARD: He was one of my partners in the project that all this stuff sort of ....

THE COURT: But you are individually the plaintiff?

MR. SHEPPARD: Yes, ma'am.
THE COURT: Okay. Because you are not allowed to represent anybody else. I know you know that.
MR. SHEPPARD: Right.
THE COURT: Okay.
MR. SHEPPARD: Yeah, moral support.
THE COURT: Great. All right. Happy to hear from you.
MR. LESEMANN: Your Honor, Ellis Lesemann, again, representing several defendants. We -- each defendant has a motion to dismiss. The grounds overlap in some cases.
THE COURT: Okay.
MR. LESEMANN: And the grounds are unique in some others. Your Honor, briefly, we are here before you today on a pro se complaint seeking $19,000,000 in damages relating to a real estate deal.
The parties came together as follows. Mr. Sheppard and Mr. Simmons had an entity called Wando River, LLC. They found a piece of property that they wanted to purchase and then develop, but they didn't have the financial wherewithal to do it themselves.
They approached Rusty Bennett and the Kiawah Group in order to be able to facilitate that purchase. Which happened. My clients signed a guarantee so that Mr. Sheppard and his entity could purchase the property in the first place. In exchange for that, consideration provided

by the Kiawah Group, what I will call them, they were granted a 40 percent interest in the -- in Wando River, basically a right to exercise the 40 percent interest.

THE COURT: Okay.

MR. LESEMANN: So roll forward a few years. There's a real estate contract signed with DR Horton that falls through. There are obviously things happening in the larger economy affecting the real estate values, and we come forward to December of 2007 and January of 2008.

We -- our clients begin to realize that Mr. Sheppard, Wando River, are not going to -- are not intending to honor the rights that were granted in exchange for the guarantee.

Just a little bit of background, Your Honor, just for the general picture. So we file an action in February of two thousand -- excuse me, it was December of 2006, January of 2007. We filed an action in February of 2007.

Which brings me to my first point, Your Honor. This entire dispute has been previously litigated, previously settled, and previously dismissed with prejudice.

We filed our action to enforce our rights under that contract. Mr. Sheppard and Wando River and I believe that either Mr. Simmons was either a part of that prior action -- I can confirm that ---

THE COURT: Was this in federal court or state court?

MR. LESEMANN: It was in state court, Your Honor. Case

No. 2008-CP-08-158. So that action was in Berkeley County involving Wando River, LLC; Mr. Sheppard; and Mr. Simmons as the defendant.

I handled that action, so I am personally aware of it. The now plaintiffs were represented by Robert Dodds initially and then by the late Cotton Harness in that action.

And as time went forward an opportunity to sell the property to Mr. McCants' client at Westbook through an entity, Wando E, the -- that transition and that opportunity is what ended up resolving the case, Your Honor. Everyone agreed to have that transaction go forward.

A settlement agreement was signed which is attached to my motion for judgment on the pleadings, Your Honor, as Exhibit C.

Mr. Simmons signed it. Mr. Sheppard signed it. Mr. Sheppard also signed it on behalf of Wando E. That closing went forward.

I believe the fact that Mr. McCants had handled that closing is why Mr. Sheppard has now chose to include him in this new lawsuit. That settlement agreement was written. It was negotiated through counsel. It was signed by all parties.

After the closing happened, which again required obviously as the owner of the property, Mr. Sheppard, and

Wando River, LLC, Mr. Simmons, they had to participate and they had to cooperate with that closing which occurred in the summer of 2008.

After the closing happened we filed a stipulation of dismissal with prejudice that Mr. Harness signed on behalf of his clients. That was filed in Berkeley County.

And as you know, that operation is res judicata, not -- of the entire action, Your Honor. And I -- one thing that I may not have mentioned, it is in April of 2008 before the settlement, before the stipulation, an amended answer and counterclaims were filed on behalf of these plaintiffs. That document is attached as Exhibit B to the motion.

And you will see if -- when one looks at that document you can see the same allegations, that there was a $500,000 earnest money deposit that Mr. Pringle's client, Mr. Higgins, didn't handle properly, that they should receive the deposit, that my client interfered with the -- with their, their opportunity or their desire to sell the property to Mr. Westbrook, which actually did go forward.

THE COURT: The sale went forward?

MR. LESEMANN: The sale went forward, yes.

THE COURT: Then how did y'all interfere with the ability to sell ---

MR. LESEMANN: Exactly. At the time -- at the time the claims were filed it had not closed at that time.

THE COURT: Okay. But it has closed since?

MR. LESEMANN: Absolutely, Your Honor. And so, Your Honor, I bring that up for a couple of reasons. First, again, to show the matter has been fully litigated, fully resolved, dismissed with prejudice. So there's a settlement and release and res judicata that is appropriate for motion -- a motion for judgment on the pleadings.

And in addition -- in addition, the entire matter is time barring. If you set aside the closing, the stipulation, the settlement, all those things that have already happened with the full consent of all the parties while being represented, the matters are all -- the earnest money issue dates back to 2006. Exhibits E and F to my motion for judgment on the pleadings, Your Honor, and as you know under Rule 10 the matters attached to the pleadings can be considered as part of the pleadings for purposes of our motion.

You will see an email and also a document that consents to release of the earnest money. Those date back to September of 2006. Mr. Sheppard filed this action in June of 2011. So let's call it four and three quarter years before the action was filed.

Those types of causes of action would have a three-year statute of limitations in terms of conversion, etc., malpractice, you know, negligence; those are all barred.

And in addition, the counter claims initially filed by these -- by this plaintiff and by his -- his partner and his entity, as I mentioned, they were initially filed in 2008 which means they had arisen in the plaintiff's mind at that time.

This action was not re-filed -- again, we never expected to see any of this again. The action was not re-filed until June 2011. So there was more than three years that passed between the initial time these claims were asserted and when they were reasserted in the action that we have before you today.

And finally, Your Honor, within the pro se complaint I believe that these first arguments that I've mentioned call for dismissal of the complaint in its entirety.

But there are no cause of actions stated at all against defendant KRA and defendant Charles Darby, so that there is just a failure to state a claim against those two parties altogether. Thank you.

THE COURT: Okay. Happy to hear from you, sir.

MR. SHEPPARD: Yes, ma'am.

THE COURT: Where is the $19,000,000 figure come from?

MR. SHEPPARD: It was from the guarantors. When all this stuff happened, they -- one of the first things that went on as soon as we closed on the loan they -- we had an agreement to develop the property together and move forward.

We closed on August 2004. By December 2004 they came to us with new terms for a development agreement that it totally reversed the ownership percentage 180 percent.

THE COURT: So you were harmed in December of 2004 you allege?

MR. SHEPPARD: Well, I've been harmed ever since I met the guys.

THE COURT: Well, let me ask you this question. You -- I know you are representing yourself.

MR. SHEPPARD: But to answer your question, it came from their -- they put pro forma. And it was the amount of the -- what the property -- they found the property was worth. So I just ---

THE COURT: But you have sold the property since, correct?

MR. SHEPPARD: Yes, ma'am.

THE COURT: So what are your damages even if I were to let this go forward?

MR. SHEPPARD: Well, first of all, damages I will leave that up to you.

THE COURT: Well, okay, let's go back. Why is this not barred by the doctrine of res judicata as having been actually and necessarily litigated in the Berkeley County litigation?

MR. SHEPPARD: All the documents they are talking about

are fraudulent. There is a document that -- an investor agreement that I guess the guarantors or the defendants, whatever, they were trying to get it changed. They wanted us to keep signing these -- this amendment that ---

THE COURT: Let me ask you a question.

MR. SHEPPARD: --- I have a copy here. And we ---

THE COURT: Did those come up in the Berkeley County case?

MR. SHEPPARD: No, ma'am, I never -- I've got -- I never was allowed to even speak or even get a hold of -- talk to anybody. This is the first time I've been in a courtroom since all of this stuff happened. I've suffered all kind of fraudulent ---

THE COURT: Well, no, no. I need you to explain to me what happened in the Berkeley County case.

MR. SHEPPARD: The case was dismissed because I filed -- served -- I served the papers on the 121st day and it is supposed to be filed within 120 days.

And I was being represented pro se. I had just come down with cancer. And I was -- I was -- extending that weekend I was counting the weekend -- I figured, you know, since the 120th day was over the weekend I figured -- you know what; I was meeting with a lawyer, Darryl Hawkins, trying to get representation. And I thought it would be best that I would, you know, spend my last minutes trying to

have a lawyer versus I really didn't want to do this pro se.

THE COURT: Okay. I ---

MR. PRINGLE: Your Honor.

THE COURT: Yes.

MR. PRINGLE: I am not rising to argue with Mr. Sheppard but in fact to resolve a little bit of confusion. What Mr. Sheppard is discussing was yet another action that I will discuss ---

THE COURT: Okay.

MR. PRINGLE: --- in discussing the failure to serve and which is another docket ---

THE COURT: And I thought that might be the case.

MR. PRINGLE: Okay.

THE COURT: And let me be more specific. And I apologize for -- I didn't realize there was yet another lawsuit that had stemmed from this. I am looking at a lawsuit with the caption of 2008 Common Pleas, 08, which is the county code for Berkeley County, 158. KRA, LP, and Russell Bennett ---

MR. SHEPPARD: Correct.

THE COURT: --- verses Wando River, LLC; Alan J. Sheppard; ---

MR. SHEPPARD: That's correct.

THE COURT: --- and Julian Reed Simmons.

MR. SHEPPARD: That's the one I am referencing. It

was ---

THE COURT: Let me finish my question, okay. She can only take one of us talking at the same time.

MR. SHEPPARD: Yes, ma'am.

THE COURT: And so I will let you talk if you are answering my questions. If you don't answer my questions I am going to interrupt you and not let you talk. Okay?

MR. SHEPPARD: Yes, ma'am.

THE COURT: But then I'm also looking at a settlement and the lease agreement and there is a signature under the name Alan Sheppard. And it appears that that litigation was resolved. Was that litigation resolved?

MR. SHEPPARD: No, ma'am. I was under duress. And I can explain.

THE COURT: Okay. So, yes, ma'am, it was resolved but I was under duress; or, no, ma'am, it wasn't resolved? Those are your two choices.

MR. SHEPPARD: No, ma'am, it wasn't resolved.

THE COURT: Okay. Well, were you represented by counsel?

MR. SHEPPARD: No, ma'am.

THE COURT: You were pro se in that case as well?

MR. SHEPPARD: Yes, ma'am.

THE COURT: Okay.

MR. SHEPPARD: I take it back. That's not correct.

THE COURT: Let's do this. Since you aren't an attorney I am going to ask you to raise your right hand for me.

MR. SHEPPARD: Yes, ma'am.

THE COURT: Do you swear to tell the truth, the whole truth and nothing but the truth so help you God?

MR. SHEPPARD: I do.

THE COURT: Okay. Don't make any misrepresentations in here.

MR. SHEPPARD: Yes, ma'am.

THE COURT: And please be aware that I have access to all the pleadings filed anywhere in the state.

MR. SHEPPARD: Yes, ma'am.

THE COURT: Okay. All right. Now I am looking at the complaint in that action. It appears y'all were the defendants in that case.

MR. SHEPPARD: Correct.

THE COURT: So they sued you?

MR. SHEPPARD: Yes, ma'am.

THE COURT: Okay. And did you have an attorney? Who did Cotton ---

PLAINTIFF ATTY: I did.

THE COURT: --- and Harness represent?

MR. SHEPPARD: Cotton stepped in at the last minute because there was no -- there was no law being followed. It

was sort of a -- you know, it was sort of like a judicially created defense.

THE COURT: I'm sorry?

MR. SHEPPARD: You know, they were like making up -- they were just coming out and saying things that were not correct. And they would move forward and they would just file stuff. And of course that left us, you know, penniless.

And we had -- we were just doing the best we could. And in the middle of it I got sick. And if I could just say one thing. Because of the question about -- my swearing oath. Because of all of that, knowing that, you know, under oath and statements that you make that, you know, you have to be clear about them, I put together an overview -- my -- an overview of everything that relates to this case.

And I have it here. You know, it is signed. It says, you know, I can attest it is accurate to the best of my knowledge and all that good stuff. And it covers the whole -- the whole story of how everything unfolded.

It is a really complex case. I really am not -- you know, wasn't enthused about being a pro se litigant.

THE COURT: Well, and I don't -- you're certainly constitutionally entitled to represent yourself. It would be a lot better if you had an attorney.

MR. SHEPPARD: I have seen a lot of attorneys.

THE COURT: And nobody would take it?
MR. SHEPPARD: No, ma'am.
THE COURT: Okay. Let me ask you one more question. Because you answered this before I had you under oath. Or you just -- it wasn't even responsive to my questions. You just told me you have never had a chance to be in court on this before.
MR. SHEPPARD: No, ma'am.
THE COURT: But that wasn't true, was it? I am looking at this lawsuit that was filed that you were a defendant in.
MR. SHEPPARD: You know, I never made it into court. I was actually in the doctor's office being told that I had a second dealing with cancer. And when I pulled into -- I mean the doctor had me, you know, held up.
THE COURT: All right.
MR. SHEPPARD: And by the time I had got there it had been dismissed.
THE COURT: Mr. Sheppard, I am looking at this settlement and release agreement; okay?
MR. SHEPPARD: Yes, sir.
THE COURT: And it has got a signature under the name Alan Sheppard.
MR. SHEPPARD: Yes, ma'am.
THE COURT: Is that your signature on that ---
MR. SHEPPARD: Yes, ma'am.

THE COURT: --- settlement and release agreement?
MR. SHEPPARD: It is.
THE COURT: And that relates to that Berkeley County litigation, correct?
MR. SHEPPARD: What is the date on that?
THE COURT: I don't know.
MR. LESEMANN: Your Honor, it is on the first page in the first paragraph. And the date I believe is June 26th, 2008 or ---
MR. SHEPPARD: 2008 or '07?
MR. LESEMANN: 2008.
MR. SHEPPARD: It is 2008.
THE COURT: Okay. I am happy to hear about what happened in 2008. But what I asked you is is it your signature or not.
MR. SHEPPARD: Yes, ma'am.
THE COURT: Okay. Now why does it matter what date it was?
MR. SHEPPARD: It doesn't I guess.
THE COURT: Okay.
MR. SHEPPARD: It was my signature, yes, ma'am.
THE COURT: Now and I am going to back to my question from before. If in South Carolina, and really in all the 50 states, it is the law that if a case has already been litigated or the fact that that case were already litigated

and the parties had an opportunity to be there and particularly when they were represented by counsel to be there you don't get to come to court again on that.

We have two doctrines. One is res judicata, and one is collateral estoppel. They are arguing that your case needs to be thrown out because of that. I need you to explain to me why I shouldn't.

MR. SHEPPARD: The case -- I'm not -- in court I am not bringing up the case because of that. I am bringing up the case because in light of recent events that I found out of -- I mean 2010 things that I found out about that were -- that were, you know, mind-boggling to say the least.

THE COURT: Things that related to the events ---

MR. SHEPPARD: Yes ---

THE COURT: --- from the first ---

MR. SHEPPARD: Yes, ma'am.

THE COURT: --- suit?

MR. SHEPPARD: Yes, ma'am.

THE COURT: Okay. I am not sure what the date on the first suit is. But we have a rule. It is called Rule 60(b) of the South Carolina Rules of Civil Procedure. And there are certain times, even though this was a settlement, that you can be relieved from judgment for fraud, misrepresentation, misconduct, you can argue that the judgment is void. But you have to do that in relation to

the prior lawsuit. You don't get to file another lawsuit. And it also generally you have to do that within a year. But just because you find out some things later doesn't mean you get to go to court again.

MR. SHEPPARD: That is not my reason for coming to court.

THE COURT: All right. Why are you here today?

MR. SHEPPARD: The -- all the proceedings that you see that are signed up there I believe are fraudulent by mistake.

And that when I talk about the judicially created defense, you know, sort of what I mean is they were sort of throwing things at us in such a mass, you know, form of justice from their part and dictating justice to us.

So what happened was at the end of 2007 there was -- they were trying to take property. I was trying to sell -- we had 12 contracts for over $12,000,000. They kept pushing this amendment to change their agreement, their investor agreement, that had them tied to our property. We had other financing. They intervened or interfered.

At the end of 2007 when we wouldn't sign that, they just moved forward in two -- we sold the property, paid off the note, two -- December 28, 2007.

THE COURT: Okay, sir, I understand that.

MR. SHEPPARD: At the end of 2007 there was -- the

thing they were trying to get us to sign said that if we didn't -- it was an amendment that said they wanted to change this clause in there.

It said -- in our agreement it said this agreement terminates at which time the loan is paid off. So we paid off the loan. The agreement terminated. They moved forward on filing a lis pendens holding up the property, keeping us from closing on the ---

THE COURT: And when was that, sir, the lis pendens?

MR. SHEPPARD: The lis pendens was filed in February of two thousand -- excuse me, January of 2008.

THE COURT: Okay. January 2008.

MR. SHEPPARD: And I believe that was fraudulent by mistake as well.

THE COURT: Okay. Let me stop you real quick. January 2008. And then I am looking at the settlement and release agreement was signed ---

(Pause for court to review file.)

MR. LESEMANN: Again, Your Honor, the preamble. I'm sorry, it is only on the first page. June 26, 2008. I think at the top of the page.

THE COURT: Yes. It is better when all of the signature pages are signed too. June 26 of 2008. So that is six months after that? And that related -- that settlement agreement related to that same property that had

the lis pendens on it?

MR. SHEPPARD: Yes, ma'am.

THE COURT: Okay. Sir, this action is barred by the doctrine of res judicata. Okay. I think it is probably also barred by the statute of limitations. If something happened in 2008 and then you filed this in -- I guess the settlement agreement was signed June 26, '08. And then this was filed you said in July of 2011?

MR. LESEMANN: Late June, Your Honor. June 27, 2011.

THE COURT: So the date after. So even if it wasn't barred by res judicata it would be barred by the statute of limitations.

Yes, sir?

MR. SHEPPARD: The statute of limitations, we closed on the loan -- we closed on the -- it closed. We never got any proceeds. We signed a release that we didn't get any consideration for. On June 28th, you know, all of this stuff happens and, you know, we sort of move forward.

I went to file a suit against Mr. Higgins and Trenholm Walker and Clay McCullough who I respect. And as we were getting ready to go to court I met with Trenholm and Clay's lawyer and they told me -- I said what the heck happened, y'all -- I never got the escrow funds that I contacted y'all.

THE COURT: But what does that have to do with this

lawsuit?

MR. SHEPPARD: It has a lot to do with it. It is a very complex case. And I tell you what might be better. Because of the way that my -- the complaint that I filed looks so trashy ---

THE COURT: Yeah, that is a federal form using federal court ---

MR. SHEPPARD: What happened ---

THE COURT: --- generally for pro se prisoner lawsuits.

MR. SHEPPARD: What happened, when all this stuff came about -- I mean I was literally just coming out of the hospital when I am finding out about all this stuff. I came in with all my stuff, you know, on what do you call it, a little drive. Put it in the computer. Worked on it for two hours. Had Mr. Simmons with me. And it is about ten to 5:00 or -- you know, ten minutes before they close. I couldn't print it. It doesn't print. They bring somebody over. It doesn't print. I had to piece together from just ---

THE COURT: I'm happy to read whatever you want me to read ---

MR. SHEPPARD: Yeah, that would be great.

THE COURT: --- and make it an exhibit. However, ---

MR. SHEPPARD: Yes, ma'am.

THE COURT: --- what their motion addresses today is

judgment on the pleading which is the paper you filed to get into court, the complaint, that form. I am bound to look at what you claim in that form and what they claim in response to it.

MR. SHEPPARD: Okay.

THE COURT: And that is what is before the court today. Do you understand that, sir?

MR. SHEPPARD: What about -- yes, but I thought that there was an option that in proceedings that -- I thought that there was a ruling that you can, you know, you don't have to put it in writing that you have an option at a hearing, your pretrial hearing, to give a brief that explains all that.

THE COURT: I'm happy to take a brief ---

MR. SHEPPARD: Yes, ma'am.

THE COURT: --- from you. In opposition -- if that is your brief ---

MR. SHEPPARD: Yes, ma'am.

THE COURT: --- in opposition, ---

MR. SHEPPARD: Yes, ma'am.

THE COURT: --- I'm happy to take it ---

MR. SHEPPARD: Okay.

THE COURT: --- and make it a part of the record ---

MR. SHEPPARD: Yes, sir.

THE COURT: --- if that's what you want that to be.

MR. SHEPPARD: Yeah, and I mean ---
THE COURT: But ---
MR. SHEPPARD: And I ---
THE COURT: You -- they're entitled to judgment on the pleadings if this case has already been actually and necessarily litigated in another court. It sounds to me like it has, you are unhappy with what happened and ---
MR. SHEPPARD: No ---
THE COURT: --- you wish --- don't interrupt me again.
MR. SHEPPARD: Excuse me.
THE COURT: Okay. And you wish that you hadn't signed that settlement agreement. And you say that you were under duress in signing that settlement agreement.
But nobody ever moved to set aside that settlement agreement or tried to appeal from anything or file anything to reopen that case. You don't just get to keep going back to court after you have already had your day in court even if it is in another county. Do you understand that?
MR. SHEPPARD: Yes, ma'am, I do understand that very much.
THE COURT: Okay.
MR. SHEPPARD: Very much. And I have had to -- I have had to do a lot of, you know, research to -- and I have had a lot of people that have helped me with my case that would not be here because of the acts that took place.

And I've been directed -- I have met the statute of limitations within, you know, within a couple of days. I did my best with what I had to work with. And I give you my word that there is nothing -- there is nothing phony and made up or me trying to re- -- re-address ---

THE COURT: As I said, I'm happy to take a look at what you have brought. If you want to give it to my court staff they will bring it up to me. Do you have a copy for me?

MR. SHEPPARD: Yes, ma'am, I do.

THE COURT: Okay.

MR. SHEPPARD: It is long but ---

THE COURT: He will bring it. Thank you.

MR. SHEPPARD: It is long but ---

THE COURT: That's okay.

MR. SHEPPARD: You know, it goes through a lot -- it addresses laws and it addresses ---

THE COURT: Have they been provided with a copy of this?

MR. SHEPPARD: This is the first time I've been able to get to anybody ---

THE COURT: No, sir, I am not allowed to review it ---

MR. SHEPPARD: I've got extra copies.

THE COURT: Okay. You need to give all of them a copy of it.

MR. SHEPPARD: I don't have all of them a copy. But

I've got most of them a copy.

THE COURT: I am happy to review this and make it part of the record if it is appropriately part of the record. Really what I'm bound to look at today is your complaint that brought you into court. They have moved to dismiss it.

MR. SHEPPARD: Right.

THE COURT: I understand that you don't like what happened in Berkeley County.

MR. SHEPPARD: I promise you it has nothing to do with that.

THE COURT: They say it does.

MR. SHEPPARD: I know they do.

THE COURT: And I need to know why it doesn't. And I still don't.

MR. SHEPPARD: Whenever I try to tell a story -- it is -- it takes -- it is a long story. I mean if we want to spend some time with it ---

THE COURT: No ---

MR. SHEPPARD: I don't -- I understand ---

THE COURT: We are on the pleadings. Why is what you put forth in your well-pleaded complaint, that is the rule, the well-pleaded complaint, enough to keep you in court today?

MR. SHEPPARD: Because I believe that the documents that you are -- that they are pleading all of this off of

and the exhibits that are referenced in their answer are all fraudulent by mistake.

THE COURT: Okay. Let's go through those. I want to understand why you think they are fraudulent. And then we are going to hear back from the other side. Because we've got several other motions.

MR. SHEPPARD: Okay. And I'm very happy to be here to have a chance to ....

THE COURT: Okay. Exhibit A is the complaint from Berkeley County. That is fraudulent?

MR. SHEPPARD: What is the date on it?

THE COURT: Sir, you have a copy of what they filed; don't you? I need you to pull out ---

MR. SHEPPARD: Yes, ma'am, all of that is fraudulent because the relief -- the -- everything that was filed I paid the note off in 2007 ---

THE COURT: No, sir. No, sir. No, sir. I need to know if the document itself is that the complaint that was filed in Berkeley County in the lawsuit; yes or no? Take a look at it. You were a defendant. They were required to serve you with all of their pleadings. You don't have those with you today?

MR. SHEPPARD: No, ma'am.

THE COURT: Okay. It is a complaint with a civil action cover sheet, okay.

MR. SHEPPARD: Yes, ma'am.
THE COURT: And it is Complaint 2008-CP-08-158 with Mary Brown's stamp that it was filed on 2008, February 4th.
You have an extra copy? That would be great.
MR. SHEPPARD: Okay. Yeah, I am familiar with that.
THE COURT: Okay. That is the document from that case.
MR. SHEPPARD: Yes, ma'am.
THE COURT: Okay. The next document, Exhibit B, is an amended answer and counterclaim filed in that case by Robert S. Dodd.
MR. SHEPPARD: Yes, ma'am.
THE COURT: And he says he appeared on behalf of Wando River, LLC, and Alan J. Sheppard and Julian Reed Simmons, III.
MR. SHEPPARD: Correct.
THE COURT: Is that accurate?
MR. SHEPPARD: Yes, ma'am.
THE COURT: Was he your lawyer for at least part of the time in that case?
MR. SHEPPARD: The whole time, yes, ma'am.
THE COURT: Okay. The next document is Exhibit C which I see as a settlement and release agreement. It is five pages long. And it is dated -- well, it says this agreement is made the 26th of June 2008; and your signature that you've already agreed was your signature is on Page 4.

MR. SHEPPARD: Yes, ma'am.
THE COURT: Is that the settlement agreement?
MR. SHEPPARD: Yes, ma'am.
THE COURT: Okay. And how is that -- is that a fraudulent document or is that a copy of the settlement agreement?
MR. SHEPPARD: That would follow suit to the original ---
THE COURT: Okay.
MR. SHEPPARD: Original suit.
THE COURT: Great. The stipulation of dismissal with prejudice filed 2008, July 15th, and Cotton Harness signed off on that. It appears to be dated June 25th, 2008. Is that the stipulation of dismissal with prejudice from the Berkeley County suit?
MR. SHEPPARD: That's ---
THE COURT: You have got it in your packet.
MR. SHEPPARD: Is it stipulation ---
THE COURT: It is Exhibit D.
MR. SHEPPARD: Right. It is correct. We -- that was all followed suit to -- Cotton was not my lawyer, my friend. And these guys were -- we couldn't -- they wouldn't do anything, just were holding all of our money. You know, everything they took -- you know, took $3.8 million from me. You know, 500,000 the first-time. After I hired two other

attorneys to approach them and make sure they didn't do it. And I got his informed consent to make sure he understood.

After he did his informed consent he came back and said oops, you know what -- the ink was still wet on the paper; and he says oh you know what, I think I'm going to go ahead and give it to the other guy.

So he gave $500,000 of my funds to another group outside of my LLC, outside of my directions. And his -- that he had already given his informed consent to Mr. Walker and Mr. McCullough.

So, you know, I released Mr. McCullough and Mr. Walker from the case and turned around and said hey you know I don't know what the heck happened here but, you know, we came to court with this Mr. Ellis.

THE COURT: Okay. Here is what I am going to do, sir. You have identified these pleadings. And the property at issue in this case was also at issue in the Berkeley County case, correct? The deal you had with them was at issue in the Berkeley County case?

MR. LESEMANN: Was it the same piece of real estate?

MR. SHEPPARD: Yeah, piece of real estate.

THE COURT: Okay. I am going to review those pleadings in great detail. And I am going to also reveal -- review your packet. All right?

MR. SHEPPARD: Okay.

THE COURT: And I am going to hold this motion under advisement until I have had a chance to review all of this.

MR. SHEPPARD: Okay. And one thing that I want to add that sort of changed all of this is that -- sort of brought me here today and found me filing suit, one thing I found out after, you know, all the informed consents, the money being given to somebody else and us being held under water until the money was given away is that that the guarantors who -- you know, were acting in good faith and we were all trying to do good that after everything was said and done I find out that this guy, Mr. Higgins, who we had -- who had been brought in as a real estate ethics professional sits on the chair of the South Carolina Bar as their, you know, Real Estate Ethics Advisory Committee, he was brought in as a professional to maintain integrity of our deal of the transactions.

After all of the corruption and stuff that was, you know, happened to me I find out that he, Mr. Higgins, and the guarantors have been doing business together for 15 or 20 years. It is -- it is the ---

THE COURT: Okay.

MR. SHEPPARD: --- ugliest thing I've ever seen. It's all detailed in here.

THE COURT: Like I said, I am going to review all of this.

MR. SHEPPARD: That would be great.
THE COURT: And I'm not going to rule on your motion -- the motion today.
MR. SHEPPARD: Thank you.
THE COURT: I am going to take it under advisement. But you do have a pretty hefty legal hurdle.
MR. SHEPPARD: I understand that.
THE COURT: I just want you to understand that.
MR. SHEPPARD: I do understand that.
THE COURT: Okay. Now I need to hear the next motion. You will get a brief minute to respond and then we will keep going. All right. It looks to me like what I really need to see is this document you prepared.
MR. SHEPPARD: The only thing I would ask is that after, you know, the hearings and stuff I would just ask for, you know, an opportunity to stand in front of you and answer any questions that you have or and, you know, explain anything. I hope that the stuff I gave you will take care of that.
THE COURT: I will review it.
MR. SHEPPARD: Thank you.
THE COURT: Okay. Yes, sir.
MR. PRINGLE: Your Honor, Jack Pringle for the defendant, William O. Higgins. And I've got a memorandum.
THE COURT: Okay.

MR. PRINGLE: This memorandum I apologize has not yet been filed.

THE COURT: That's okay.

MR. PRINGLE: I managed to time things pretty well coming from Columbia but not quite enough. I am not so sure exactly what to add other than I will say just as a predicate matter I know that you have taken Mr. Sheppard's packet.

THE COURT: I have.

MR. PRINGLE: The one thing that I, you know, would just point out and won't necessarily object to it except that, you know, where we are is certainly on the pleadings and the facts alleged therein. And ---

THE COURT: I agree.

MR. PRINGLE: So okay.

THE COURT: And I think I have explained that to Mr. ---

MR. PRINGLE: Okay.

THE COURT: --- Wiggin -- I mean to Mr. Sheppard ---

MR. PRINGLE: Sure.

THE COURT: --- that this is a motion for judgment on the pleading. But I want him to get a chance to tell his whole story. But if for some reason I venture outside the pleadings in making the legal decision we will convert it to a motion for summary judgment and we will all deal with it

then, okay, and I will let y'all submit what needs to be submitted.

MR. PRINGLE: And I am going to stick to what is in the memorandum; although it would be, you know, just remiss of me not to mention also that what -- the person I am representing here today is one of my partners and one of my close friends and who is indeed has been involved in the writing of the South Carolina Rules of Professional Responsibility.

And, you know, when I -- when I respond and I hear allegations about corruption and self dealing and fraud I take great umbrage to that. And I think these documents demonstrate something completely different.

THE COURT: Okay.

MR. PRINGLE: Mr. Sheppard in connect -- following this transaction or these -- this series of transactions involving the real estate that you have heard about filed an action in Charleston County in the Circuit Court in 2009 alleging legal malpractice against my client, against Mr. Higgins.

THE COURT: That is a separate case from this one?

MR. PRINGLE: That was a separate case. That was ---

THE COURT: How many suits total arising out of this property or transaction has Mr. Sheppard been involved in?

MR. PRINGLE: Well, there was -- I believe the Berkeley

County action we have discussed.

THE COURT: The Berkeley County action that was dismissed he said on the ---

MR. PRINGLE: Right.

THE COURT: --- 121 days?

MR. PRINGLE: Right -- no, no. That's -- that's mine actually.

THE COURT: Okay.

MR. PRINGLE: There is the Berkeley County one that we discussed that was resolved via a settlement agreement and then a stipulation of dismissal. Then there is -- the one I am to describe here, 2009-CP-10-5838 ---

THE COURT: Okay.

MR. PRINGLE: --- which was Mr. Sheppard's complaint against my client in 2009. Then there was the complaint in this instant case that I am here on, 2011-CP-10-4537 ---

THE COURT: Okay.

MR. PRINGLE: --- whereas I am going to describe he re-alleged the exact same things again.

THE COURT: Okay.

MR. PRINGLE: And then there is Mr. Lesemann's action is what I call the -- and I am not sure what the case number is that he is here on. Is that forty -- well, it is still 4537 ---

THE COURT: I think they are all ---

MR. PRINGLE: Yeah.
THE COURT: ---- 4537.
MR. PRINGLE: Well, they there are all 45 -- you are right.
THE COURT: What I am trying to figure out ---
MR. PRINGLE: Yeah.
THE COURT: --- is this the fourth or the third?
MR. LESEMANN: I believe it is the third.
MR. PRINGLE: The third. That's right. Okay.
THE COURT: Got it.
MR. PRINGLE: And so the plaintiff filed this complaint in 2009. At that time some -- a couple of my partners filed a motion to dismiss alleging among other things that the plaintiff had failed to serve the complaint within the 120 days provided by Rule 3 and that necessarily he had also gone beyond the statute of limitations at that time.

As I have attached to the memorandum, Judge Young dismissed plaintiff's claims against my client with prejudice in January of 2011. That order is attached to my memorandum. And I'm certainly asking that the court, you know, take judicial notice of that because it is in the court's files.

And clearly there is some discussion in my memorandum of the rationale under which or by which it was dismissed in

demonstrating that it -- because of the way it was served going beyond -- it had gone well beyond the statute of limitations that was applicable to a claim for legal malpractice.

In addition, as an additional sustaining ground, the court's order also noted that given that this was a legal malpractice action the plaintiff had failed to attach an affidavit as required by the fairly recent ---

THE COURT: And I was going to ask about that.

MR. PRINGLE: In Title 15.

THE COURT: Okay.

MR. PRINGLE: 15-36-100(b) did not contain that, so dismissed that. Then flash forward to the complaint that was filed in this case on June 27th, 2011. I will also add just parenthetically in the interim my client Mr. Higgins responded to a complaint and an inquiry by an entity, you know, outside the court system that has to do with -- with ethics.

THE COURT: Okay.

MR. PRINGLE: And had, you know, resolved without any further action. Then this action is filed on June 27th.

If you look -- and I have noted this in my memorandum, the complaints are not only functionally identical, they are exactly identical including typographical errors, making the same claims that Mr. Higgins was derelict in his

representation of Mr. Sheppard in connection with the transaction on this property.

So for some of the same reasons that Mr. Lesemann has raised, there is an order from this court that dismissed his claims with prejudice. That means that they cannot be re-filed or re-ajudicated.

Moreover, you know, just as an alternative in the alternative Mr. Sheppard's complaint failed again to attach the expert affidavit that's specifically required for a legal malpractice cause of action.

And I just close by saying this would all be I guess just have some element of absurdity to it without anything deeper than that if I had not heard so many allegations against of professional negligence against not only my partner but my colleagues and friends, Mr. McCullough and Mr. Walker. And I think this -- as the complaint makes clear and these filings, this action is well over, already been done, and couldn't go forward even if there was any life in it. Which there isn't.

THE COURT: I understand. Thank you, sir. Mr. Sheppard, you get to respond. But I need to ask you one question first.

MR. SHEPPARD: Yes, ma'am.

THE COURT: Our general assembly has enacted a statutory scheme for how you sue professionals, architects,

doctors, lawyers. You have to file what is known as a notice of intent to file with an affidavit from an expert witness ---

MR. SHEPPARD: Right.

THE COURT: --- explaining why the action is allowed to go forward.

MR. SHEPPARD: Right.

THE COURT: That didn't happen either in the prior action or this one.

MR. SHEPPARD: It did happen.

THE COURT: How did it happen?

MR. SHEPPARD: It did happen. I couldn't get a lawyer because of Mr. Higgins being the real estate professional ethics. And because I didn't have a lawyer I couldn't get a professional ---

THE COURT: Okay. Let me stop you.

MR. SHEPPARD: So I filed an affidavit myself.

THE COURT: I am trying to listen to your argument and let you speak. But when you misrepresent things to the court it makes it difficult for me to do that, okay. I asked you why it didn't happen, and you said it did happen.

MR. SHEPPARD: Yes, ma'am.

THE COURT: Did it happen or not.

MR. SHEPPARD: Yes, it did.

THE COURT: You have an affidavit from an expert?

MR. SHEPPARD: I -- under the 15-100 statute I -- I've done an affidavit myself, being a person that was ---

THE COURT: No, sir. No, sir. You have to have an affidavit signed by somebody that you are going to bring as an expert witness. Did that ---

MR. SHEPPARD: No, ma'am.

THE COURT: --- happen?

MR. SHEPPARD: No, ma'am. I ---

THE COURT: Okay. Then don't tell me it did happen. I need you to answer my questions or tell me you don't understand them and I will explain it more. Okay?

MR. SHEPPARD: Yes, ma'am.

THE COURT: So you didn't file the notice of intent to file suit, correct? You just filed your complaint, right?

MR. SHEPPARD: Yes, ma'am.

THE COURT: Okay.

MR. SHEPPARD: I filed the complaint. And ---

THE COURT: Did you ever file an affidavit from an expert witness in any legal malpractice action; yes or no?

MR. SHEPPARD: I need to ---

THE COURT: Yes or no?

MR. SHEPPARD: --- understand. I don't understand.

THE COURT: Okay. Under the statute -- and when you represent yourself pro se you have to know what to do.

MR. SHEPPARD: Right.

THE COURT: You have to file an affidavit. Not signed by you but signed by some witness, qualified witness, that is going to come forward and say that you have enough of an action to go forward against a legal professional, medical professional. It applies professionally across the board.

MR. SHEPPARD: Yes, ma'am.

THE COURT: Okay. Have you ever filed in any court an affidavit signed by such an expert witness?

MR. SHEPPARD: Not by any other witness, no, ma'am.

THE COURT: Have -- I am going to ask ---

MR. SHEPPARD: No.

THE COURT: No. Okay. I need you to answer my questions, okay?

MR. SHEPPARD: Yes, ma'am.

THE COURT: All right. So we didn't comply with that. Okay. And did you understand that Judge Young dismissed the prior action against Mr. Higgins with prejudice; do you understand that? Have you seen Judge Young's order?

MR. SHEPPARD: You know -- I ....

THE COURT: Have you seen Judge Young's order?

MR. SHEPPARD: I haven't looked at it -- I thought it was -- I really thought it was without prejudice.

THE COURT: Okay. Well, let's look at it. I want to make sure.

MR. SHEPPARD: I was under the impression it was

without prejudice. May I address the ---

THE COURT: Okay. I am going to read from the conclusion. Do you have a copy of their brief and their attachment?

MR. SHEPPARD: Yes, ma'am.

THE COURT: On Page 9 of Judge Young's order for the reason set forth -- set forth above the complaint is dismissed with prejudice as to Defendant William O. Higgins. Do you see that, sir?

MR. SHEPPARD: Yes, ma'am.

THE COURT: Okay. And that was your prior legal malpractice action?

MR. SHEPPARD: Yes, ma'am.

THE COURT: Okay. Now what do you want to tell me?

MR. SHEPPARD: As all of this stuff was unfolding I read the 15-100, I believe it is, document. And there is a part in there that says you -- either a professional witness affidavit from a professional witness or a person that is immersed in the dealings, day-to-day dealings, that has knowledge of all the stuff happened. And that -- I would fall under that.

THE COURT: Okay. Well ---

MR. SHEPPARD: And so I answered -- I just gave an accurate affidavit that I swore was true.

THE COURT: All right. Well, I -- that is fine. And

but also you do have -- you do -- you are aware of Judge Young's order that dismissed that action with prejudice, correct?

MR. SHEPPARD: Yes, ma'am.

THE COURT: Okay. I am now bound by that, that order. Okay. I'm still going to read your ---

MR. SHEPPARD: Yes, ma'am.

THE COURT: --- your filing with respect to Mr. Lesemann's client. But with respect to Mr. Higgins ---

MR. SHEPPARD: I understand that.

THE COURT: --- that is crystal clear to me.

MR. SHEPPARD: I understand that.

THE COURT: Okay.

MR. SHEPPARD: What I would like -- the -- it does seem like I re-filed that. I have got to give y'all that.

THE COURT: Okay. I appreciate your candor.

MR. SHEPPARD: But I would like a chance to explain what happened.

THE COURT: Okay. Go ahead.

MR. SHEPPARD: When -- as I told you, that pleading that I put together that really looks bad. I put that pleading in there and I pieced it together literally by taping ---

THE COURT: Okay.

MR. SHEPPARD: --- and putting stuff together. So what

I did was I came back and read the rules of the court that say -- I can't remember the exact number. I think is in there. But it says that in -- you plead your case and then they give an answer -- or a reply -- or answer. Excuse me. And then I can either put in writing and send something to the court, to you, and to the attorneys representing them or I can at the pretrial hearing I can submit a pretrial brief. Which that packet is not a packet. It is a pretrial brief.

THE COURT: Okay. And I am going to review it.

MR. SHEPPARD: Okay.

THE COURT: Okay. However, there is nothing in that packet that is going to be able to change what is in Judge Young's order. Do you understand that?

MR. SHEPPARD: Yes, ma'am, regarding the malpractice.

THE COURT: Okay. The malpractice action, the any action against Mr. Higgins is dismissed. We are going to move to the next one now. Okay.

Yes, sir. Mr. McCants.

MR. MCCANTS: Thank you, Your Honor. My name is John Lynn McCants. I am here on behalf of Lynn McCants, defendant, or myself. And my motion to dismiss is based on two -- two claims. That is there are no allegations in the complaint or no cause of action against me. In fact, I have not heard my name even mentioned by the plaintiff today.

I was the closing attorney for the third-party buyer in

this transaction and was involved in this transaction for approximately the last 120 days of these events leading up to that June settlement agreement.

And of course listed in that settlement agreement is my name as the closing attorney representing a buyer. And the terms of that settlement agreement clearly state that I represent the buyer only and no other parties.

THE COURT: And you never represented Mr. Sheppard or Wando -- I am trying to find the name of his company. But you never represented Mr. Sheppard, ever?

MR. MCCANTS: Never represented Mr. Sheppard.

THE COURT: Okay.

MR. MCCANTS: And the -- of course a third-party buyer is not made a party to this ---

THE COURT: Sure.

MR. MCCANTS: -- this action. I dealt with Robert Dodds and Cotton Harness and of course disbursed the funds in accordance with the settlement agreement.

THE COURT: Okay. Thank you, sir.

All right. Mr. Sheppard, do you understand what Mr. McCants ---

MR. SHEPPARD: Yes, ma'am.

THE COURT: --- is saying?

MR. SHEPPARD: I do.

THE COURT: You can't sue somebody's else's lawyer

unless ---

MR. SHEPPARD: I understand.

THE COURT: --- you have some independent claim.

MR. SHEPPARD: Yes, ma'am. I understand.

THE COURT: So why is he a defendant?

MR. SHEPPARD: Mr. McCants is on -- is listed because of in the pretrial brief that I gave you that addresses some of the things that happened that led up to the fraudulent acts that happened Mr. McCants found himself in the middle of part of the acts that -- that sort of kicked off all the fraud.

In the closing of a piece of property that was -- that I found and realized that was -- had it surveyed, I had it for $3.8 million. A got an appraisal done. It came back with an appraisal that said it was worth today's dollars of $48 million. In over 20 years and 70 -- and 70 percent of the minerals in the ground it is worth like $180 million.

THE COURT: Okay. Sir, has he ever represented you as an attorney?

MR. SHEPPARD: He was involved in the transfer -- no, ma'am.

THE COURT: Thank you. Other than having his name in here what does it say in your complaint -- and I am bound by the four corners of this well-pleaded complaint under their motions today. Where does it say in here that Mr. McCants

ever did anything to you?
MR. SHEPPARD: It says in the ---
THE COURT: Where does it say in here ---
MR. SHEPPARD: --- very ---
THE COURT: I want you to point it out to me.
MR. SHEPPARD: I'm sorry.
THE COURT: Get it out and look at it and show me.
MR. SHEPPARD: I'm sorry, are you talking about ---
THE COURT: Your complaint that you filed.
MR. SHEPPARD: Mr. McCants just was the closing attorney. And the way that everything went down and it was fraudulent so I included him because of all the fraud that took place. He was just in there. And I don't actually think that Mr. McCants was involved.
THE COURT: So do you dismiss him voluntarily?
MR. SHEPPARD: He was ---
THE COURT: Sir?
MR. SHEPPARD: I would. Yes.
THE COURT: You dismiss Mr. McCants voluntarily?
MR. SHEPPARD: Yes, ma'am.
THE COURT: Okay. Mr. McCants is dismissed by consent and because he is not -- there is no cause of action set forth in what you filed. You recognize your civil cover sheet?
MR. SHEPPARD: Yes, ma'am.

THE COURT: Okay. There is nothing in here other than his name. You have to say what he did in these filings. Do you understand that?

MR. SHEPPARD: Yes, ma'am, I do.

THE COURT: Okay. So Mr. McCants is dismissed.

MR. MCCANTS: Thank you, Your Honor.

THE COURT: Now that leaves us with Mr. Lesemann's client. And they are correct in their argument on the rules. And I just want to make sure that you understand that, Mr. Sheppard.

They have moved for judgment on the pleadings, okay. That means that I have to review this, what you filed, and what they filed with the proper attachments and items, court filings, that I am allowed to take judicial notice of, okay. That's all I can consider in making my decision.

I do want to review everything you have given to me. And I am going to review it. But it is not part of -- I can't look at any evidence yet. I can only look at whether you've -- what you've said in here ---

MR. SHEPPARD: Yes, ma'am.

THE COURT: --- lets you go forward. Okay?

MR. SHEPPARD: Yes, ma'am.

THE COURT: And I just want to make sure that you understand that. Do you understand that?

MR. SHEPPARD: I do. And I -- the pretrial brief is

supporting that ---

THE COURT: Okay.

MR. SHEPPARD: --- statement.

THE COURT: A pretrial brief is when you get to the point of being able to have a trial under Rule 16. What they are saying is because of everything that has happened so far you don't get to file anything else and it is over.

I am going to review everything and make sure that the Berkeley County case indeed is what we call res judicata, that would keep you out of court. Okay, that means it was litigated.

If that is the ruling, that -- I am going to do an order. I will do a brief order and I will let y'all know. The matter is under advisement, okay.

And if I do rule on the pleadings I am going to put some language in there prohibiting additional future filings in other courts, okay, sir.

So if I do rule for their folks after I read everything, you need to look at the rules. And if you want to appeal, see if that is something you can do or not.

But I caution you to be very careful about filing anything else. Because at this point they could sue you probably understand the South Carolina Frivolous Civil Proceedings Act.

MR. SHEPPARD: Yes, ma'am.

THE COURT: Okay. And I just want to make sure that you understand that. Do you understand that?

MR. SHEPPARD: I do.

THE COURT: Okay.

MR. SHEPPARD: And, you know, there is a lot more ---

THE COURT: That is why I am going to read it. I want to know what happened.

MR. SHEPPARD: And what I want to clarify and understand -- if you would help me understand this. The summons that I sent, the packet that I gave you, I was under the understanding that today in a -- is this a hearing or ---

THE COURT: It is a motion hearing. It is their motion's hearing. And then you are allowed to argue. But you are only allowed to argue matters relevant to the hearing. I don't take evidence. Okay?

MR. SHEPPARD: Well, it wasn't meant to be evidence. It is meant to support the ---

THE COURT: ... arguments that you're making here?

MR. SHEPPARD: To support what I ---

THE COURT: Okay.

MR. SHEPPARD: The summons, I guess.

THE COURT: Then I will review it as a brief in opposition to their motion for judgment on the pleadings. Because you're allowed to file that.

MR. SHEPPARD: Right. That's what it is.
THE COURT: That's what you want me to look at?
MR. SHEPPARD: Yes, ma'am.
THE COURT: Okay. That is your brief in opposition.
MR. SHEPPARD: Yes.
THE COURT: I can review your legal argument.
MR. SHEPPARD: That's what it is.
THE COURT: But I can't take any facts.
MR. SHEPPARD: I understand.
THE COURT: Even if you tell them to me now.
MR. SHEPPARD: Oh, it's not facts. It's got to do with case law so.
THE COURT: Perfect. No, I am going to review all of that. That's why I've kept the motion against -- the action against Mr. Lesemann's client under advisement. Because I want to review everything that you put in here before I rule.
But what I'm trying to explain to you, because I want to make sure you understand it, is prior court orders and prior proceedings aren't taken lightly. And even when they don't turn out like you want them to, you're still bound by them. Do you understand that?
MR. SHEPPARD: Yes, ma'am. I'm a big boy.
THE COURT: Okay. Well, I just want to make sure you understand. Because I don't want to see a proliferation of

future filings that are ---
MR. SHEPPARD: I promise.
THE COURT: --- not legitimate. Okay?
MR. SHEPPARD: I just -- I promise. I just ---
THE COURT: Because they are going to move for sanctions and sue you at some point. All right. And I just need you to understand that and stop with these filings ---
MR. SHEPPARD: I think it -- you know, it is -- it is a misrepresentation for anybody to say that I just started ---
THE COURT: Okay.
MR. SHEPPARD: I am not a sue-happy person.
THE COURT: Okay. I just want ---
MR. SHEPPARD: I am a hard working guy.
THE COURT: --- to make sure that you understand.
MR. SHEPPARD: That is a very wrong, ---
THE COURT: Okay.
MR. SHEPPARD: -- you know, impression. I mean I am a hard-working -- I put a lot of work into ---
THE COURT: Okay.
MR. SHEPPARD: --- trying to make all this stuff.
THE COURT: And I am going to review all of it.
MR. SHEPPARD: I have been held under water. This is my first time ---
THE COURT: Okay.
MR. SHEPPARD: --- in since 2006 to speak so.

THE COURT: Okay. There is also going to be a copy of this transcript.

MR. SHEPPARD: Yes, ma'am.

THE COURT: And you answered some of my questions before I put you under oath, but then I put you under oath.

MR. SHEPPARD: They are all the truth.

THE COURT: Well, they are after I asked several follow-up questions.

MR. SHEPPARD: I give you my word.

THE COURT: Okay.

MR. SHEPPARD: They are the truth ---

THE COURT: So I think ---

MR. SHEPPARD: --- so help me God.

THE COURT: --- you need to think about all that too. Under advisement. I'll let y'all know in ten days. Good luck.

(Whereupon the hearing concluded. Taken under advisement.)

(NOTE: A transcript which has been certified by the court reporter will bear an original signature on the below certification sheet. Please contact the court reporter for additional certified transcripts.*)*

CERTIFICATE

I, the undersigned Phyllis Norton, Official Court Reporter for the Ninth Judicial Circuit of the State of South Carolina, do hereby certify that the foregoing is a true, accurate, and complete transcript of record of all the proceedings had and evidence introduced in the captioned case, relative to appeal, in the Family Court for Charleston County, South Carolina, on .

I do further certify that I am neither of kin, counsel, nor interest to any party hereto.

PHYLLIS NORTON, CVR
(Signature in blue ink.)

Date: 4/19/2013

Certified Transcript Provided For: Sheppard

Certification Reference # 041913 OR16

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

KIAWAH RESORT ASSOCIATES, L.P., and L. Russell Bennett, Plaintiffs, vs. WANDO RIVER, LLC, ALAN J. SHEPPARD and JULIAN REED SIMMONS, III, Defendants.	)	Case No. 2008-CP-08-158 SUMMONS

FILED
2008 FEB -4 PM 1:42
MARY P. BLAKELY
CLERK OF COURT
BERKELEY COUNTY, SC

TO: THE ABOVE-NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is hereby served upon you, and to serve a copy of your answer to the Complaint on the subscriber at his office in Charleston, South Carolina, within thirty (30) days after the service hereof, exclusive of the day of such service; and if you fail to appear and defend this action within the time aforesaid, judgment by default will be rendered against you for the relief demanded.

Ellis R. Lesemann
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
Phone: (843) 727-2650

ATTORNEYS FOR PLAINTIFFS

February 4, 2008
Charleston, South Carolina

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

KIAWAH RESORT ASSOCIATES, L.P. and L. RUSSELL BENNETT, Plaintiffs, vs. WANDO RIVER, LLC, ALAN J. SHEPPARD and JULIAN REED SIMMONS, III, Defendants.	)	Case No. 2008-CP-08-158 COMPLAINT

FILED
2008 FEB -4 PM 1:42
CLERK OF COURT
BERKELEY COUNTY, SC

The Plaintiffs Kiawah Resort Associates, L.P. and L. Russell Bennett bring this action for monetary damages, declaratory judgment, and equitable relief against the Defendants Wando River, LLC, Alan J. Sheppard and Julian Reed Simmons, III, both in their individual capacities and as members of Wando River, LLC, and states as follows:

PARTIES

1. Kiawah Resort Associates, L.P. ("KRA") is a limited partnership that is organized and existing under the laws of the State of Delaware. KRA has contractual and property rights that are enforceable within the State of South Carolina and incurred damages within the State of South Carolina.

2. L. Russell Bennett ("Bennett") is an individual who resides in the State of South Carolina. Bennett has contractual and property rights that are enforceable within the State of South Carolina.

3. Wando River, LLC ("Wando River") is a limited liability company organized and existing under the laws of the State of South Carolina. Wando River is the owner of two tracts of

real property located in Berkeley County, South Carolina ("Property"), which along with the contractual agreements between the parties, are the underlying subject matter of this action.

4. Alan J. Sheppard ("Sheppard") is a member of Wando River and is a resident of the State of South Carolina.

5. Julian Reed Simmons, III ("Simmons") is a member of Wando River and is a resident of the State of South Carolina.

6. Based on the subject matter of this action, the location of the Property, and the residency of the parties, this Court has jurisdiction in this action and venue is proper.

FACTUAL BACKGROUND

7. The parties entered into an Agreement dated August 25, 2004 (as amended, "Agreement"), as amended by that certain First Amendment to Agreement dated December 31, 2006 ("Amendment") relating to two tracts of land located in Berkeley County and currently owned by Wando River ("Property"). A true copy of the Agreement and Amendment are attached hereto as Exhibit A. Sheppard and Simmons are bound by this Agreement both as members of Wando River and in their individual capacities. The rights afforded to Plaintiffs in the Agreement include, among other things, the right to purchase the Property in the event that Defendants breach the Agreement.

8. In connection with the Agreement, Wando River and KRA also entered into a warrant (as amended, "Warrant") as amended by the Amendment, that provides for various rights and obligations of the parties. A true copy of the Warrant is attached hereto as Exhibit B. The rights afforded to Plaintiffs in the Warrant include the right to receive a membership interest in Wando River or the right to receive payment in lieu of that membership interest. The value of

the membership interest that would be awarded or paid to Plaintiffs is based directly upon the fair market value of the Property, as that term is defined and determined under the Warrant.

9. Defendants have breached the terms of the Agreement and the Warrant as well as the implied covenant of good faith and fair dealing underlying the Agreement and the Warrant.

10. This action has become necessary because Defendants have refused to perform their obligations under the Agreement and Warrant and are in default. In addition, Defendants are taking actions that directly violate and disregard pending rights, options, and interests that Plaintiffs have in the Property. Particularly, these actions include mortgaging the property without consent from Plaintiffs and attempting to sell the Property to a third party without notice to Plaintiffs or consent from Plaintiffs.

11. Plaintiffs have attempted to resolve these issues with Defendants, but have been met with delay and evasion while Defendants are simultaneously attempting to circumvent the rights and interests of Plaintiffs.

AS A FIRST CLAIM FOR RELIEF

Declaratory Judgment pursuant to S.C. Code § 15-53-20 et seq.

12. Plaintiffs reassert the facts and statements contained in the previous paragraphs and incorporates the same herein as if restated verbatim.

13. Under the circumstances of this case, this Court is authorized under South Carolina law to render declaratory judgment regarding the rights and obligations of the parties under the Agreement and Warrant. These rights and obligations specifically include pending rights and interests relating to the Property.

14. In some instances, Defendants have acknowledged certain rights on the part of Plaintiffs, but have refused to comply with them or have merely promised to comply at an unknown time in the future. In other instances, Defendants have appeared to dispute the

interpretation or application of certain rights on the part of Plaintiffs, although these rights are set forth in the plain terms of the applicable contractual documents and Defendants do not provide any explanation for the alleged dispute.

15. Defendants have been surreptitiously attempting to sell the Property while fraudulently attempting to mislead Plaintiffs that Defendants will comply with their obligations. As a result, the intervention of the Court through a declaratory judgment is necessary and proper.

16. The Court is empowered to make a declaration resolving these issues that will have the force and effect of a final judgment or decree and allow the necessary accounting and transaction(s) to be accomplished.

17. Upon information and belief, all necessary parties are joined in this action. Furthermore, upon information and belief, the parties to this action are the only parties in interest.

18. Plaintiffs request that this Court enter a declaratory judgment determining the rights and obligations of the parties under the Agreement and Warrant, based upon the facts and circumstances of this case, among such other and further relief as may be appropriate.

AS A SECOND CLAIM FOR RELIEF
Breach of Contract

19. Plaintiffs reassert the facts and statements contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

20. The Agreement and Warrant are enforceable contracts between and among the parties that were supported by mutual and valid consideration.

21. Defendants have breached the Agreement and Warrant by failing to pay amounts due to Plaintiffs, committing actions and inactions that are forbidden by these contractual documents, and attempting to circumvent the property interests held by Plaintiffs. Defendants

have also breached the implied covenant of good faith and fair dealing that is inherent in each of these contractual documents.

22. Plaintiffs have been damaged and continue to be damaged by the breaches of the Agreement and Warrant that have been committed and are being committed by Defendants.

23. As a result of the breaches, Plaintiffs are entitled to recover damages in an amount to be proven at trial for breach of contract and will be entitled to an award for attorney's fees and costs incurred in bringing this action as a prevailing party.

AS A THIRD CLAIM FOR RELIEF
Breach of Contract Accompanied by Fraudulent Act

24. Plaintiffs reassert the facts and statements contained in the previous paragraphs and incorporate the same herein as if restated verbatim.

25. The Agreement and Warrant are enforceable contracts between and among the parties.

26. Defendants have feigned their intent to comply with these agreements while attempting to breach the agreements through the sale of the Property to a third party without notice to Plaintiffs or consent from Plaintiffs.

27. Plaintiffs have been damaged and continue to be damaged by the breaches of the agreements committed by Defendants, the feigned promises to comply with those agreements, and the fraudulent acts accompanying those breaches undertaken by Defendants. The circumstances have resulted in actual, special and consequential damages in an amount to be awarded at trial.

WHEREFORE, on the basis of these claims against Defendants, Plaintiffs respectfully pray that the Court enter a judgment in favor of Plaintiffs on these claims, providing for declaratory judgment regarding the rights and obligations of the parties and awarding Plaintiffs

their actual and consequential damages and attorney's fees and costs, as well as any such further relief as the Court deems just and proper.

Ellis R. Lesemann
PARKER, POE, ADAMS & BERNSTEIN L.L.P.
200 Meeting Street, Suite 301
Charleston, SC 29401
Phone: (843) 727-2650
Fax: (843) 727-2680

ATTORNEYS FOR PLAINTIFFS

February 4, 2007

Charleston, South Carolina

EXHIBIT A

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT

AGREEMENT

This is an agreement among and between, on the one hand, Kiawah Resort Associates, L.P., a Delaware limited partnership ("KRA") and L. Russell Bennett ("Bennett") and, on the other hand, Wando River, LLC, a South Carolina limited liability company ("Company"), Alan J. Sheppard ("Sheppard") and Julian Reed Simmons, III ("Simmons"). KRA and Bennett are referred to herein collectively as the "Investors". The date of this Agreement is August 25, 2004.

BACKGROUND

1. By contract dated July ____, 2004 (the "Contract"), Sheppard and Simmons agreed to purchase certain property in Charleston County, South Carolina (the "Property"). The Contract was assigned to Company on August _____, 2004. A legal description of the Property is attached hereto as Exhibit A.

2. To finance a portion of the purchase price of the Property, the Company obtained a commitment from Carolina First Bank ("Lender") for a credit facility in the amount of $3,150,000.00 (the "Loan").

3. A condition of the Loan is that seventy five percent (75%) of the loan balance be guaranteed (the "Guaranty") by KRA and twenty five percent (25%) by Bennett.

4. Investors have agreed to provide the Guaranty under the terms and conditions hereinafter set forth.

NOW THEREFORE, for valuable consideration and intending to be bound the parties agree as follows:

1. Guaranty. Subject to the terms and conditions hereinafter set forth, Investors agree to provide the Guaranty to Lenders in the form attached hereto as Exhibit B. The Guaranty shall be delivered at closing (the "Closing") on the Loan.

2. Fees.

2.1 The Company, Sheppard and Simmons jointly and severally agree to pay Investors the following fees in consideration of their entering into the Guaranty:

2.1.1 A commitment fee equal to one percent (1%) of the Guaranty amount which shall be earned at the closing of the Loan ("Closing") and shall be due and payable at the earlier of (i) the sale of all or part of the Property or (ii) the first anniversary of Closing.

2.1.2 A guarantee fee which shall accrue at a rate of five percent (5%) per annum on the outstanding Loan balance as the same shall vary from time to time and shall be payable at the earlier of (i) the sale of all or part of the Property or (ii) the first anniversary of Closing.

2.2 In the event of a Default as hereinafter defined, the fees described in Section 2.1 shall become immediately due and payable. After an event of Default the guarantee fee shall increase to twelve percent (12%) and shall continue to accrue so long any Loan balance remains.

2.3 The operating agreement of Company shall provide that no distributions shall be made to members until all fees due Investors have been fully paid.

3. Escrow Agreement.

3.1 Company agrees to establish an Escrow (the "Escrow") and to enter into an escrow agreement (the "Escrow Agreement") with Kiawah Capital, LLC, the Investor's

representative, in the form attached as Exhibit C. The Escrow will be funded with $300,000 less the amount of closing costs paid by Company in connection with closing on the Loan and this Agreement.

4. Term; First Anniversary.

4.1 The parties contemplate that the Property will be sold and the Loan repaid on before the first anniversary of Closing. If this has not occurred, then the Company shall within ten (10) days of the first anniversary of Closing pay to Investors all fees due pursuant to Section 2.1 and pay into the Escrow an amount equal to the remaining interest due on the Loan until maturity plus any amounts needed for taxes, insurance or other budgeted expenses of the Company through maturity less the amount, if any, of the Escrow balance; provided (i) that if the Property is subject to a bona fide purchase agreement on such first anniversary, (ii) no condition of Default exists and (iii) the Escrow has sufficient funds to pay interest for sixty days, then no fee or escrow payments shall be required for a period of sixty (60) days. If closing does not occur within such sixty (60) day period, the required payments shall be made on such sixtieth day.

4.2 This Agreement shall terminate at such time as Investors' liability on the Guaranty ends.

5. Obligations of Company.

5.1 So long as the Investors are obligated under the Guaranty the Company agrees as follows:

5.1.1 It shall provide Investors such financial information and reports as shall be requested from time to time.

5.1.2 It shall keep Investors informed about all matters dealing with the development of the Property, including specifically, condemnation, annexation, zoning, environmental and permitting matters and shall promptly provide Investors with copies of all correspondence which it receives granting or denying requested governmental approvals.

5.1.3 It shall immediately inform Investors of the occurrence of any material adverse event in connection with the Property or the development thereof.

5.1.4 It shall promptly provide Investors with any correspondence received by Company from Lender relating to a default under the Loan and any agreements related thereto as the same may be amended from time to time (collectively the "Loan Agreements").

5.1.5 It shall not further mortgage the Property.

5.1.6 It shall maintain comprehensive insurance with coverage and limits acceptable to Investors; name Investors as an additional insured and provide Investors with proof thereof at or before Closing.

5.1.7 Its operating agreement shall not be amended without Investors prior written consent.

5.1.8 It shall not make any loans or advances to any member.

5.1.9 It shall provide Investors for their approval a preliminary development budget for the Property within 30 days of Closing, (the "Budget"). The Budget shall be updated monthly and submitted to Investors. Company, shall not make expenditures which materially vary from the provisions of the Budget (as adjusted) or enter into contracts or commitments to make such expenditures without Investors' prior written consent. If Investors determine that the Escrow amount is not adequate to fund all items in the Budget, then Investors

may elect to defer payment of all or part of any development fees included in the Budget until the Escrow funds are sufficient.

6. Default.

6.1 The following shall constitute an event of default by Company ("Default") hereunder:

6.1.1 The occurrence of a default under the Loan Agreements which remains uncured after any applicable cure period.

6.1.2 The breach by Company of any provision, representation or warranty container in this Agreement, which breach is not cured (if curable) by Company within ten (10) days of notice by Investors.

6.1.3 The filing of bankruptcy by the Company, Sheppard or Simons.

6.1.4 The failure of the Company to discharge any lien against the Property or judgment within thirty (30) days.

6.1.5 Any breach by the Company or its members of the terms of its operating agreement.

6.1.6 The failure of Sheppard to pay $150,000 into the Escrow within five (5) days of Closing.

6.2 Investors' Remedies.

Upon the occurrence of an event of Default and in addition to all rights which Investors' may have at law or equity, Investors' shall have the following rights:

6.2.1 Purchase the Property for the Default Amount, as hereinafter defined; or

6.2.2 Acquire all membership interests in the Company for an amount equal to the Default Amount, paid pro-rata to the Members, or in such a manner as all members shall direct in writing.

6.3 Default Amount. The "Default Amount" shall be equal to seventy-five percent (75%) of the appraised value of the Property, less: (i) all amounts of principal, interest and fees due Lender; (ii) property taxes on the Property pro-rated through the purchase; (iii) the amount of all liens, judgments and charges to which the Property is subject; (iv) all amount due Investors hereunder; (v) $5,000.00 for Investor's professional fees and (vi) the cost of any appraisal required by Section 6.4. If the Default Amount is a negative number, then the Default Amount shall be $10.00.

6.4 Appraisal. If Investors elect to proceed under Section 6.2.1 or 6.2.2 and the parties are unable to agree on the value of the Property, then Investors shall select an appraiser who is a Member of the Appraisal Institute ("MAI") who shall appraise the Property and the value so determined shall be used for purposes of this Section 6.

6.5 Closing on Purchase. The purchase of the Property, or the membership interests as the case may be, shall occur within thirty (30) days of the determination of value; provided, Investors may elect to deliver to the Company or the members a promissory note payable at the earlier of (i) the sale of the Property or (ii) one year from date. Absent such election, the purchase price shall be paid in cash at the closing. Closing documentation shall be prepared by Investors' counsel.

6.6 Right to Purchase Loan. Company acknowledges that in addition to the rights set forth in this Section 6, Investors are entitled, pursuant to the Loan Agreements, to purchase Lender's note and mortgage and exercise all rights thereunder in the event of a Default.

6.7 Cross-Default. Company acknowledges that a Default under this Agreement also constitutes a default under the Loan Agreements.

7. Indemnification by Company, Simmons and Sheppard. In the event of a Default hereunder or under the Warrant, Company, Simmons and Sheppard shall jointly and severally indemnify and hold harmless Investors from all claims, losses, damages and liabilities (including attorney's fees) resulting therefrom (collectively "Damages") as defined in Section 8. It is understood and agreed that the calculation of Damages may not be completed until the disposition of the Property and the indemnification obligation shall survive for one year after such disposition.

8. Warrant. At closing, Company shall issue Investors a warrant in the form attached as Exhibit D (the "Warrant").

9. Arbitration. If a dispute arises out of or relates to this Agreement, or its breach, the parties agree to submit the dispute to a sole mediator selected by the parties. If not thus resolved it shall be referred to a sole arbitrator selected by the parties within thirty (30) days of the mediation or, in the absence of such selection, to the American Arbitration Association ("AAA") for arbitration which shall be governed by its Commercial Arbitration Rules. The award shall be made within six (6) months of selection of the arbitrator and judgment on the award may be entered in any court having jurisdiction. The mediation and arbitration shall be held in Charleston, South Carolina. The arbitrator shall determine issues of arbitrability but may not limit, expand or otherwise modify the terms of the Agreement, nor have authority to award punitive or other damages in excess of compensatory damages and each party irrevocably waives any claim thereto. The costs of mediation shall be born equally by the parties to the dispute. The costs of arbitration shall be apportioned amongst the parties as the arbitrator shall determine

in his or her discretion. The parties, their representatives, other participants and the mediator and arbitrator shall hold the existence, content and result of mediation and arbitration in confidence.

10. Miscellaneous.

10.1 Waiver. Any waiver by the Investors of any breach of any term or condition hereof shall be effective only if in writing and such writing shall not be deemed to be a waiver of any subsequent or other breach, term or condition of this Agreement.

10.2 Severability. If any provision, sentence, phrase or word of this Agreement or the application thereof to any person or circumstance shall be held invalid, the remainder of this Agreement, or the application of such provision, sentence, phrase, or word to persons or circumstances, other than those as to which it is held invalid, shall not be affected thereby.

10.3 Agreement in Counterparts. This Agreement may be executed in several counterparts, each of which shall be deemed an original, but all of which shall constitute one and the same instrument. In addition, this Agreement may contain more than one counterpart of the signature page and this Agreement may be executed by the affixing of the signatures of each of the parties to one of such counterpart signature pages; all of such signature pages shall be read as though one, and they shall have the same force and effect as though all of the signers had signed a single signature page.

10.4 Notice. Any notice request, approval, consent, demand or communication shall be in writing and shall be effective upon the first to occur of the following: upon receipt by the party to whom intended or three business days after deposit in the United States Mail, registered or certified, return receipt requested to the then current business or primary residence address of the intended party.

10.5 Construction. Counsel for all parties have reviewed this Agreement and no provision hereof shall be construed on the basis of authorship.

COUNTER PART SIGNATURE PAGES FOLLOW

Counter Part Signature Page to Agreement between Kiawah Resort Associates, L.P., L. Russell Bennett, Wando River, LLC, Alan J. Sheppard and Julian Reed Simmons, III dated as of August 25 2004.

KIAWAH RESORT ASSOCIATES, L.P.

By: D & W Investments, Inc.
Its: General Partner

By: _____
Charles P. Darby, III
Its: President

TWD INVESTMENTS, LLC

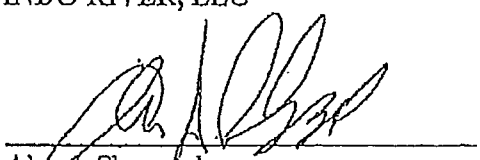
By: _____
Charles P. Darby, III
Its: Manager

Counter Part Signature Page to Agreement between Kiawah Resort Associates, L.P., L. Russell Bennett, Wando River, LLC, Alan J. Sheppard and Julian Reed Simmons, III dated as of August __, 2004.

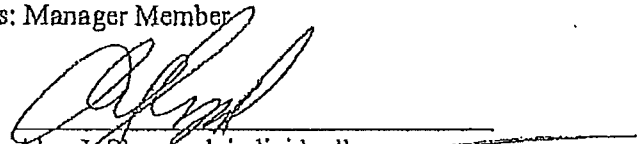
L. Russell Bennett

Counter Part Signature Page to Agreement between Kiawah Resort Associates, L.P., L. Russell Bennett, Wando River, LLC, Alan J. Sheppard and Julian Reed Simmons, III dated as of August __, 2004.

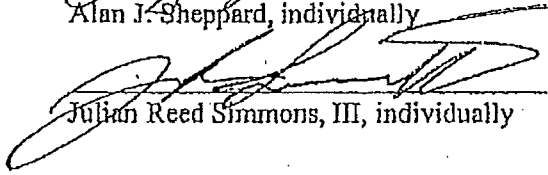
WANDO RIVER, LLC



Alan J. Sheppard
Its: Manager Member



Alan J. Sheppard, individually



Julian Reed Simmons, III, individually

FIRST AMENDMENT TO AGREEMENT

This is the first amendment to an agreement dated August 25, 2004 (the "2004 Agreement") among and between, on the one hand, Kiawah Resort Associates, L.P. ("KRA") and L. Russell Bennett ("Bennett") and, on the other hand, Wando River, LLC, Alan J. Sheppard and Julian Reed Simmons, III. The effective date of this amendment is as of December 31, 2006. Except as otherwise provided herein, capitalized terms used herein shall have the same meaning as in the 2004 Agreement.

BACKGROUND

1. Lender has agreed to extend the maturity of the Loan until December 31, 2007. A condition of such extension is that the Guaranty of KRA and Bennett be extended until the new maturity date.

2. KRA and Bennett have agreed to the extension of the Guaranty until December 31, 2007, but only if the conditions set forth herein are satisfied.

NOW THEREFORE for valuable consideration, and intending to be legally bound, the parties agree to amend the 2004 Agreement as follows:

A new Section 11 shall be added to the Agreement as follows:

11. Extension of 2004 Agreement.

11.1 KRA and Bennett hereby agree to extend the Guaranty with Lender until August ~~30~~ December 31, 2007, subject however, to the satisfaction of the terms and conditions set forth herein.

11.2 The Guaranty Fee described in Section 2.1.1 of the 2004 Agreement in the amount of $31,500.00 which was due on August 25, 2005 shall be paid on or before the execution and delivery of the extension of the Guaranty.

11.3 The payment of the Fee described in Section 2.1.2 of the 2004 Agreement calculated through December 31, 2006 shall be paid to KRA and Bennett. The foregoing notwithstanding, the payment of this fee may be deferred so long as the Company makes no distributions to any LLC member. Prior to making any distributions, the Company shall pay the 5% Guaranty Fee described in Section 2.1.2 to KRA and Bennett calculated as of the date of the intended distribution. Such fee shall become immediately due and payable upon the sale of all or part of the Property. If the Property has not been sold by December 31, 2007, then KRA and Bennett shall have the option to extend the Guaranty 6 months until June 30, 2008 with an increase of 2.5% to the 5% Guaranty Fee making it 7.5%. This option is only available if there are adequate provisions to cover the carrying cost for the additional 6 months and the bank has agreed to extend the loan.

11.4 Forbearance. It is understood and agreed that the Company, Sheppard and Simmons have defaulted on Sections 2.1.1 and Sections 2.1.2 of the 2004 Agreement and further that KRA and Bennett have agreed to forebear from enforcing their rights under the 2004 Agreement provided for in Section 6 thereof. Nothing herein shall be deemed a waiver by KRA or Bennett of any rights which they may have under the 2004 Agreement arising out of a Default by Company, Sheppard or Simmons. However, if all terms and conditions contained herein are satisfied then all such defaults prior to the date hereof shall be deemed cured. In the event of any Default after the date hereof the provisions of the 2004 Agreement would be fully applicable.

11.5 The Warrant shall be amended so as to extend the expiration date thereof from August 31, 2008 until August 31, 2009 and the Base Amount (as such term is defined in the Warrant) shall be increased to 40% if the contract/sales price is more than 8 million dollars or 45% if contract/sales price is 8 million dollars or less. If the Property closes or an acceptable joint venture agreement is executed prior to January 31, 2007, then the Base Amount percentage (referred to above) will be decreased by 5% and the Base Amount percentage (referred to above) will be decreased by 2% if an acceptable joint venture agreement is executed or closing occurs by March 31, 2007; otherwise, the percentages stated above will be the Warrant percentage.

3. Except as amended herein, the 2004 Agreement shall remain in full force and effect.

IN WITNESS WHEREOF, the parties have executed this Agreement to be effective as of the date first above written.

KIAWAH RESORT ASSOCIATES, L.P.

By: D & W Investments, Inc.
Its: General Partner

By: _____
Charles P. Darby, III
Its: President

TWD INVESTMENTS, LLC

By: _____
Charles P. Darby, III
Its: Manager

_____
L. Russell Bennett, individually

WANDO RIVER, LLC

_____
By: Alan J. Sheppard
Its: Manager

_____
Alan J. Sheppard, individually

_____
Julian Reed Simmons, III, individually

EXHIBIT B

THIS AGREEMENT IS SUBJECT TO ARBITRATION PURSUANT TO THE SOUTH CAROLINA UNIFORM ARBITRATION ACT

WANDO RIVER, LLC

WARRANT

This WARRANT ("Warrant") is issued this 25th day of August, 2004, by Wando River, LLC, a South Carolina limited liability company (the "Company"), to KIAWAH RESORT ASSOCIATES, L. P., a Delaware limited partnership ("KRA") and L. Russell Bennett, a resident of South Carolina ("Bennett"). KRA and Bennett and any subsequent assignee or transferee hereof are hereinafter referred to collectively as "Holder" or "Holders".

AGREEMENT:

1. Issuance of Warrant; Term.

(a) For and in consideration of providing a guaranty in support of Company's credit facility with Carolina First Bank of even date herewith, and other good and valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the Company hereby grants to Holder the right (1) to purchase and acquire forty percent (40%) of the Membership Interests (as defined in the Operating Agreement of the Company dated August 25, 2004 (the "Operating Agreement") of the Company calculated on a fully diluted basis as defined below (the "Base Amount") and (2) to be admitted as a Member (as defined in the Operating Agreement), together with the rights of a Member to vote or give consent, to receive allocations of profits and losses and distributions (both interim and liquidating), subject to the terms, covenants and conditions of the Operating Agreement. The Base Amount is subject to adjustment as hereinafter provided in Section 8.

(b) As used in this Warrant, "fully diluted basis" means the Membership Interests outstanding on the effective date of this Warrant, as adjusted for subsequent issuances or redemptions of Membership Interests, if any after the date hereof.

(c) The Membership Interests issuable to Holder upon exercise of this Warrant are hereinafter referred to as the "LLC Interests." This Warrant shall be exercisable at any time and from time to time from the date hereof until August 31, 2008 (the "Expiration Date").

2. Exercise Price and Reallocation of Capital Accounts.

The exercise price (the "Exercise Price") for each exercise of this Warrant, in full or in part, shall be Ten Dollars ($10.00), without regard to the percentage of Membership Interests so purchased. Other than the Exercise Price, Holder shall not be required to make any capital contribution to the Company for the issuance of the LLC Interests or to be admitted as a Member. At the time the Warrant or a portion thereof is exercised and Holder

receives LLC Interests as provided hereunder, the Company shall cause a reallocation of all capital accounts of its Members (to the extent the aggregate balance of the capital accounts is positive and in excess of the Unreturned Priority Capital (as defined in the Operating Agreement) to allocate to said Holder a proportionate share of all Capital Contributions (as defined in the Operating Agreement) and positive balances in the capital accounts of all Members (less an amount equal to the Unreturned Priority Capital, equal to Holder's Membership Interests. If, at the time of exercise of this Warrant or any portion thereof, the aggregate balance of the capital accounts of the Members of the Company is less than the Unreturned Priority Capital, then the reallocation of the capital accounts of the Members to Holder upon such exercise shall be zero for the Membership Interests that are received by Holder in connection with such exercise. It is acknowledged that the exercise of this Warrant and the foregoing described reallocation will dilute the economic interests and the Membership Interests of the Members of the Company other than Holder.

3. Exercise. This Warrant may be exercised by Holder (but only on the conditions hereinafter set forth) in whole or in part, upon delivery of written notice of intent to exercise to the Company, together with this Warrant and payment to the Company of the aggregate Exercise Price of the LLC Interests so purchased. Upon exercise of this Warrant as aforesaid, the Company shall as promptly as practicable, and in any event within 30 days thereafter, execute and deliver to Holder an amendment to the Operating Agreement making Holder a party thereto and a Member of the Company with Membership Interests equal to the LLC Interests for which this Warrant is exercised and Holder shall exercise the same. If this Warrant shall be exercised with respect to less than all of the LLC Interests, Holder shall be entitled to receive a new Warrant covering the percentage of LLC Interests in respect of which this Warrant shall not have been exercised, which new Warrant shall in all other respects be identical to this Warrant. The Company covenants and agrees that it will pay when due any and all state and federal issue taxes which may be payable in respect of the issuance of this Warrant or the issuance of any LLC Interests upon exercise of this Warrant.

4. Covenants and Conditions. The above provisions are subject to the following:

(a) Neither this Warrant nor the LLC Interests have been registered under the Securities Act of 1933, as amended ("Securities Act"), or any state securities laws ("Blue Sky Laws"). This Warrant has been acquired for investment purposes and not with a view to distribution or resale and may not be sold or otherwise transferred without (a) an effective registration statement for such Warrant under the Securities Act and such applicable Blue Sky Laws, or (b) an opinion of counsel, which opinion and counsel shall be reasonably satisfactory to the Company and its counsel, that registration is not required under the Securities Act or under any applicable Blue Sky Laws. Transfer of the LLC Interests issued upon the exercise of this Warrant shall be restricted in the same manner and to the same extent as the Warrant and the certificates representing such LLC Interests shall bear a legend so stating.

Holder and the Company agree to execute such other documents and instruments as counsel for the Company reasonably deems necessary to effect the compliance of the issuance of this Warrant and any LLC Interests issued upon exercise hereof with applicable federal and state securities laws.

The Company covenants and agrees that all LLC Interests that may be issued upon exercise of this Warrant will, upon issuance and payment therefor, be legally and validly issued and outstanding, free from all taxes, liens, charges and preemptive rights, if any, with respect thereto or to the issuance thereof.

(b) The Company covenants and agrees that it shall not prior to the exercise or termination of this Warrant issue or redeem any Membership Interests without the prior written consent of Holder, which may be withheld for any reason or no reason.

5. Transfer of Warrant. This Warrant may not be transferred, in whole or in part, to any person or business entity, without the written consent of the Company, which shall not be unreasonably withheld or delayed. KRA or Bennett may transfer rights herein between themselves and KRA may transfer its rights herein to its partners or affiliates.

(a) Warrant Holder Not Member. Except as otherwise provided herein, this Warrant does not confer upon Holder, as such, any right whatsoever as a Member of the Company.

7. Put Agreement.

(a) The Company hereby irrevocably grants and issues to Holder the right and option to sell this Warrant to the Company (the "Put") during the Put Period (as hereinafter defined), at a purchase price (the "Put Price") equal to the Fair Market Value (as hereinafter defined) of the LLC Interests then issuable to Holder upon exercise of this Warrant less the Exercise Price. "Put Period" means the period commencing on the date hereof and terminating on the Expiration Date.

(b) Holder may exercise the Put by delivery of written notice (the "Put Notice") of such exercise to the Company. The Company shall pay to Holder, in cash or by wire transfer of immediately available funds, the Put Price within ten (10) days of the determination of Fair Market Value.

(c) For purposes of this Section 7, the Fair Market Value of the LLC Interests issuable pursuant to this Warrant shall be calculated as follows:

(i) The Net Value of the Company's assets shall be determined by subtracting from the fair market value of the assets, the amount of all debt secured by such assets, but not to exceed the sum of $3,150,000.00.

(ii) The Priority Equity Investment in the Company, as defined in the Company's Operating Agreement, less $100,000.00, but not to exceed $550,000.00 shall be subtracted from the Net Value determined above and the difference shall be the value of the Company. ("Company Value").

(iii) The Put Price payable to Holder shall be equal to the Company Value times the LLC Membership Interest percentage represented by the Warrant, i.e. 40% or an adjusted percentage if Section 8 is applicable.

If the Holder and Company cannot agree on the value of the Company's assets, then they shall agree upon an appraiser who shall be a member of the Appraisal Institute ("MAI") and the value so determined by the appraiser shall be binding on the parties. Holder and Company shall share equally in the cost of the appraisal. If the parties cannot agree on an appraiser within ten (10) days, then either party may request that Pratt-Thomas Gumb & Company designate an MAI appraiser of its selection.

The Put Price shall be paid 75% to KRA and 25% to Bennett unless Company is notified otherwise in writing signed by both of them.

8. Adjustments.

(a) If this Warrant is exercised and at the time of exercise the Company's real estate in Charleston County, South Carolina (the "Property") is subject to a contract of sale or has been sold, then the Base Amount (as defined in Section 1(a)) shall be reduced as follows:

(i) If the contract/sales price is greater than $6,000,000 and less than $8,000,000 then the Base Amount shall be 35%.

(ii) If the contract/sales price is more than $8,000,000 then the Base Amount shall be 30%.

(b) If the Property has not been sold within fourteen (14) months of the date hereof, the Base Amount shall be increased by five percentage points, which increase shall also apply after the adjustments set forth in part (a) of this Section 8, if any.

9. Remedies. If the Company violates, breaches or defaults under this Warrant, Holder may proceed to protect and enforce its rights by any action at law, suit in equity or other appropriate proceeding, whether for specific performance of any agreement contained in this Warrant, or for an injunction against a violation of any of the terms hereof, or in and of the exercise of any power granted hereby or by law. In case of any violation, breach or default under this Warrant, the Company shall pay to Holder on demand all costs and expenses of enforcing Holder's rights under this Warrant, including, without limitation, reasonably attorneys' fees and legal expenses.

10. Article and Section Headings. Numbered and titled article and section headings are for convenience only and shall not be construed as amplifying or limiting any of the provisions of this Warrant. When used herein, the singular shall include the plural and vice versa, and the use of any gender shall include all other genders, as appropriate.

11. Notice. Any and all notices, elections or demands permitted or required to be made under this Warrant shall be in writing, signed by the party giving such notice, election or demand and shall be delivered personally, telecopied, or sent by certified mail or overnight via nationally recognized courier service (such as Federal Express), to the other party at the then current business or primary residence of such party. The date of personal delivery or telecopy or two business days after the date of mailing (or the next business day after delivery to such courier service), as the case may be, shall be the date of such notice, election or demand.

12. Severability. If any provisions(s) of this Warrant or the application thereof to any person or circumstances shall be invalid or unenforceable to any extent, the remainder of this Warrant and the application of such provisions to other persons or circumstances shall not be affected thereby and shall be enforced to the greatest extent permitted by law.

13. Entire Agreement. This Warrant between the Company and Holder represents the entire agreement between the parties concerning the subject matter hereof, and all oral discussions and prior agreement are merged herein.

14. Governing Law and Amendments. This Warrant shall be construed and enforced under the laws of the State of South Carolina applicable to contracts to be wholly performed in such State. No amendment or modification hereof shall be effective except in a writing executed by each of the parties hereto.

15. Counterparts. This Warrant may be executed in any number of counterparts and be different parties to this Warrant in separate counterparts, each of which when so executed shall be deemed to be an original and all of which taken together shall constitute one and the same Warrant.

16. Arbitration. If a dispute arises out of or relates to this Agreement, or its breach, the parties agree to submit the dispute to a sole mediator selected by the parties. If not thus resolved it shall be referred to a sole arbitrator selected by the parties within thirty (30) days of the mediation or, in the absence of such selection, to the American Arbitration Association ("AAA") for arbitration which shall be governed by its Commercial Arbitration Rules. The award shall be made within six (6) months of selection of the arbitrator and judgment on the award may be entered in any court having jurisdiction. The mediation and arbitration shall be held in Charleston, South Carolina. The arbitrator shall determine issues of arbitrability but may not limit, expand or otherwise modify the terms of the Agreement, nor have authority to award punitive or other damages in excess of compensatory damages and each party irrevocably waives any claim thereto. The costs of mediation shall be born equally by the parties to the dispute. The costs of arbitration shall be apportioned amongst the parties as the arbitrator shall determine in his or her discretion. The parties, their representatives, other participants and the mediator and arbitrator shall hold the existence, content and result of mediation and arbitration in confidence.

[Signatures begin on following page.]

IN WITNESS WHEREOF, the parties hereto have set their hands as of the date first above written.

COMPANY:

Wando River, LLC, a South Carolina limited liability company

By: _____
Alan J. Sheppard
Its: Managing Member

[Counterpart Signatures pages follow.]

WANDO RIVER, LLC
WARRANT
Counterpart Signature Page

HOLDER:

KIAWAH RESORT ASSOCIATES, L. P.,

By: D&W Investments, Inc.
Its: General Partner

By: _____
Charles P. Darby, III
Its: President

TWD INVESTMENTS, LLC

By: _____
Charles P. Darby, III
Its: Manager

WANDO RIVER, LLC WARRANT
COUNTERPART SIGNATURE PAGE

L. Russell Bennett

STATE OF SOUTH CAROLINA)	IN THE COURT OF COMMON PLEAS
)	NINTH JUDICIAL CIRCUIT
COUNTY OF BERKELEY)	CASE NO.: 2008-CP-08-158
)	
KIAWAH RESORT ASSOCIATES,)	
L.P. and L. RUSSELL BENNETT)	
)	
Plaintiff,)	
)	
vs.)	AMENDED ANSWER AND COUNTERCLAIM
)	
WANDO RIVER, LLC, ALAN J.)	
SHEPPARD and JULIAN REED)	
SIMMONS, III)	
)	
Defendants.)	
)	

The Defendants, Wando River, LLC, Alan J. Sheppard, and Julian Reed Simmons, III, answering the Complaint of the Plaintiffs herein would respectfully show unto this honorable Court as follows:

1. Each and every allegation contained in the Plaintiffs Complaint which is not hereinafter specifically admitted is hereby denied.

2. The Defendants do not have sufficient information to form an opinion as to the allegations contained in the first sentence of paragraph 1 of the Complaint. The remaining allegations of paragraph 1 are denied.

3. The Defendants do not have sufficient information to form an opinion as to the allegations contained in the first sentence of paragraph 2 of the Complaint. The remaining allegations of paragraph 2 are denied.

4. The allegations contained in paragraphs 3, 4, 5 and 6 of the Complaint are admitted.

5. The allegations contained in the first two sentences of paragraph 7 of the

Complaint are admitted. The remaining allegations of paragraph 7 of the Complaint are denied.

6. The allegations contained in the first two sentences of paragraph 8 of the Complaint are admitted. The remaining allegations of paragraph 8 of the Complaint require interpretation of the referenced documents and therefore reference to such documents is made for such interpretation, and such allegations are hereby denied.

7. The allegations contained in paragraphs 9, 10, and 11 of the Complaint are denied.

8. The allegations contained in the first sentences of paragraph 13 of the Complaint are admitted. The remaining allegations of paragraph 13 of the Complaint are denied.

9. The allegations contained in paragraphs 14 and 15 of the Complaint are denied.

10. The allegations contained in paragraphs 16 and 17 of the Complaint are admitted.

11. The allegations of paragraph 18 of the Complaint are a prayer for relief and as such require no response from the Defendants. To the extent a response is required, the allegations are denied.

12. The allegations contained in paragraphs 20, 21, 22, 23, 25, 26 and 27 of the Complaint are denied.

FURTHER ANSWERING THE COMPLAINT BY WAY OF AN AFFIRMATIVE DEFENSE THERETO, THE DEFENDANTS ALLEGE AS FOLLOWS:

1. The Agreement, as amended by the Amendment, was terminated on or about December 31, 2007, and therefore the Plaintiffs are not entitled to any relief thereunder.

2. The Plaintiffs have breached the contracts between the Plaintiffs and Defendants and are therefore barred from recovery.

FURTHER ANSWERING THE COMPLAINT AND BY WAY OF COUNTERCLAIM, THE DEFENDANTS ALLEGE AS FOLLOWS:

1. The Defendants adopt the jurisdictional allegations contained in Plaintiffs' Complaint by reference.

FOR A FIRST CAUSE OF ACTION
(Interference with Contractual Relationship)

1. The Defendant, Wando River, LLC, heretofore engaged the services of an attorney to represent Wando River, LLC in connection with certain legal matters, including a contract for the sale of real property in Berkeley County, South Carolina to D.R. Horton, Inc. (hereafter the "DR Horton Contract").

2. Eventually litigation was initiated by Wando River, LLC against D.R. Horton, Inc. related to the DR Horton Contract.

3. The litigation between Wando River, LLC against D.R. Horton, Inc. was settled and a Mutual Release and Settlement Agreement was executed by the parties to the litigation.

4. The settlement of the subject litigation called for the disbursement of earnest money to Wando River, LLC; such earnest money then being held by the attorney for Wando River, LLC, as escrow agent under the DR Horton Contract..

5. The Plaintiffs had actual knowledge of the matters surrounding the settlement of the litigation between Wando River, LLC and D.R. Horton, Inc., and the Plaintiffs knew that the attorney holding the earnest money in connection with the DR

Horton Contract was representing Wando River, LLC.

6. The Plaintiffs, individually and by and through its agents, initiated contact with the attorney representing the Defendant, Wando River, LLC, interfering with the disbursement of such earnest money to Wando River, LLC, preventing Wando River, LLC from having the use of such funds for the development and/or sale of the subject property.

7. The Plaintiffs contact with the attorney for Wando River, LLC and their conduct related thereto constitutes interference with the contractual relationship between Wando River, LLC and its attorney.

8. The Defendants have suffered monetary damages and continue to be damaged by the actions of the Plaintiffs.

9. As a result of such intentional interference, Defendants are entitled to recover damages in an amount to be proven at trial.

FOR A SECOND CAUSE OF ACTION
(Breach of Fiduciary Duty)

1. The Plaintiffs, individually and though their agents, have participated with the Defendants in the marketing and development of the subject real property.

2. The Plaintiffs, individually and though their agents, have participated in multiple meetings with the Defendants and have offered advice and counsel to Defendants in connection with the marketing and development of the subject property.

3. The Plaintiffs have been given access to confidential information concerning the business of the Defendants, including financial information.

4. The interaction between the Defendants and Plaintiffs resulted in a special

relationship, in which the Defendants entrusted the Plaintiffs to act in good faith and with due regard to the best interests of the Defendants, and the Plaintiffs accepted and induced the confidence placed in them by the Defendants by continuing to be involved in the business of the Defendants and offering counsel and advice with regard to such business matters.

5. The Plaintiffs occupied a fiduciary relationship to the Defendants.

6. The Plaintiffs, individually and though their agents, have breached their fiduciary obligations to the Defendants, by working contrary to the bests interests of Defendants and not in good faith, resulting in monetary damages to the Defendants.

7. As a result of such breach of fiduciary duty, Defendants are entitled to recover damages in an amount to be proven at trial.

FOR A THIRD CAUSE OF ACTION
(Interference with Contract)

1. The Defendant, Wando River, LLC, entered into a Contract of Purchase and Sale with Edward J. Westbrook for the sale of the subject property.

2. The Plaintiffs subsequently filed a Lis Pendens against the subject property.

3. The filing of the said Lis Pendens has prevented the Defendant, Wando River, LLC, from closing on the sale of the subject property, resulting in monetary damages to the Defendants, which damages continue to accrue.

4. The actions of the Plaintiffs are an intentional interference with the contract between Wando River, LLC and Edward J. Westbrook, by which the Defendants have been damaged and continue to be damaged.

5. As a result of this interference with contract, the Defendants are entitled to recover damages in an amount to be proven at trial.

FOR A FOURTH CAUSE OF ACTION
(Breach of Implied Covenant of Good Faith and Fair Dealing)

1. The Plaintiffs have breached the implied covenant of good faith and fair dealing inherent in the Agreement and Warrant between the Plaintiffs and the Defendants.

2. The Defendants have been damaged and continue to be damaged by the actions of the Plaintiffs.

3. As a result of such conduct, Defendants are entitled to recover damages in an amount to be proven at trial for breach of contract and as a prevailing party will be entitled to an award of attorney's fees and costs in prosecuting this action.

WHEREFORE, having fully answered the Complaint, the Defendants respectfully pray that the Court award the Defendants their attorneys fees and costs in this action, that the Court enter declaratory judgment regarding the rights and obligations of the parties as requested in the Plaintiffs' Complaint, that the Defendants be awarded judgment against the Plaintiffs for actual, general, special and punitive damages, and for such other and further relief as the Court deems just and proper.

CISA & DODDS, LLP

Robert S. Dodds
858 Lowcountry Blvd., Suite 101
Mt. Pleasant, SC 29464
(843) 881-6530

Attorneys for the Defendants

April 4, 2008
Mount Pleasant, South Carolina

STATE OF SOUTH CAROLINA	)	IN THE COURT OF COMMON PLEAS
	)	
COUNTY OF CHARLESTON	)	FOR THE NINTH JUDICIAL CIRCUIT
KIAWAH RESORT ASSOCIATES, L.P. and L. RUSSELL BENNETT,	)	Case No. 2008-CP-08-158
Plaintiffs,	)	
vs.	)	STIPULATION OF DISMISSAL WITH PREJUDICE
WANDO RIVER, LLC, ALAN J. SHEPPARD and JULIAN REED SIMMONS, III,	)	
Defendants.	)	

COME NOW the parties, by and through their undersigned counsel, and stipulate to the dismissal of all claims and counterclaims asserted in this action *with prejudice* pursuant to Rule 41(a)(1)(B) of the South Carolina Rules of Civil Procedure.

IT IS SO STIPULATED.

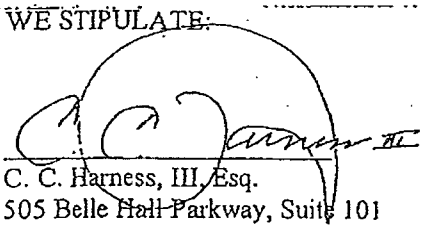
FILED
2009 JUL 15 PM 1:39
CLERK OF COURT
BERKELEY COUNTY, SC

WE STIPULATE:

Ellis R. Lesemann, Esq.
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650

Attorneys for Plaintiffs

WE STIPULATE:



C. C. Harness, III, Esq.
505 Belle Hall Parkway, Suite 101
Mt. Pleasant, SC 29464
(843) 856-2627

Attorneys for Defendants

June 25, 2008

Charleston, South Carolina

SETTLEMENT AND RELEASE AGREEMENT

This Settlement and Release Agreement (this "Agreement") is made this 26th day of June, 2008 by and among KIAWAH RESORT ASSOCIATES, L.P. ("KRA") and L. RUSSELL BENNETT ("Bennett"), (collectively the "Plaintiffs"), WANDO RIVER, LLC ("Wando River"), ALAN SHEPPARD ("Sheppard"), and JULIAN REED SIMMONS, III ("Simmons"), (collectively the "Defendants"), WANDO E, LLC ("Buyer") and J. LYNN McCANTS, ESQ. ("Closing Attorney").

WHEREAS, Plaintiffs and Defendants are engaged in litigation regarding their respective rights, interests, and contractual obligations relating to certain real property approximating 23.682 acres located in Berkeley County, South Carolina (the "Property"), and the Buyer also has pending interests in the Property in the form of a recorded mortgage secured by the Property and a contract to purchase the Property from Wando River; and

WHEREAS, the Parties wish to allow Wando River to close and sell the Property to Buyer, resolve the dispute upon certain terms and conditions, withdraw the lis pendens on the Property, enter a mutual release of claims, and dismiss the pending litigation with prejudice;

NOW, THEREFORE, in consideration of the premises, the covenants and agreements herein, it is agreed as follows:

1. Identification of Closing Attorney. The Parties confirm that J. Lynn McCants, Esq. shall serve as the Closing Attorney, shall handle the Closing, and shall cause the stipulated disbursements to be made as set forth in this Agreement. It is agreed, however, that the Closing Attorney represents Buyer only and does not represent any other party to this Agreement.

2. Withdrawal of Lis Pendens and Waiver of Interest by Plaintiffs. Within 24 hours of receipt of a fully-executed original of this Agreement, Plaintiffs agree to withdraw the lis pendens that was filed relating to the Property. Plaintiffs further agree that they hereby waive and will not claim any further right or interest in the Property provided that this Agreement is fully performed, the Closing occurs, and the required disbursements are received by KRA and Bennett.

3. Closing of Sale and Payment of Funds. Wando River and Buyer will proceed to a closing of the sale of the Property at a mutually convenient time, but no later than June 30, 2008. At the closing, the Closing Attorney shall disburse to KRA by wire transfer the sum of $1,200,000.00 (One Million Two Hundred Thousand Dollars and no/100s). Furthermore, at the Closing, the Closing Attorney shall disburse to Bennett the sum of $400,000.00 (Four Hundred Thousand Dollars and no/100s).

   It is confirmed by Plaintiffs and Defendants that these funds represent the following compromise payments: (1) a compromise payment of $400,000.00 for the Guaranty Fee claimed by KRA and Bennett; and (2) a compromise payment of $1,200,000.00 of the Put Price claimed by KRA and Bennett.

4. Disbursement for Portion of Appraisal Fee Owed by Wando River. The Closing Attorney shall make an additional disbursement from the closing proceeds by wire transfer in the amount of $1,200.00 payable to KRA to cover Wando River's 50% share of the cost of the appraisal ($2,400.00) performed by Paul K. Moore & Associates in January 2008 in accordance with the provisions in Section 7)(c)(iii) of the Warrant dated August 25, 2004.

5. Use of Balance in Existing Escrow Account for Payment of Fees Due to Moore & Van Allen, PLLC. The Parties confirm that the remaining funds ($2,760.57) in the pre-existing escrow account held at Carolina First Bank in the name of Wando River will be disbursed in partial payment of the amount due ($3,819.00) from South Carolina Bank & Trust ("SCBT") to Moore & Van Allen, PLLC for professional services rendered to SCBT relating to the re-financing of the Property requested by Wando River and prepared by SCBT and its counsel, but that was never consummated by Wando River. KRA and Bennett will pay the remaining balance ($1,058.43) of this invoice.

6. Mutual Release of Claims. In consideration for the mutual promises and obligations hereunder, KRA, Bennett, Wando River, Sheppard, Simmons on behalf of themselves and their subsidiaries, affiliate entities, principals, shareholders, directors, officers, employees, representatives, members, managers, agents, heirs, successors, and assigns each hereby release and discharge each other and their respective subsidiaries, affiliate entities, principals, shareholders, directors, officers, employees, representatives, members, managers, agents, heirs, successors, and assigns from any and all claims or causes of action of any kind as they may have against one another including but not limited to all claims or counterclaims raised in this Action.

Furthermore, in exchange for the promises and obligations of KRA and Bennett hereunder, Buyer agrees to waive and release any claims that it has or may have had against KRA or Bennett and KRA and Bennett agree to waive and release any claims it has or may have had against Buyer. All parties confirm that this Agreement does not modify or affect the mutual rights or obligations of Wando River or Buyer under the separate contract for the sale of the Property under which those parties will proceed to Closing.

Plaintiffs and Defendants will memorialize the dismissal of the pending litigation and the release of the claims and counterclaims by way of a Stipulation of Dismissal with Prejudice. Plaintiffs confirm that the amounts to be paid hereunder are accepted in complete satisfaction of any amounts due or claimed to be due to KRA or Bennett from Wando River, Sheppard, or Simmons.

7. Miscellaneous Provisions.

(a) Prior Agreements. If this Agreement is fully performed, it shall supersede all prior agreements between any Plaintiff(s) and any Defendant(s) relating to

Wando River, the Property, or any other aspect of the subject matter herein. This Agreement is intended to memorialize a compromise enforcement of prior agreements between Plaintiffs and Defendants and to fully resolve and discharge all rights and obligations among Plaintiffs and Defendants. However, as stated above, this Agreement does not modify or supersede the contract for the sale of the Property existing between Buyer and Wando River.

(b) Amendments. This Agreement may not be modified or amended except by an instrument in writing signed by an authorized officer of each party hereto.

(c) Counterparts. This Agreement may be executed in two or more counterparts, each of which shall be deemed to be an original, but all of which together shall constitute one and the same agreement.

(d) Governing Law. This agreement, including all matters of construction, validity and performance, shall be governed by and construed in accordance with the laws of the state of South Carolina, without regard to principles of conflicts or choice of laws or any other law that would make the laws of any other jurisdiction other than the state of South Carolina applicable hereto.

(e) Assignment. This Agreement may not be assigned by any party hereto without the prior written consent of the other parties.

(g) Binding Nature; Third-Party Beneficiaries. This Agreement shall be binding upon and inure solely to the benefit of the parties hereto and their respective successors (whether by operation of law or otherwise) and permitted assigns. Nothing in this Agreement, express or implied, is intended to or shall confer upon any third party any rights, benefits or remedies of any nature whatsoever under or by reason of this Agreement.

(h) Severability. This Agreement shall be deemed severable; the invalidity or unenforceability of any term or provision of this Agreement shall not affect the validity or enforceability of this Agreement or of any other term hereof, which shall remain in full force and effect, for so long as the economic or legal substance of the transactions contemplated by this Agreement is not affected in any manner materially adverse to any party hereto.

(i) Construction. The parties hereto have participated jointly in the negotiation and drafting of this Agreement. In the event an ambiguity or question of intent or interpretation arises, this Agreement shall be construed as if drafted jointly by the parties hereto, and no presumption or burden of proof shall arise favoring or disfavoring any party by virtue of the authorship of any provisions of this Agreement.

IN WITNESS WHEREOF, the undersigned have caused this Settlement and Release Agreement to be executed by their duly authorized representatives as of the date above written.

KIAWAH RESORT ASSOCIATES, L.P.
By: D&W Investments, Inc., its general partner

Witness: _____

By: _____
Name: Charles P. Darby, III
Title: Chief Executive Officer

L. RUSSELL BENNETT

Witness: _____

WANDO RIVER, LLC

Witness: _____

By: _____
Name: _____
Title: _____

ALAN SHEPPARD

Witness: _____

JULIAN REED SIMMONS, III

Witness: _____

J. LYNN McCANTS, ESQ.

Witness: _____

WANDO E, LLC

Witness: _____

By: _____
Name: Edward J Westbrook
Title: Member

PPAB 1442437v1

EXHIBIT D

State of South Carolina
The Circuit Court of the Ninth Judicial Circuit

Stephanie P. McDonald
Judge

Charleston County Judicial Center
100 Broad Street, Suite 427
Charleston, SC 29401
Phone: (843) 958-5102
Fax: (843) 958-5107
smcdonaldj@sccourts.org

October 12, 2012

Sent via U.S. Mail and Email

Alan Sheppard
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Mount Pleasant, SC 29464
alanjosephsheppard@gmail.com

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lynn@mccantslawfirm.com

John Pringle, Jr., Esq.
Ellis, Lawhorne & Sims, P.A.
P.O. Box 2285
Columbia, SC 29202
jpringle@ellislawhorne.com

Ellis R. Lesemann, Esq.
Harvey & Vallini, LLC
497 Branson Court, Suite 201
Mt. Pleasant, SC 29464
ellisl@hvsclaw.com

RE: Alan Sheppard v. William O. Higgins, Ronald C. Owens, Russell Bennett, Charles P. Darby, Lynn McCants, and Kiawah Island Resort Associates, L.P.
C/A No.: 2011-CP-10-4537

All:

I have reviewed the materials submitted by the parties and considered the arguments made at the motions hearing. With respect to Mr. McCants' Motion to Dismiss, unless further detail is necessary I will simply sign a Form 4 dismissing the matter due to plaintiff's consent at the hearing.

The Motion for Judgment on the Pleadings filed by Mr. Lesemann is also granted. Mr. Lesemann, please prepare a proposed order granting the motion on the grounds that the current action is barred by res judicata, the applicable statute of limitations, and the prior release executed by the parties in the earlier lawsuit. Please mail the proposed order to Mr. Sheppard 5 days before e-mailing it to me in Word so that he will have time to review it and send me any proposed revisions or objections to the order as proposed.

Finally, Defendant Higgins' Motion to Dismiss is likewise granted. Mr. Pringle, please prepare a proposed order to that effect and send it to Mr. Sheppard for review 5 days prior to sending it to me in Word.

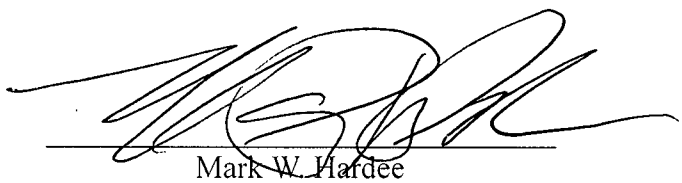
Unless additional time is required, I would appreciate having the proposed orders e-mailed to my law clerk by November 5th. Mr. Sheppard, any objections should be sent by November 12th.

Many Thanks,

Stephanie P. McDonald

Certificate of Counsel

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.



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CERTIFICATE OF SERVICE

I, Vicky McCarter, an employee with the law firm of The Hardee Firm., do hereby certify that I have this date served a copy of the following pleading upon the individual named below, by placing a copy in the United States Mail, postage prepaid and return address clearly indicated to the address below:

COUNSEL SERVED:

Ellis Reed-Hill Lesemann
Harvey & Vallini
497 Bramson Ct, Suite 201
Mt. Pleasant, SC 29464

PLEADING: Record on Appeal

Vicky McCarter

Columbia, South Carolina
January 31, 2014

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