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THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Marvin H. Dukes, Master in Equity

Appellate Case No. 2014-002290

JMT Capital Holdings, LLC, Plaintiff,

v.

VDM/T Land Company, LLC, and Daufuskie Island Properties, LLC,
Defendants,

And

Daufuskie Island Properties, LLC,
and its successor in interest, Ace
Basin Investments, LLC, Appellant,

v.

Raymond Travaglione, Respondent.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA

COUNTY OF BEAUFORT

JMT Capitol Holdings, LLC,

Plaintiff,

vs.

VDM/T Land Company, LLC and
Daufuskie Island Properties, LLC,

Defendants.

Daufuskie Island Properties, LLC and its
successor in interest, Ace Basin Investments,
LLC,

Third-Party Plaintiff,

vs.

Raymond Travaglione,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2014-CP-07-0380

**ORDER GRANTING THIRD-PARTY
DEFENDANT RAYMOND
TRAVAGLIONE'S MOTION TO
DISMISS THIRD-PARTY COMPLAINT**

2014 SEP 25 AM 11:58

This matter is before the Court on the motion of third-party defendant Raymond Travaglione ("Travaglione") to dismiss the third-party complaint filed by defendant and third-party plaintiff Daufuskie Island Properties, LLC ("Daufuskie") on April 16, 2014 (the "Third-Party Complaint"). Based on the arguments of counsel and pleadings properly before the Court, and for the reasons set forth below, Travaglione's Motion is granted.

PROCEDURAL HISTORY

Travaglione's Motion was filed on July 8, 2014. A hearing was scheduled for August 11, 2014. Prior to the hearing, Daufuskie filed a memorandum in opposition to the Motion, and Travaglione filed a memorandum in support of the Motion. At the conclusion of the hearing, the Motion was taken under advisement, and a telephonic status conference was scheduled for

September 5, 2014. On September 4, 2014, one day prior to the telephonic hearing, counsel for Daufuskie submitted a supplemental memorandum, in the form of a letter, to the court. Counsel for Travaglione submitted a response, also in the form of a letter, on the morning of September 5, 2014. On September 5, 2014, the Court conducted a status conference, and heard further arguments of counsel, and again took the matter under advisement.

STANDARD OF LAW

South Carolina Rule of Civil Procedure 12(b)(6) provides for dismissal of a complaint due to its "failure to state facts sufficient to constitute a cause of action." "The question is whether, in the light most favorable to the [claimant], and with every doubt resolved in his behalf, the complaint states any valid claim for relief." *Plyler*, 373 S.C. at 645, 647 S.E.2d at 192 (citing *Toussaint v. Ham*, 292 S.C. 415, 416, 357 S.E.2d 8, 9 (1987)).

When deciding a motion to dismiss under Rule 12(b)(6), SCRCP, the court should only consider the allegations set forth in the pleadings. *Plyler v. Burns*, 373 S.C. 637, 645, 647 S.E.2d 188, 192 (2007) (citing *Stiles v. Onorato*, 318 S.C. 297, 300, 457 S.E.2d 601, 602 (1995)). If, in the court's consideration of a motion to dismiss, "matters outside the pleadings are presented to and not excluded by the court, 'the motion shall be treated as one for summary judgment and disposed of as provided in Rule 56 [of the South Carolina Rules of Civil Procedure].'" *Martin v. Companion Healthcare Corp.*, 357 S.C. 570, 574, 593 S.E.2d 624, 627 (Ct. App. 2004) (quoting S.C. R. Civ. P. 12(b)).

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. Procedural Background

JMT Capitol Holdings, LLC ("Plaintiff") commenced this action on February 19, 2014, seeking to foreclose its mortgage against VDM/T Land Company, LLC ("

VDM/T"), waiving any deficiency claim against its borrower, VDM/T.¹ In addition, Plaintiff sought a declaratory judgment that its lien was a valid and enforceable first mortgage lien against the Properties. Daufuskie was named as a defendant in this action by virtue of its status as a lienholder on the Properties.² In response to the foreclosure complaint, Daufuskie filed an Answer and Third-Party Complaint on April 16, 2014 (the "Third-Party Complaint"), wherein it denied that Plaintiff held the first mortgage lien against the Properties and that Plaintiff is entitled to foreclosure of its mortgage. Daufuskie also brought a third-party complaint against Mr. Travaglione for alleged breach of his Guaranty of the Daufuskie Notes (hereinafter defined).

2. Facts Relative to Travaglione Motion

The following facts appear within Plaintiff's Complaint and Daufuskie's Third Party Complaint and the exhibits attached thereto:

On or about June 2, 2006, pursuant to Partial Release and Subordination Agreements, VDM/T executed and delivered to Daufuskie two promissory notes in the amount of \$400,000.00 and \$100,000.00 each (collectively, the "Daufuskie Notes"). To secure the Daufuskie Notes, VDM/T executed and delivered to Daufuskie a mortgage on each of the Properties (the "Daufuskie Mortgages"). As additional security for the Daufuskie Notes, Travaglione executed and delivered to Daufuskie a guaranty (the "Guaranty").

The Guaranty is, by its terms, a guaranty of payment. Above the signature line, the Guaranty states, "IN WITNESS WHEREOF, this instrument has been duly executed by the undersigned this 2 day of June, 2006." Directly below this language is language which states,

¹ On or about June 2, 2006, VDM/T executed and delivered to First Federal Savings & Loan Association of Charleston ("Bank") a promissory note and a mortgage, pursuant to which VDM/T granted Bank a mortgage on certain parcels of real property located in Beaufort County (the "Properties"). Bank's note and mortgage were later sold and assigned to VFC Partners 15, LLC ("VFC"), who later assigned the note and mortgage to Plaintiff.

² On or about June 2, 2006, Daufuskie and Travaglione, along with additional parties, entered into Partial Release and Subordination Agreements, which provided that Daufuskie would provide the purchaser of the Properties with purchase money financing, to be secured by mortgages on the Properties, and would agree to subordinate the debts to any construction financing obtained to erect improvements on the Properties.

"SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF:". The Guaranty is signed by two witnesses, and by Raymond M. Travaglione as Guarantor.

3. Travaglione Motion to Dismiss Third-Party Complaint.

- a. The Guaranty is not a sealed instrument and therefore, S.C. Code § 15-3-530, not S.C. Code § 15-3-520(b), is the applicable statute of limitations.

Travaglione sought to have the Third-Party Complaint dismissed on the following grounds:

a) The Third-Party Complaint is not a proper third-party complaint under South Carolina Rule of Civil Procedure 14 because Daufuskie's claims against Travaglione are not derivative of any liability Daufuskie has to Plaintiff in the foreclosure action.

b) Daufuskie is judicially estopped from asserting its claim on the Guaranty because it failed to list the claim in its chapter 11 bankruptcy case.

c) Daufuskie's claim on the Guaranty is barred by the applicable statute of limitations.

Assuming, without deciding, that the third-party complaint was procedurally proper, and that judicial estoppel considerations did not apply, Travaglione also asserts that this action is barred by the statute of limitations because it was brought more than three (3) years after default on the Guaranty.

Travaglione argues that the applicable statute of limitations for a suit on this guaranty is three years. Specifically, S.C. Code § 15-3-530 provides that "within three years . . . an action upon a contract, obligation, or liability, express or implied [must be commenced]." Daufuskie disagrees, arguing that because the Guaranty is a sealed instrument, the limitations period is twenty years. See S.C. Code § 15-3-520(b).

Based on the record before it and the applicable law, the Court finds that the Guaranty is not a sealed instrument, and that the three year statute of limitations set forth in S.C. Code § 15-3-530 applies to the Guaranty.

In *Treadaway v. Smith*, 325 S.C. 367, 479 S.E.2d 849 (Ct. App. 1996), the court of appeals considered the issue of whether or not a guaranty was a sealed instrument. In *Treadaway*, in addition to "SIGNED, SEALED AND DELIVERED IN THE PRESENCE OF" language, the document at issue also contained the language "IN WITNESS WHEREOF, the parties have hereunto set their respective Hands and Seals in quadruplicate as of the day and year first above written" above the parties' signatures. In another court of appeals case considering the same issue, *South Carolina Dept. of Social Services v. Winyah Nursing Homes, Inc.*, 282 S.C. 556, 320 S.E.2d 464 (Ct. App. 1984), the court found that the document was a sealed instrument because the following indicia of the parties' intent to create a sealed document were present:

- a) The attestation clauses stated that "the parties hereto have set their hands and seals";
- and
- b) The signatures of the parties were followed by the notation "L.S.".

Winyah Nursing Homes, 282 S.C. at 561, 320 S.E.2d at 467.

Unlike the *Treadaway* and *Winyah Nursing Homes* documents, the Guaranty in this case is more comparable to the guaranty agreement in *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 609 S.E.2d 548 (Ct. App. 2005), which contained only the language "IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this ___ day of December, 1996," without more. The court of appeals held this was insufficient to establish the parties' intent to create a sealed instrument. *Carolina Marine*, 363 S.C. at 172, 609 S.E.2d at 550; see also *Clifton, LLC v. Tadlock*, 2012 WL 909826, *aff'd*, 513 Fed. Appx. 255 (4th Cir. 2013)

5 2/7 n

("[B]ecause the Lease in our case contains only the clause "Signed, sealed and delivered," and no other indicia sufficient to evidence an intent to seal, the undersigned finds that the parties did not intend for the Lease to be sealed."). Considered together, *Treadaway*, *Winyah Nursing Homes*, and *Carolina Marine Handling* make clear that before a document can be found to be a sealed instrument, more evidence of the parties' intent to create such a document is necessary than is present in this case.

The Guaranty before the Court, like the guaranty in *Carolina Marine*, does not reflect an intent by the parties to create a sealed instrument. The only reference to a "seal" in the Guaranty appears directly above the parties' and the witnesses' signatures. See *supra*, at pg. 3. There is no "L.S." or other notation after any of the signatures to the Guaranty. Further, the body of the Guaranty is devoid of language that would indicate the parties' intent to create a sealed instrument. Based on the foregoing, the Court finds that the Guaranty is not a sealed instrument. As a result, the applicable statute of limitations is three years.

b. The Applicable Three-Year Statute of Limitations has expired, and the Third-Party Complaint is time barred.

The South Carolina Court of Appeals has found that the statute of limitations for an action on a guaranty begins to run upon default of the obligor. *CoastalStates Bank v. Hanover Homes of South Carolina, LLC*, 759 S.E.2d 152 (S.C. Ct. App. 2014). The bankruptcy schedules in Daufuskie's chapter 11 bankruptcy case, filed in January 2009 and amended in March 2009, indicate that at the time of its bankruptcy filing in January 2009, Daufuskie had an existing claim against VDM/T for foreclosure.³ Thus, as of January 2009, when Daufuskie filed its chapter 11 bankruptcy case, the Daufuskie Notes, and the Guaranty, were already in default. Clearly,

³ Pursuant to South Carolina Rule of Evidence 201, the Court takes judicial notice of Daufuskie's Schedule B, filed January 20, 2009 and Amended Schedule B, filed March 6, 2009, both filed in Daufuskie's chapter 11 bankruptcy case, Case No. 09-00389-jw.

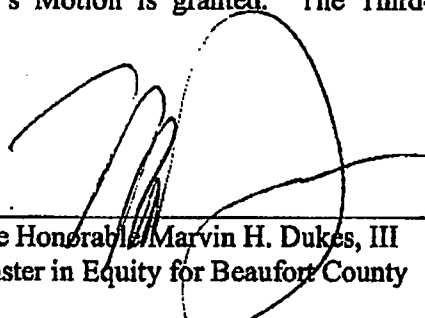
substantially more than three years elapsed between Daufuskie's 2009 bankruptcy filing and Daufuskie's filing of its Third-Party Complaint in April 2014. Because more than three years have elapsed since Daufuskie's claim on the Guaranty arose, pursuant to S.C. Code § 15-3-530, the applicable statute of limitations, Daufuskie's Third-Party Complaint is time-barred and must be dismissed.

CONCLUSION

For the reasons set forth above, Travaglione's Motion is granted. The Third-Party Complaint against Travaglione is dismissed.

AND IT IS SO ORDERED.

September 1st 2014



The Honorable Marvin H. Dukes, III
Master in Equity for Beaufort County

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Case No. 2014 – CP- 07-0380

JMT Capital Holdings, LLC,

Plaintiff,

vs.

VDM/T Land Company, LLC, and Daufuskie
Island Properties, LLC,

Defendants.

COMPLAINT

**(Non-Jury)
(Declaratory Judgment)
(Foreclosure of Mortgage on Secured
Indebtedness)
(Deficiency Waived)**

2014 FEB 19 PM 12:28
JAMES ROSEHEAD
BEAUFORT COUNTY, SC
CLERK OF COURT

Plaintiff, JMT Capital Holdings, LLC, would show unto this Court as follows:

1. Plaintiff is a limited liability company organized and existing under the laws of the State of Utah, and the property described herein, which is the subject of this action, is situated in the State of South Carolina in Beaufort County.
2. Upon information and belief, Defendant VDM/T Land Company, LLC, ("Defendant VDM/T") is a limited liability company organized and existing under the laws of the State of South Carolina.
3. Upon information and belief, Defendant Daufuskie Island Properties, LLC, ("Defendant DIP") is a limited liability company organized and existing under the laws of the State of Delaware and licensed to do business in South Carolina.
4. This is a mortgage foreclosure on property located in Beaufort County, South Carolina.
5. The loan, under which the indebtedness arises, is not subject to modification under the Home Affordable Modification Program (the "HMP") or the HMP Guidelines

promulgated by the United States Department of the Treasury dated March 4, 2009, as may be amended or supplemented from time to time.

6. The loan, under which the indebtedness arises, is a commercial loan.

7. This Court has jurisdiction over this matter and venue is proper in Beaufort County, South Carolina.

8. The real property, which is the subject of this foreclosure action, is not an "owner-occupied dwelling" as defined by Administrative Order No. 2011-05-02-01.

FACTUAL HISTORY

9. On or about December 19, 2004, Defendant DIP, Raymond Travaglione¹ ("Travaglione") and the International Junior Golf Tour d/b/a International Junior Golf Academy ("IJGA")² entered into that certain Agreement for Land Housing Parcel and Amenities Tract whereby Travaglione agreed to purchase and Defendant DIP agreed to sell the Housing Parcel³.

10. On or about December 19, 2004, Defendant DIP, Travaglione and IJGA entered into that certain Agreement for Land School Parcel whereby Travaglione agreed to purchase and Defendant DIP agreed to sell the School Parcel⁴.

11. On or about June 2, 2006, Defendant DIP conveyed the Mortgaged Premises (as hereinafter defined) to Defendant VDM/T.

¹ Raymond Travaglione is the Manager of Defendant VDM/T and was the President of IJGA. Upon information and belief, Defendant VDM/T and IJGA were affiliated or related entities which were commonly controlled and/or managed by Raymond Travaglione.

² IJGA was a South Carolina corporation that was incorporated on April 11, 2000 which was administratively dissolved on October 14, 2010 according to the South Carolina Secretary of State's website.

³ The Housing Parcel is a portion of the Mortgaged Premises and more particularly described herein, *infra*.

⁴ The School Parcel is a portion of the Mortgaged Premises and more particularly described herein, *infra*.

12. At the time of conveyance of the Mortgaged Premises from Defendant DIP to Defendant VDM/T, the Mortgaged Premises were encumbered by that certain mortgage from Defendant DIP in favor of ClubCorp USA, Inc., successor by merger to Club Financial Corp. ("ClubCorp") in the original principal amount of Eighteen Million Dollars (\$18,000,000).

13. On or about June 2, 2006, ClubCorp, Defendant DIP, Travaglione and IJGA entered into that certain Partial Release and Subordination (Housing Parcel) which was recorded in the Office of the Register of Deeds for Beaufort County on June 22, 2006 in Book 2395 at Page 573. A true copy of the Partial Release and Subordination (Housing Parcel) is attached hereto as Exhibit "A" and incorporated herein by reference.

14. On or about June 2, 2006, ClubCorp, Defendant DIP, Travaglione and IJGA entered into that certain Partial Release and Subordination (School Parcel) which was recorded in the Office of the Register of Deeds for Beaufort County on June 22, 2006 in Book 2395 at Page 579. A true copy of the Partial Release and Subordination (School Parcel) is attached hereto as Exhibit "B" and incorporated herein by reference.

15. The Partial Release and Subordination (Housing Parcel) stated that Defendant DIP would provide the purchaser of the Housing Parcel with purchase money financing represented by a promissory note in the amount of \$400,000 (the "DIP Housing Parcel Note") to be secured by a mortgage in favor of Defendant DIP and ClubCorp on the Housing Parcel (the "DIP Housing Parcel Mortgage"). The Partial Release and Subordination (Housing Parcel) further stated that Defendant DIP and ClubCorp agreed to subordinate the indebtedness secured by the DIP Housing Parcel Mortgage to any construction financing of IJGA to be used to construct improvements on the Housing Parcel⁵.

⁵ See Section 4 of the Partial Release and Subordination (Housing Parcel).

16. To secure the DIP Housing Parcel Note, Defendant VDM/T, on or about June 2, 2006, Defendant VDM/T made, executed and delivered to Defendant DIP and ClubCorp the DIP Housing Parcel Mortgage which was filed and recorded in the Office of the Register of Deeds for Beaufort County on June 27, 2006 in Book 2397 at Page 1489. The DIP Housing Parcel Mortgage referenced and incorporated the Partial Release and Subordination (Housing Parcel)⁶. A true copy of the DIP Housing Parcel Mortgage is attached hereto as Exhibit "C" and incorporated herein by reference.

17. The Partial Release and Subordination (School Parcel) stated that Defendant DIP would provide the purchaser of the School Parcel with purchase money financing represented by a promissory note in the amount of \$100,000 (the "DIP School Parcel Note") to be secured by a mortgage in favor of Defendant DIP and ClubCorp on the School Parcel (the "DIP School Parcel Mortgage"). The Partial Release and Subordination (School Parcel) further stated that Defendant DIP and ClubCorp agreed to subordinate the indebtedness secured by the DIP School Parcel Mortgage to any construction financing of IJGA to be used to construct improvements on the School Parcel⁷.

18. To secure the DIP School Parcel Note, Defendant VDM/T, on or about June 2, 2006, made, executed and delivered to Defendant DIP and ClubCorp the DIP School Parcel Mortgage which was filed and recorded in the Office of the Register of Deeds for Beaufort County on June 27, 2006 in Book 2397 at Page 1496. The DIP School Parcel Mortgage referenced and incorporated the Partial Release and Subordination (School Parcel)⁸. A true copy

⁶ See 3rd WHEREAS paragraph on first page of DIP Housing Parcel Mortgage.

⁷ See Section 4 of the Partial Release and Subordination (School Parcel).

⁸ See 3rd WHEREAS paragraph on first page of DIP School Parcel Mortgage.

of the DIP Housing Parcel Mortgage is attached hereto as Exhibit "D" and incorporated herein by reference.

19. On or about June 2, 2006, Defendant VDM/T, for consideration, made, executed and delivered a certain Promissory Note (the "Original Note"), payable to the order of First Federal Savings & Loan Association of Charleston ("First Federal") in the original principal sum of One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00). The Note was amended by those certain Amendments to Commercial Note and Mortgage dated June 2, 2008, June 2, 2009 and June 15, 2010 (the "Amended Notes"). A true copy of the Original Note and the Amended Notes are attached hereto as Exhibit "E" and incorporated herein by reference. The Original Note and the Amended Notes shall collectively hereinafter be referred to as the "Note".

20. To secure the Note, Defendant VDM/T, on or about June 2, 2006, made, executed and delivered to First Federal a Mortgage (the "Mortgage"), whereby Defendant VDM/T mortgaged certain property located in Beaufort County (the "Mortgaged Premises") described as follows:

Parcel "A": School Parcel

ALL that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as "IJGA, 57,446 SF, 1.32 Ac.," on that certain plat prepared by William S. Sanders, PLS #16122, dated June 23, 2005, and recorded in Plat Book 107 at Page 81 in the ROD Office for Beaufort County, South Carolina.

Parcel "B": Housing Parcel

ALL that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as 10.90 acres, being a portion of Melrose Plantation, Daufuskie Island, Beaufort County, South Carolina," prepared by William S. Sanders, PLS #16122, and recorded in Plat Book 114 at Page 13 in the ROD Office for Beaufort County, South Carolina.

AND ALSO a perpetual, non-exclusive easement for ingress and egress over that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as Fifty (50') Easement on that certain plat entitled, "A Boundary and Wetlands Survey of 10.90 acres, being a portion of Melrose Plantation, Daufuskie Island, Beaufort County, South Carolina," prepared by William S. Sanders, PLS #16122, and recorded in Plat Book 114 at Page 13 in the ROD Office for Beaufort County, South Carolina.

This being the same property conveyed to VDM/T Land Company, LLC by Deed of Daufuskie Island Properties, LLC d/b/a Daufuskie Island Resort & Breath Spa, and which deed is dated June 2, 2006, and recorded in the Office of the Register of Deeds for Beaufort County in Book 2397 at Page 1486.

TMS# R800-025-00F-0023-0000

TMS# R800-025-00F-0005-0000.

21. The Mortgage was filed and recorded in the Office of the Register of Deeds for Beaufort County on June 27, 2006, in Book 2397 at Page 1504. A true copy of the Mortgage is attached hereto as Exhibit "F" and incorporated herein by reference.

22. Thereafter, on November 12, 2011, First Federal assigned the Note and Mortgage, together with certain other collateral documents to VFC Partners 15, LLC ("VFC") by virtue of that certain Allonge (the "First Federal Allonge") and Assignment of Mortgage and Collateral Documents (the "First Federal Assignment") recorded in the Office of the Register of Deeds for Beaufort County, South Carolina on March 26, 2012 in Book 3129 at Page 939. A copy of the First Federal Allonge and First Federal Assignment are attached hereto as Exhibit "G" and incorporated herein.

23. Thereafter, on August 1, 2013, VFC assigned the Note and Mortgage, together with certain other collateral documents to Plaintiff by virtue of that certain Allonge (the "VFC Allonge") and Assignment and Assumption of Mortgage and Loan Documents (the "VFC Assignment") recorded in the Office of the Register of Deeds for Beaufort County, South

Carolina on August 16, 2013 in Book 3265 at Page 1530. A copy of the VFC Allonge and VFC Assignment are attached hereto as Exhibit "H" and incorporated herein.

24. Thereafter, on or about November 8, 2013, ClubCorp assigned all of its interest in the DIP Housing Parcel Mortgage to Defendant DIP pursuant to that certain Assignment of Mortgage (Housing Parcel) recorded in the Office of the Register of Deeds on December 5, 2013 in Book 3290 at Page 2348.

25. Thereafter, on or about November 8, 2013, ClubCorp assigned all of its interest in the DIP School Parcel Mortgage to Defendant DIP pursuant to that certain Assignment of Mortgage (School Parcel) recorded in the Office of the Register of Deeds on December 5, 2013 in Book 3290 at Page 2351.

FOR A FIRST CAUSE OF ACTION
(Declaratory Judgment)

26. The allegations of the preceding paragraphs are realleged and incorporated herein as if restated verbatim.

27. Upon information and belief, the Mortgage was inadvertently filed after the Partial Release and Subordination (Housing Parcel) and the Partial Release and Subordination (School Parcel) and, but for the inadvertent recording order of the aforementioned documents, the Mortgage would be a first mortgage lien on the Mortgaged Premises as was the intent of the parties.

28. The Plaintiff contends that it is entitled to an Order declaring that it has a valid first mortgage lien on the Mortgaged Premises under the Mortgage through equitable relief.

29. The Plaintiff is informed and believes that Defendant VDM/T and/or Defendant DIP may dispute Plaintiff's contentions hereinabove and contend that the Plaintiff does not have a valid first mortgage lien on the Mortgaged Premises either in equity or at law.

30. Any claim by Defendant VDM/T or Defendant DIP that the Mortgage is not a valid first mortgage lien against the Mortgaged Premises is neither valid in law, nor in fact.

31. The Plaintiff is entitled to an Order of this Court declaring the Mortgage to be a valid and enforceable first mortgage lien against the Mortgaged Premises either in equity or at law.

FOR A SECOND CAUSE OF ACTION
(Foreclosure of Mortgage on Secured Indebtedness)

32. The allegations of the preceding paragraphs are realleged and incorporated herein as if restated verbatim.

33. The Plaintiff is informed and believes that the Mortgage constitutes a valid first mortgage lien on the Mortgaged Premises.

34. The Plaintiff is entitled to foreclose the Mortgage securing the indebtedness owed to it on the Note.

35. The Plaintiff is entitled to judgment barring Defendant VDM/T and Defendant DIP (collectively referred to hereinafter as the "Defendants") and all persons claiming by or through the Defendants from all right, title and interest in or to the Mortgaged Premises, and each and every part thereof.

THE DEFAULT

36. The obligations under the terms and conditions of the Note and Mortgage are in default for, among other reasons, Defendant VDM/T's failure to repay the indebtedness in accordance with the terms thereof.

37. In the Note and Mortgage, it is provided that if the loan evidenced thereby is not paid when due, the maker would pay all reasonable costs and expenses of suit, including but not limited to reasonable attorney's fees.

38. In the Note and Mortgage, it is further provided that in the event of default in any of the payments as therein provided, the whole amount of the debt secured by the Mortgage would become immediately due and payable. Defendant VDM/T has failed to pay Plaintiff the installments of principal and interest due and owing although demand has been made therefore.

THE INDEBTEDNESS

39. By reason of the failure of Defendant VDM/T to pay the principal and interest becoming due on the Note, Plaintiff has exercised its option under the Note to declare the entire indebtedness secured by the Mortgage immediately due and payable. As a result of Defendant VDM/T's failure to pay the indebtedness according to the terms of the Note, Plaintiff is entitled to foreclosure of the Mortgage.

40. There is now due and owing to Plaintiff by Defendant VDM/T on the Note, the sum of One Million and 00/100 Dollars (\$1,000,000.00), principal, and accrued interest (as of January 17, 2014) of \$90,821.92, together with interest from said date at the rate provided in the Note, and together with attorneys' fees as provided in the Note and Mortgage.

THE RELIEF SOUGHT

41. The Plaintiff seeks: (i) an Order of this Court declaring the Mortgage to be a valid and enforceable first mortgage lien against the Mortgaged Premises; and (ii) a judgment of foreclosure of the Mortgage on the Mortgaged Premises for the full amount to be due and owing to the Plaintiff under the Note.

42. Plaintiff waives judgment against Defendant VDM/T for the full amount found to be due to Plaintiff.

WHEREFORE, Plaintiff prays:

(a) For entry of this Court's Order confirming the Mortgage to be a valid and enforceable first mortgage lien against the Mortgaged Premises

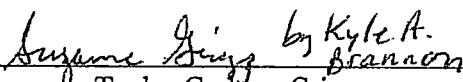
(b) That the amount due upon the Note be ascertained and determined under the direction of the Court;

(c) For a judgment of foreclosure for the amount so found to be due and owing to Plaintiff, together with reasonable attorney's fees and the costs of this action;

(d) That the Mortgaged Premises be sold pursuant to Order of this Court, the equity of redemption be barred, and the proceeds of sale be first applied to the costs and expenses of this action, with the remaining proceeds being applied upon Plaintiff's judgment and attorney's fees and expenses, and then to any subordinated interests, and any amount in excess to be held by the Court until further ordered;

(e) That the Defendants, and all persons whomsoever claiming by or through said Defendants, be forever barred of all right, title and interest of, in and to the Mortgaged Premises, and each and every part thereof; and

(f) For such other and further relief as the Court may deem just and proper.


Suzanne Taylor Graham Grigg
Jeffrey D. Locker
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Post Office Drawer 2426
Columbia, South Carolina 29202
Telephone: 803-771-8900

Attorneys for Plaintiff, JMT Capital Holdings, LLC

February 14, 2014
Columbia, South Carolina

6/11/2
Notar
Gavin

NS & A

1/2

BEAUFORT COUNTY SC - ROD
BK 02395 PGS 0573-0578
FILE NUM 2008048588
08/22/2008 11:10:01 AM
REC'D BY J COORE RCPT# 428504
RECORDING FEES 11.00

This instrument prepared by and
after recording return to
McNair Law Firm, P.A./WJN
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400-
Hilton Head Island, SC 29928
(843) 785-2171

17817-2 / LT

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) PARTIAL RELEASE AND SUBORDINATION
(Housing Parcel)

THIS PARTIAL RELEASE AND SUBORDINATION (the "Partial Release") is made and entered into as of the 2 day of JUNE, 2006, by and between DAUFUSKIE ISLAND PROPERTIES, LLC, a Delaware limited liability company, d/b/a DAUFUSKIE ISLAND RESORT AND BREATHE SPA with an address of 421 Squire Pope Road, Hilton Head Island, South Carolina 29925 ("DIRBS"); and THE INTERNATIONAL JUNIOR GOLF TOUR d/b/a INTERNATIONAL JUNIOR GOLF ACADEMY with an address of 7 Office Park Road, Suite 105-H, Hilton Head Island, South Carolina 29928 ("IJGA"); RAYMOND TRAVAGLIONE with an address of 7 Office Park Road, Suite 105-H, Hilton Head Island, South Carolina 29928 ("Travaglione"); and CLUBCORP USA, INC., a Delaware corporation, as successor by merger to CLUB FINANCIAL CORP, (the "Lender") (DIRBS, IJGA, Travaglione and Lender, collectively, the "Parties").

WITNESSETH:

WHEREAS, on March 1, 2001, DIRBS, made and executed that certain mortgage in favor of Lender to secure indebtedness in the original principal sum of EIGHTEEN MILLION DOLLARS (\$18,000,000.00) which mortgage was recorded in the Office of the Register of Deeds for Beaufort County in Book 1586 at Page 1277 ("Lender Mortgage"); and

WHEREAS, DIRBS, IJGA and Travaglione have entered into that certain Agreement for Land Housing Parcel and Amenities Parcel dated as of the 19th day of December, 2004 (the "Housing and Amenities Parcel Agreement") whereby Travaglione agreed to purchase and DIRBS agreed to sell certain property located in Melrose Plantation, Daufuskie Island, South Carolina and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "Housing Parcel"); and

WHEREAS, pursuant to the Housing and Amenities Parcel Agreement, DIRBS has agreed to sell and Travaglione has agreed to purchase the Housing Parcel; and

WHEREAS, pursuant to the Housing and Amenities Parcel Agreement closing is contingent upon DIRBS obtaining the agreement of Lender to release the Housing Parcel from the Lender Mortgage (the "Housing Parcel Release"); and

HILTONHEAD-#621996-v1 | 116793.00049



WHEREAS, the Housing and Amenities Parcel Agreement contemplates purchase money financing from Seller to be represented by Promissory Note of Purchaser in the amount of Four Hundred Thousand and No/100 (\$400,000.00) to be secured by Mortgage in favor of Seller (the "Mortgage"); and

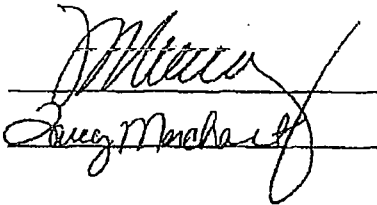
WHEREAS, Lender agrees to provide this Partial Release subject to the terms and conditions more particularly described herein.

NOW, THEREFORE, in consideration of the premises aforesaid and also in consideration of TEN AND NO/100 DOLLARS (\$10.00) and the mutual promises contained herein, the receipt and sufficiency of where are hereby acknowledged, the Parties agree as follows:

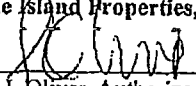
1. Recitals. The recitals above are hereby incorporated by reference.
2. Release of Lender security interest in the Housing Parcel. Lender does hereby covenant, consent and agrees to release the Housing Parcel from the Lender Mortgage. IJGA and Travaglione acknowledge that such release satisfies the release contingencies set forth in the Housing and Amenities Parcel Agreement.
3. Consideration for Release of the Housing Parcel Property from Lender Mortgage. In consideration of Lender releasing the Housing Parcel from the Lender Mortgage, DIRBS, IJGA and Travaglione agree to name Lender as co-mortgagee in the Mortgage.
4. Subordination of the Mortgages. DIRBS and Lender hereby agree to subordinate indebtedness secured by the Mortgage to any construction financing of IJGA to be used to construct improvements on the Housing Parcel.
5. Miscellaneous. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid and unenforceable provision were omitted. For the convenience of the parties hereto, duplicate originals of this Agreement may be executed and each such original shall be deemed to be an original instrument. This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina. Titles of the paragraphs and subparagraphs included herein have been inserted as a matter of convenience for reference only and shall not affect the meaning or construction of any of the terms or provisions hereof. This Agreement and all documents and instruments incorporated herein by specific reference are intended by the parties hereto to be the final expression of their agreement and constitute a complete and exclusive statement of the terms hereof notwithstanding any representations or statements to the contrary heretofore made. In the event of litigation relating to enforcement of rights under this Agreement, the prevailing party shall be entitled to recover all litigation expenses, including legal fees and court costs, from the non-prevailing party. This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by a further written agreement duly executed by the parties hereto. This Agreement shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties hereto.

HILTONHEAD-#621996-v1 116793.00049

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first above written.


Elizabeth J. Oliver, Authorized Agent

Daufuskie Island Properties, LLC

By: 
Elizabeth J. Oliver, Authorized Agent

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary, do hereby certify that **Daufuskie Island Properties, LLC**, by Elizabeth J. Oliver, Authorized Agent, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 2 day of June, 2006.


Notary Public for South Carolina
My Commission Expires: _____

MY COMMISSION EXPIRES:
AUGUST 16TH, 2014
SHARON SIMMONS

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HILTONHEAD-#621993-v1 116793.00049

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first above written.

Daufuskie Island Properties, LLC

By: _____
Tim Foley, Authorized Agent

**International Junior Golf Tour, Inc., d/b/a
International Junior Golf Academy**

By: _____
Raymond Travaglione, President

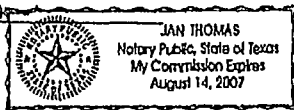
Misty Paul
Witness
Melissa [Signature]
Witness

[Signature]
Raymond Travaglione, Individually

**ClubCorp USA, Inc., as successor by merger to
Club Financial Corp**

By: _____
John M. Massey, III
Senior Vice President

[Signature]
Witness
[Signature]
Witness



HILTONHEAD-4621996-v1 116793.00049

STATE OF TEXAS

§

Acknowledgment

§

COUNTY OF DALLAS

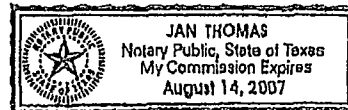
§

BEFORE ME, the undersigned authority, on this day personally appeared John M. Massey, III, Senior Vice President of ClubCorp USA, Inc., a Delaware corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said corporation, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 18th day of May, 2006.

Jan Thomas
Notary Public, State of Texas

J:\Legal\WP\SHARED\Daufuskie\1222-DIV053102\RealProp Transfers\TCC-USA notary ack.doc



STATE OF SOUTH CAROLINA

COUNTY OF BEAFORT

Acknowledgment

I HEREBY CERTIFY that on this 2nd day of June, 2006, before me, the undersigned Notary Public of the State and County aforesaid, personally appeared Raymond TRavaglione, individually and in his capacity as President of The International Junior Golf Tour d/b/a International Junior Golf Academy, A South Carolina Corporation, known to me (or satisfactorily proven) to be the persons whose name(s) is subscribed to the within instrument, who acknowledged the due execution of the foregoing instrument, individually and on behalf of the corporation

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Melissa [Signature]
Notary Public for South Carolina
My Commission Expires: 3-09-08

EXHIBIT "A"

Housing Parcel

ALL that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as 10.90 acres on that certain plat entitled, "A Boundary and Wetlands Survey of 10.90 acres, being a portion of Melrose Plantation, Daufuskie Island, Beaufort County, South Carolina," prepared by William S. Sanders, PLS # 16122, and recorded in Plat Book 114 at Page 13 in the ROD Office for Beaufort County, South Carolina.

AND ALSO a perpetual, non-exclusive easement for ingress and egress over that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as Fifty (50') Easement on that certain plat entitled, "A Boundary and Wetlands Survey of 10.90 acres, being a portion of Melrose Plantation, Daufuskie Island, Beaufort County, South Carolina," prepared by William S. Sanders, PLS # 16122, and recorded in Plat Book 114 at Page 13 in the ROD Office for Beaufort County, South Carolina.

HILTONHEAD-#621996-v1 116793.00049

11.56
Nov. 14
Escrow

NS & A
(2)
2

BEAUFORT COUNTY SC - ROD
BK 02395 PGS 0579-0584
FILE NUM 2008049599
08/22/2008 11:10:01 AM
REC'D BY J COORE RCPT# 428504
RECORDING FEES 11.00

This instrument prepared by and
after recording return to
McNair Law Firm, P.A./WJN
Shelter Cove Executive Park
23-B Shelter Cove Lane, Suite 400
Hilton Head Island, SC 29928
(843) 785-2171

17817-2/LT

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) PARTIAL RELEASE AND SUBORDINATION
(School Parcel)

THIS PARTIAL RELEASE AND SUBORDINATION (the "Partial Release") is made and entered into as of the 2 day of June, 2006, by and between DAUFUSKIE ISLAND PROPERTIES, LLC, a Delaware limited liability company, d/b/a DAUFUSKIE ISLAND RESORT AND BREATHE SPA with an address of 421 Squire Pope Road, Hilton Head Island, South Carolina 29925 ("DIRBS"); and THE INTERNATIONAL JUNIOR GOLF TOUR d/b/a INTERNATIONAL JUNIOR GOLF ACADEMY with an address of 7 Office Park Road, Suite 105-H, Hilton Head Island, South Carolina 29928 ("IJGA"); RAYMOND TRAVAGLIONE with an address of 7 Office Park Road, Suite 105-H, Hilton Head Island, South Carolina 29928 ("Travaglione"); and CLUBCORP USA, INC., a Delaware corporation, as successor by merger to CLUB FINANCIAL CORP, (the "Lender") (DIRBS, IJGA, Travaglione and Lender, collectively, the "Parties").

WITNESSETH:

WHEREAS, on March 1, 2001, DIRBS, made and executed that certain mortgage in favor of Lender to secure indebtedness in the original principal sum of EIGHTEEN MILLION DOLLARS (\$18,000,000.00) which mortgage was recorded in the Office of the Register of Deeds for Beaufort County in Book 1586 at Page 1277 ("Lender Mortgage"); and

WHEREAS, DIRBS, IJGA and Travaglione have entered into that certain Agreement for Land School Parcel dated as of the 19th day of December, 2004 (the "School Parcel Agreement") whereby Travaglione agreed to purchase and DIRBS agreed to sell certain property located in Melrose Plantation, Daufuskie Island, South Carolina and more particularly described on Exhibit "A" attached hereto and made a part hereof (the "School Parcel"); and

WHEREAS, pursuant to the School Parcel Agreement, DIRBS has agreed to sell and Travaglione has agreed to purchase the School Parcel; and

WHEREAS, pursuant to the School Parcel Agreement closing is contingent upon DIRBS obtaining the agreement of Lender to release the School Parcel from the Lender Mortgage (the "School Parcel Release"); and

HILTONHEAD-4621910-v1 116793.00049

Page 1 of 4

Book2395/Page579

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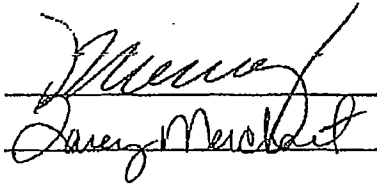
WHEREAS, the School Parcel Agreement contemplates purchase money financing from Seller to be represented by Promissory Note of Purchaser in the amount of One Hundred Thousand and No/100 (\$100,000.00) to be secured by Mortgage in favor of Seller (the "Mortgage"); and

WHEREAS, Lender agrees to provide this Partial Release subject to the terms and conditions more particularly described herein.

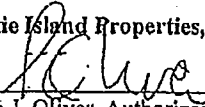
NOW, THEREFORE, in consideration of the premises aforesaid and also in consideration of TEN AND NO/100 DOLLARS (\$10.00) and the mutual promises contained herein, the receipt and sufficiency of where are hereby acknowledged, the Parties agree as follows:

1. Recitals. The recitals above are hereby incorporated by reference.
2. Release of Lender security interest in the School Parcel. Lender does hereby covenant, consent and agrees to release the School Parcel from the Lender Mortgage. IJGA and Travaglione acknowledge that such release satisfies the release contingencies set forth in the School Parcel Agreement.
3. Consideration for Release of the School Parcel from Lender Mortgage. In consideration of Lender releasing the School Parcel from the Lender Mortgage, DIRBS, IJGA and Travaglione agree to name Lender as co-mortgagee in the Mortgage.
4. Subordination of the Mortgages. DIRBS and Lender hereby agree to subordinate indebtedness secured by the Mortgage to any construction financing of IJGA to be used to construct improvements on the School Parcel.
5. Miscellaneous. The invalidity or unenforceability of any provision of this Agreement shall not affect the other provisions hereof and this Agreement shall be construed in all respects as if such invalid and unenforceable provision were omitted. For the convenience of the parties hereto, duplicate originals of this Agreement may be executed and each such original shall be deemed to be an original instrument. This Agreement shall be governed and construed in accordance with the laws of the State of South Carolina. Titles of the paragraphs and subparagraphs included herein have been inserted as a matter of convenience for reference only and shall not affect the meaning or construction of any of the terms or provisions hereof. This Agreement and all documents and instruments incorporated herein by specific reference are intended by the parties hereto to be the final expression of their agreement and constitute a complete and exclusive statement of the terms hereof notwithstanding any representations or statements to the contrary heretofore made. In the event of litigation relating to enforcement of rights under this Agreement, the prevailing party shall be entitled to recover all litigation expenses, including legal fees and court costs, from the non-prevailing party. This Agreement may not be amended, modified, altered or changed in any respect whatsoever, except by a further written agreement duly executed by the parties hereto. This Agreement shall be binding upon and inure to the benefit of the respective heirs, legal representatives, successors and assigns of the parties hereto.

IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first above written.


Mary Marshall

Daufuskie Island Properties, LLC

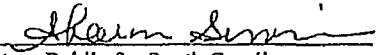
By: 
Elizabeth J. Oliver, Authorized Agent

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGEMENT

I, the undersigned Notary, do hereby certify that Daufuskie Island Properties, LLC, by Elizabeth J. Oliver, Authorized Agent, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 2 day of June, 2006.


Notary Public for South Carolina
My Commission Expires: _____ MY COMMISSION EXPIRES:
AUGUST 16TH, 2011
SHARON SIM

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IN WITNESS WHEREOF, the parties hereto have set their hands and seals as of the date first above written.

XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

XX: _____
XXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXXX

Miss Paul
witness,
Miliana
witness

International Junior Golf Tour, Inc., d/b/a
International Junior Golf Academy

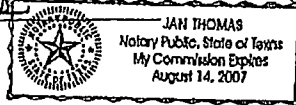
By: _____
Raymond Travaglione, President

Raymond Travaglione
Raymond Travaglione, Individually

Debbie E. Dietz
witness
Jan Thomas
witness

ClubCorp USA, Inc., as successor by merger to
Club Financial Corp

By: _____
John M. Massey, III
Senior Vice President



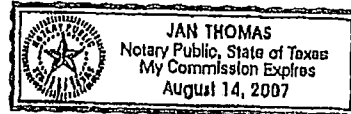
STATE OF TEXAS §
COUNTY OF DALLAS §

ACKNOWLEDGMENT

BEFORE ME, the undersigned authority, on this day personally appeared John M. Massey, III, Senior Vice President of ClubCorp USA, Inc., a Delaware corporation, known to me to be the person and officer whose name is subscribed to the foregoing instrument and acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said corporation, and in the capacity therein stated.

GIVEN UNDER MY HAND AND SEAL OF OFFICE this the 18th day of May, 2006.

Jan Thomas
Notary Public, State of Texas



J:\Legal\WPSHARE\DW\Aufuski\122-DIV053102\RecalProp Transfers\NCC-USA notary ock.doc

STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

COUNTY OF BEAUFORT

I HEREBY CERTIFY that on this 2nd day of June, 2006 before me, the undersigned Notary Public of the State and County aforesaid, personally appeared Raymond Travaglione, individually and in his capacity as President of International Junior Golf Tour, Inc. d/b/a International Junior Golf Academy, a South Carolina Corporation, known to me (or satisfactorily proven) to be the persona whose name(s) is subscribed to the within instrument, who acknowledged the due execution of the foregoing instrument individually and on behalf of the Corporation.

IN WITNESS WHEREOF, I have hereunto set my hand and official seal the day and year last above mentioned.

Mildred W. D.
Notary public for South Carolina
My Commission Expires: 3-09-08

EXHIBIT "A"

School Parcel

ALL that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as "IIGA, 57,446 SF, 1.32 Ac.," on that certain plat prepared by William S. Sanders, PLS # 16122, dated June 23, 2005, and recorded in Plat Book 107 at Page 81 in the ROD Office for Beaufort County, South Carolina.

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1380
0043

(2)

BEAUFORT COUNTY SC - ROD
BK 02387 PGS 1489-1495
FILE NUM 2008050748
08/27/2008 11:40:33 AM
REC'D BY S SMITH RCPT# 427576
RECORDING FEES 13.00

NSA/RMS/ET/VDM/T

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

MORTGAGE - HOUSING PARCEL

THIS MORTGAGE (the "Mortgage") is made this 2 day of June, 2006, between VDM/T LAND COMPANY, LLC, a South Carolina limited liability company, whose address 7 Office Park Road, Hilton Head Island, SC 29928 (the "Borrower"), and DAUFUSKIE ISLAND PROPERTIES LLC d/b/a DAUFUSKIE ISLAND RESORT AND BREATHE SPA whose address is 421 Squire Pope Road, Hilton Head Island, SC 20025 ("DIRBS") and CLUBCORP USA, INC., a Delaware Corporation as successor by merger to CLUB FINANCIAL CORP, ("CLUBCORP") (DIRBS and CLUBCORP hereinafter alternatively the "Lender").

WITNESSETH:

WHEREAS, Borrower is indebted to DIRBS in the principal sum of FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$400,000.00) which indebtedness is evidenced by Borrower's note of even date herewith (the "Note"), providing for payment in one lump sum of principal and interest on November 10, 2010; and

WHEREAS, the Note is subject to the terms of that certain Agreement for Land Housing Parcel and Amenities Parcel of August 19, 2004 (the "Housing and Amenities Parcel Agreement" which provides that the Note shall be cancelled without any payment thereunder in the event the Borrower shall cause the property acquired by the within Borrower from DIRBS by Deed of even date herewith (the "School Parcel") to be used for the construction of a school and associated training and recreational facility for a period of Five (5) consecutive years from the date of the commencement of the first full school year as described in said Agreement except as otherwise therein provided; and

WHEREAS, Borrower and Lender are parties to that certain Partial Release and Subordination of even date herewith which is incorporated herein by reference hereto.

NOW THEREFORE, TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

TO HAVE AND TO HOLD unto Lender and Lender's heirs, successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) is herein referred to as the "Property."

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Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy or certificate of title insuring Lender's interest in the Property.

SECTION 1. GENERAL COVENANTS: Borrower and Lender covenant and agree as follows:

SECTION 1.1 Payment of Principal and Interest. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, prepayment and late charges as provided in the Note, and the principal of and interest on any future advances secured by this Mortgage.

SECTION 1.2 Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and Paragraph 1.1 above shall be applied by Lender first to interest payable on the Note, then to the principal of the Note.

SECTION 1.3 Charges; Liens. Borrower shall pay prior to delinquency all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any. Borrower shall promptly furnish to Lender all notices of amounts due under this Paragraph 1.3, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender upon request receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Mortgage; provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

SECTION 1.4 Preservation and Maintenance of Property. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. Borrower (a) will not remove or demolish nor alter the design or structural character of any building now or hereafter erected upon the premises unless Lender shall first consent thereto in writing; and (b) will comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the premises, and will not suffer or permit any violation thereof.

SECTION 1.5 Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable legal fees and entry upon the Property to make repairs. Any amounts disbursed by Lender pursuant to this Paragraph 1.5, with interest thereon, shall become additional indebtedness of Borrower secured by this

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Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate of the prevailing average prime rate published in the Wall Street Journal until paid, payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this Paragraph 1.5 shall require Lender to incur any expense or take any action hereunder.

SECTION 1.6 Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

SECTION 1.7 Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Mortgage such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower. If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Mortgage. Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in Paragraph 1 hereof or change the amount of such installments.

SECTION 1.8 Transfer of the Property; Assumption. If the Property is sold or transferred by Borrower or if possession is given to the Property by Borrower to a third party via a land contract, or agreement for deed or other similar instrument, without Lender's prior written consent, excluding: (a) the creation of a lien or encumbrance subordinate to this Mortgage; (b) the creation of a purchase money security interest for household appliances; (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant; or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable.

SECTION 1.9 Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender at Lender's option may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable legal fees, and costs of documentary evidence, abstracts and title reports, all of which shall be additional sums secured by this Mortgage.

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SECTION 1.10 Assignment of Rents; Appointment of Receiver. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under Paragraph 1.9 or abandonment of the Property, have the right to collect and retain such rents as they become due and payable. Upon acceleration under Paragraph 1.9 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property, including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable legal fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

SECTION 1.11 Release. Upon payment of all sums secured by this Mortgage or satisfaction of the conditions for cancellation of the Note under the Housing and Amenities Parcel Agreement, this Mortgage shall become null and void, and Lender shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

SECTION 2. MISCELLANEOUS PROVISIONS.

SECTION 2.1 Any extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to Borrower or any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest.

SECTION 2.2 Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage.

SECTION 2.3 All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently, independently or successively.

SECTION 2.4 The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

SECTION 2.5 Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by mailing such notice by certified mail addressed to Borrower at the address of Borrower as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice

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provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

SECTION 2.6 This Mortgage shall be governed by the law of South Carolina. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage and the Note are declared to be severable.

SECTION 2.7 Borrower shall be furnished a copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

SECTION 2.8 This Mortgage was prepared in the office of the McNair Law Firm, P.A., P.O. Drawer 3, Hilton Head Island, SC 29938-0003.

SECTION 2.9 Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and such other hazards, including flood, as Lender may require and in such amounts and for such periods as Lender may require; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Mortgage. All premiums on insurance policies shall be paid by Borrower, when due, directly to the insurance carrier. All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage. Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in Paragraph 1 hereof or change the amount of such installments. If under Paragraph 10 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

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- Page 5 of 7 -

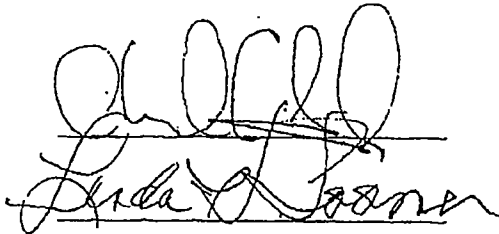
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IN WITNESS WHEREOF, Borrower has executed this Mortgage effective the date first above written.

WITNESSES

BORROWER

VDM/T LAND COMPANY
A South Carolina Limited Liability Company

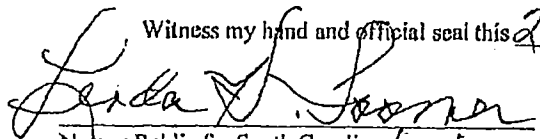

Linda L. Jernigan

By: 
Raymond M. Travaglione
Its: Manager

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary, do hereby certify Raymond M. Travaglione as Manager of VDM/T Land Company, a South Carolina limited liability company, personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 2 day of June, 2006.

Notary Public for South Carolina
My Commission Expires: 12/21/14

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- Page 6 of 7 -

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EXHIBIT "A"

PROPERTY DESCRIPTION

ALL that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as 10.90 acres on that certain plat entitled, "A Boundary and Wetlands Survey of 10.90 acres, being a portion of Melrose Plantation, Daufuskie Island, Beaufort County, South Carolina," prepared by William S. Sanders, PLS # 16122, and recorded in Plat Book 114 at Page 13 in the ROD Office for Beaufort County, South Carolina.

AND ALSO a perpetual, non-exclusive easement for ingress and egress over that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as Fifty (50') Easement on that certain plat entitled, "A Boundary and Wetlands Survey of 10.90 acres, being a portion of Melrose Plantation, Daufuskie Island, Beaufort County, South Carolina," prepared by William S. Sanders, PLS # 16122, and recorded in Plat Book 114 at Page 13 in the ROD Office for Beaufort County, South Carolina.

This being the same property conveyed to the Mortgagors by Deed recorded in the ROD Office for Beaufort County, South Carolina in Record Book 2397 at Page 1496.

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BEAUFORT COUNTY SC - ROD
BK 02387 PGS 1486-1503
FILE NUM 2006050749
08/27/2006 11:40:33 AM
REC'D BY S SMITH RCPT# 427576
RECORDING FEES 14.00

Prepared by and when recorded return to:

MCNATH LAW FIRM, P.A./WJN
Shelter Cove Executive Park, Suite 400
23-B Shelter Cove Lane
Post Office Drawer 3
Hilton Head Island, SC 29928
(843) 785-2171

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NSA/RMS/LT/V D M/T

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT) MORTGAGE - SCHOOL PROPERTY

THIS MORTGAGE (the "Mortgage") is made this 2 day of June, 2006, between VDM/T LAND COMPANY, LLC, a South Carolina limited liability company whose address 7 Office Park Road, Hilton Head Island, SC 29928 (the "Borrower"), and DAUFUSKIE ISLAND PROPERTIES LLC d/b/a DAUFUSKIE ISLAND RESORT AND BREATHE SPA whose address is 421 Squire Pope Road, Hilton Head Island, SC 29925 ("DIRBS") and CLUBCORP USA, INC., a Delaware Corporation as successor by merger to CLUB FINANCIAL CORP, ("CLUBCORP") (DIRBS and CLUBCORP, collectively the "Lender").

WITNESSETH:

WHEREAS, Borrower is indebted to Lender in the principal sum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) which indebtedness is evidenced by Borrower's note of even date herewith (the "Note"), providing for payment of principal and interest in one lump sum on November 10, 2004; and

WHEREAS, the Note is subject to the terms of that certain Agreement for Land School Site of August 19, 204 (the "School Parcel Agreement") which provides that the Note shall be cancelled without any payment thereunder in the event the Borrower shall cause the Property which is described herein to be used for the construction and operation of a school and associated training and recreational facility for a period of Five (5) consecutive years from the date of the commencement of the first full school year as described in said School Parcel Agreement except as otherwise therein provided; and

WHEREAS, Borrower and Lender are parties to that certain Partial Release and Subordination of even date herewith which is incorporated herein by reference hereto.

NOW THEREFORE, TO SECURE to Lender the repayment of the indebtedness evidenced by the Note, with interest thereon, the payment of all other sums, with interest thereon, advanced in accordance herewith to protect the security of this Mortgage, and the performance of the covenants and agreements of Borrower herein contained, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property:

SEE EXHIBIT "A" ATTACHED HERETO AND MADE A PART HEREOF

TO HAVE AND TO HOLD unto Lender and Lender's heirs, successors and assigns, forever,

HILTONHEAD-#742593-v4 116793.00049

- Page 1 of 8 -

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Prepared by and when recorded return to:

MCNAIR LAW FIRM, P.A./W.J.N.
Shelter Cove Executive Park, Suite 400
23-B Shelter Cove Lane
Post Office Drawer 3
Hilton Head Island, SC 29938
(843) 785-2171

together with all the improvements now or hereafter erected on the property, and all easements, rights, appurtenances, rents, royalties, mineral, oil and gas rights and profits, water, water rights, and water stock, and all fixtures now or hereafter attached to the property, all of which, including replacements and additions thereto, shall be deemed to be and remain a part of the property covered by this Mortgage; and all of the foregoing, together with said property (or the leasehold estate if this Mortgage is on a leasehold) is herein referred to as the "Property."

Borrower covenants that Borrower is lawfully seized of the estate hereby conveyed and has the right to mortgage, grant and convey the Property, that the Property is unencumbered, and that Borrower will warrant and defend generally the title to the Property against all claims and demands, subject to any declarations, easements or restrictions listed in a schedule of exceptions to coverage in any title insurance policy or certificate of title insuring Lender's interest in the Property.

SECTION 1. GENERAL COVENANTS: Borrower and Lender covenant and agree as follows:

SECTION 1.1 Payment of Principal and Interest. Borrower shall promptly pay when due the principal of and interest on the indebtedness evidenced by the Note, prepayment and late charges as provided in the Note, and the principal of and interest on any future advances secured by this Mortgage.

SECTION 1.2 Application of Payments. Unless applicable law provides otherwise, all payments received by Lender under the Note and Paragraph 1.1 above shall be applied by Lender first to interest payable on the Note, then to the principal of the Note.

SECTION 1.3 Charges; Liens. Borrower shall pay prior to delinquency all taxes, assessments and other charges, fines and impositions attributable to the Property which may attain a priority over this Mortgage, and leasehold payments or ground rents, if any. Borrower shall promptly furnish to Lender all notices of amounts due under this Paragraph 1.3, and in the event Borrower shall make payment directly, Borrower shall promptly furnish to Lender upon request receipts evidencing such payments. Borrower shall promptly discharge any lien which has priority over this Mortgage; provided, that Borrower shall not be required to discharge any such lien so long as Borrower shall agree in writing to the payment of the obligation secured by such lien in a manner acceptable to Lender, or shall in good faith contest such lien by, or defend enforcement of such lien in, legal proceedings which operate to prevent the enforcement of the lien or forfeiture of the Property or any part thereof.

SECTION 1.4 Preservation and Maintenance of Property. Borrower shall keep the Property in good repair and shall not commit waste or permit impairment or deterioration of the Property and shall comply with the provisions of any lease if this Mortgage is on a leasehold. Borrower (a) will not remove or demolish nor alter the design or structural character of any building now or hereafter erected upon the

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premises unless Lender shall first consent thereto in writing; and (b) will comply with all laws, ordinances, regulations, covenants, conditions and restrictions affecting the premises, and will not suffer or permit any violation thereof.

SECTION 1.5 Protection of Lender's Security. If Borrower fails to perform the covenants and agreements contained in this Mortgage, or if any action or proceeding is commenced which materially affects Lender's interest in the Property, including, but not limited to, eminent domain, insolvency, code enforcement, or arrangements or proceedings involving a bankrupt or decedent, then Lender at Lender's option, upon notice to Borrower, may make such appearances, disburse such sums and take such action as is necessary to protect Lender's interest, including, but not limited to, disbursement of reasonable legal fees and entry upon the Property to make repairs. Any amounts disbursed by Lender pursuant to this Paragraph 1.5, with interest thereon, shall become additional indebtedness of Borrower secured by this Mortgage. Unless Borrower and Lender agree to other terms of payment, such amounts shall be payable upon notice from Lender to Borrower requesting payment thereof, and shall bear interest from the date of disbursement at the rate of the prevailing average prime rate published in the Wall Street Journal until paid, payable from time to time on outstanding principal under the Note unless payment of interest at such rate would be contrary to applicable law, in which event such amounts shall bear interest at the highest rate permissible under applicable law. Nothing contained in this Paragraph 1.5 shall require Lender to incur any expense or take any action hereunder.

SECTION 1.6 Inspection. Lender may make or cause to be made reasonable entries upon and inspections of the Property, provided that Lender shall give Borrower notice prior to any such inspection specifying reasonable cause therefor related to Lender's interest in the Property.

SECTION 1.7 Condemnation. The proceeds of any award or claim for damages, direct or consequential, in connection with any condemnation or other taking of the Property, or part thereof, or for conveyance in lieu of condemnation, are hereby assigned and shall be paid to Lender. In the event of a total taking of the Property, the proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. In the event of a partial taking of the Property, unless Borrower and Lender otherwise agree in writing, there shall be applied to the sums secured by this Mortgage such proportion of the proceeds as is equal to that proportion which the amount of the sums secured by this Mortgage immediately prior to the date of taking bears to the fair market value of the Property immediately prior to the date of taking, with the balance of the proceeds paid to Borrower. If the Property is abandoned by Borrower, or if, after notice by Lender to Borrower that the condemnor offers to make an award or settle a claim for damages, Borrower fails to respond to Lender within 30 days after the date such notice is mailed, Lender is authorized to collect and apply the proceeds, at Lender's option, either to restoration or repair of the Property or to the sums secured by this Mortgage. Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in Paragraph 1 hereof or change the amount of such installments.

SECTION 1.8 Transfer of the Property; Assumption. If the Property is sold or transferred by Borrower or if possession is given to the Property by Borrower to a third party via a land contract, or agreement for deed or other similar instrument, without Lender's prior written consent, excluding: (a) the creation of a lien or encumbrance subordinate to this Mortgage; (b) the creation of a purchase money

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security interest for household appliances; (c) a transfer by devise, descent or by operation of law upon the death of a joint tenant; or (d) the grant of any leasehold interest of three years or less not containing an option to purchase, Lender may, at Lender's option, declare all the sums secured by this Mortgage to be immediately due and payable.

SECTION 1.9 Acceleration; Remedies. Upon Borrower's breach of any covenant or agreement of Borrower in this Mortgage, including the covenants to pay when due any sums secured by this Mortgage, Lender at Lender's option may declare all of the sums secured by this Mortgage to be immediately due and payable without further demand and may foreclose this Mortgage by judicial proceeding. Lender shall be entitled to collect in such proceeding all expenses of foreclosure, including, but not limited to, reasonable legal fees, and costs of documentary evidence, abstracts and title reports, all of which shall be additional sums secured by this Mortgage.

SECTION 1.10 Assignment of Rents; Appointment of Receiver. As additional security hereunder, Borrower hereby assigns to Lender the rents of the Property, provided that Borrower shall, prior to acceleration under Paragraph 1.9 or abandonment of the Property, have the right to collect and retain such rents as they become due and payable. Upon acceleration under Paragraph 1.9 hereof or abandonment of the Property, Lender shall be entitled to have a receiver appointed by a court to enter upon, take possession of and manage the Property and to collect the rents of the Property, including those past due. All rents collected by the receiver shall be applied first to payment of the costs of management of the Property and collection of rents, including, but not limited to, receiver's fees, premiums on receiver's bonds and reasonable legal fees, and then to the sums secured by this Mortgage. The receiver shall be liable to account only for those rents actually received.

SECTION 1.11 Release. Upon payment of all sums secured by this Mortgage or satisfaction of the conditions for cancellation of the Note under the School Parcel Agreement, this Mortgage shall become null and void, and Lender shall release this Mortgage without charge to Borrower. Borrower shall pay all costs of recordation, if any.

SECTION 2. MISCELLANEOUS PROVISIONS.

SECTION 2.1 Any extension of the time for payment or modification of amortization of the sums secured by this Mortgage granted by Lender to Borrower or any successor in interest of Borrower shall not operate to release, in any manner, the liability of the original Borrower and Borrower's successors in interest. Lender shall not be required to commence proceedings against such successor or refuse to extend time for payment or otherwise modify amortization of the sums secured by this Mortgage by reason of any demand made by the original Borrower and Borrower's successors in interest.

SECTION 2.2 Any forbearance by Lender in exercising any right or remedy hereunder, or otherwise afforded by applicable law, shall not be a waiver of or preclude the exercise of any such right or remedy. The procurement of insurance or the payment of taxes or other liens or charges by Lender shall not be a waiver of Lender's right to accelerate the maturity of the indebtedness secured by this Mortgage.

SECTION 2.3 All remedies provided in this Mortgage are distinct and cumulative to any other right or remedy under this Mortgage or afforded by law or equity, and may be exercised concurrently,

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independently or successively.

SECTION 2.4 The covenants and agreements herein contained shall bind, and the rights hereunder shall inure to, the respective successors and assigns of Lender and Borrower. All covenants and agreements of Borrower shall be joint and several. The captions and headings of the paragraphs of this Mortgage are for convenience only and are not to be used to interpret or define the provisions hereof.

SECTION 2.5 Except for any notice required under applicable law to be given in another manner, (a) any notice to Borrower provided for in this Mortgage shall be given by mailing such notice by certified mail addressed to Borrower at the address of Borrower as provided herein, and (b) any notice to Lender shall be given by certified mail, return receipt requested, to Lender's address stated herein or to such other address as Lender may designate by notice to Borrower as provided herein. Any notice provided for in this Mortgage shall be deemed to have been given to Borrower or Lender when given in the manner designated herein.

SECTION 2.6 This Mortgage shall be governed by the law of South Carolina. In the event that any provision or clause of this Mortgage or the Note conflicts with applicable law, such conflict shall not affect other provisions of this Mortgage or the Note which can be given effect without the conflicting provision, and to this end the provisions of the Mortgage and the Note are declared to be severable.

SECTION 2.7 Borrower shall be furnished a copy of the Note and of this Mortgage at the time of execution or after recordation hereof.

SECTION 2.8 This Mortgage was prepared in the office of the McNair Law Firm, P.A., P.O. Drawer 3, Hilton Head Island, SC 29938-0003.

SECTION 2.9 Hazard Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and such other hazards, including flood, as Lender may require and in such amounts and for such periods as Lender may require; provided, that Lender shall not require that the amount of such coverage exceed that amount of coverage required to pay the sums secured by this Mortgage. All premiums on insurance policies shall be paid by Borrower, when due, directly to the insurance carrier. All insurance policies and renewals thereof shall be in form acceptable to Lender and shall include a standard mortgage clause in favor of and in form acceptable to Lender. Lender shall have the right to hold the policies and renewals thereof, and Borrower shall promptly furnish to Lender all renewal notices and all receipts of paid premiums. In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower.

Unless Lender and Borrower otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged, provided such restoration or repair is economically feasible and the security of this Mortgage is not thereby impaired. If such restoration or repair is not economically feasible or if the security of this Mortgage would be impaired, the insurance proceeds shall be applied to the sums secured by this Mortgage, with the excess, if any, paid to Borrower. If the Property is abandoned by Borrower, or if Borrower fails to respond to Lender within thirty (30) days from the date notice is mailed by Lender to Borrower that the insurance carrier offers to settle a claim for insurance

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benefits, Lender is authorized to collect and apply the insurance proceeds at Lender's option either to restoration or repair of the Property or to the sums secured by this Mortgage. Unless Lender and Borrower otherwise agree in writing, any such application of proceeds to principal shall not extend or postpone the due date of the monthly installments referred to in Paragraph 1 hereof or change the amount of such installments. If under Paragraph 10 hereof the Property is acquired by Lender, all right, title and interest of Borrower in and to any insurance policies and in and to the proceeds thereof resulting from damage to the Property prior to the sale or acquisition shall pass to Lender to the extent of the sums secured by this Mortgage immediately prior to such sale or acquisition.

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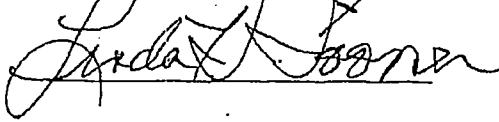
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IN WITNESS WHEREOF, Borrower has executed this Mortgage effective the date first above written.

WITNESSES

BORROWER

VDM/T LAND COMPANY, LLC


By: Raymond M. Travaglione
Its: Manager

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary, do hereby certify Raymond M. Travaglione as Manager of DVM/T Land Company, LLC personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 2 day of June, 2006.

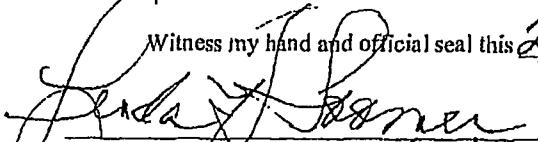

Notary Public for South Carolina
My Commission Expires: 12/21/14



EXHIBIT "A"

PROPERTY DESCRIPTION

ALL that certain piece, parcel or lot of land situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as "IJA," being a 1.32 acre parcel on a plat prepared by William S. Sanders, PLS #16122, dated June 23, 2005, and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Plat Book 107 at Page 81.

Parcel Identification Number: R800-025-000-0023-0000.

This being the same property conveyed to the Mortgagors by Deed recorded in the ROD Office for Beaufort County, South Carolina in Recorded Book 2397 at Page 1486.

PROMISSORY NOTE

Principal	Loan Date	Maturity	Loan No.	Call / Coll	Account	Officer	Initials
\$1,100,000.00	06-02-2006	06-05-2007	0103099560	260 / 900	V001165	10756	MM

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing ***** has been omitted due to text length limitations.

Borrower: VDM / T Land Company, LLC
PO Box 22659
Hilton Head Island, SC 29925

Lender: First Federal Savings & Loan Association of
Charleston
P.O. Box 118068
2440 Mall Drive Suite 100
Charleston, SC 29423-8068

Principal Amount: \$1,100,000.00

Initial Rate: 6.961%

Date of Note: June 2, 2006

PROMISE TO PAY. VDM / T Land Company, LLC ("Borrower") promises to pay to First Federal Savings & Loan Association of Charleston ("Lender"), or order, in lawful money of the United States of America, the principal amount of One Million One Hundred Thousand & 00/100 Dollars (\$1,100,000.00) or so much as may be outstanding, together with interest on the unpaid outstanding principal balance of each advance. Interest shall be calculated from the date of each advance until repayment of each advance.

PAYMENT. Borrower will pay this loan in one payment of all outstanding principal plus all accrued unpaid interest on June 5, 2007. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due as of each payment date, beginning July 5, 2006, with all subsequent interest payments to be due on the same day of each month after that. Unless otherwise agreed or required by applicable law, payments will be applied first to any accrued unpaid interest; then to principal; then to any unpaid collection costs; and then to any late charges. The annual interest rate for this Note is computed on a 365/360 basis; that is, by applying the ratio of the annual interest rate over a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding. Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an independent index which is the One Month London Interbank Offered Rate (LIBOR) as published on the last day of the month in THE WALL STREET JOURNAL "Money Rates" table (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current Index rate upon Borrower's request. The interest rate change will not occur more often than each month. The rate change will be effective on the 1st payment date and every month thereafter. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 5.111% per annum. The interest rate to be applied to the unpaid principal balance during this Note will be at a rate of 1.850 percentage points over the Index, adjusted if necessary for any minimum and maximum rate limitations described below, resulting in an initial rate of 6.961% per annum. **NOTICE:** Under no circumstances will the interest rate on this Note be less than 6.961% per annum or more than the maximum rate allowed by applicable law.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, relieve Borrower of Borrower's obligation to continue to make payments of accrued unpaid interest. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "paid in full", "without recourse", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the amount owed or that is tendered with other conditions or limitations or as full satisfaction of a disputed amount must be mailed or delivered to: First Federal Savings & Loan of Charleston, P.O. Box 118068 Charleston, SC 29423-8068.

LATE CHARGE. If a payment is 16 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the total sum due under this Note will continue to accrue interest at the interest rate under this Note. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition contained in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower.

False Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Death or Insolvency. The dissolution of Borrower (regardless of whether election to continue is made), any member withdraws from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or by any governmental agency against any collateral securing the loan. This includes a garnishment of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Borrower gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insecurity. Lender in good faith believes itself insecure.

Cure Provisions. If any default, other than a default in payment is curable and if Borrower has not been given a notice of a breach of the same provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fourteen (14) days; or (2) if the cure requires more than fourteen (14) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

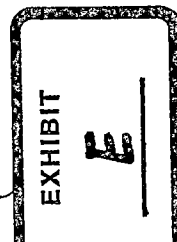
LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEYS' FEES; EXPENSES. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Note and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other sums provided by law.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of South Carolina.

DISHONORED ITEM FEE. Borrower will pay a fee to Lender of \$25.00 if Borrower makes a payment on Borrower's loan and the check or preauthorized charge with which Borrower pays is later dishonored. 046

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether



PROMISSORY NOTE
(Continued)

Page 2

checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or setoff all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Note is secured by Real Property located at Lot 350, Plat 2 Block B, Melrose Plantation, Daufuskie Island, SC 29915.

LINE OF CREDIT. This Note evidences a straight line of credit. Once the total amount of principal has been advanced, Borrower is not entitled to further loan advances. Advances under this Note may be requested either orally or in writing by Borrower or by an authorized person. Lender may, but need not, require that all oral requests be confirmed in writing. All communications, instructions, or directions by telephone or otherwise to Lender are to be directed to Lender's office shown above. Borrower agrees to be liable for all sums either: (A) advanced in accordance with the instructions of an authorized person or (B) credited to any of Borrower's accounts with Lender. The unpaid principal balance owing on this Note at any time may be evidenced by endorsements on this Note or by Lender's internal records, including daily computer print-outs. Lender will have no obligation to advance funds under this Note if: (A) Borrower or any guarantor is in default under the terms of this Note or any agreement that Borrower or any guarantor has with Lender, including any agreement made in connection with the signing of this Note; (B) Borrower or any guarantor ceases doing business or is insolvent; (C) any guarantor seeks, claims or otherwise attempts to limit, modify or revoke such guarantor's guarantee of this Note or any other loan with Lender; (D) Borrower has applied funds provided pursuant to this Note for purposes other than those authorized by Lender; or (E) Lender in good faith believes itself insecure.

ARBITRATION. Borrower and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Note or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any collateral securing this Note shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any collateral securing this Note, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral securing this Note, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Note shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

ADMINISTRATION CHARGE. The Lender provided the payment coupon book(s), free of charge, at initial account opening. I agree to pay a fee of \$5.00 for each additional replacement coupon book issued upon my request. This fee will be added to the loan payoff.

ADDITIONAL ATTORNEYS' FEES; EXPENSES. I agree to pay all of Lender's costs and expenses, including Lender's reasonable attorney's fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay an attorney to help enforce this Agreement, to collect the indebtedness, to protect its collateral and rights, or to defend itself in a lawsuit, including one brought by me, and I shall pay the costs and expenses, including reasonable attorney's fees, of such enforcement. Costs and expenses include, subject to any limits under the South Carolina Consumer Protection Code: Lender's attorney fees in the amount of fifteen percent (15%) of the amount owing on the indebtedness or the actual attorney fees incurred (whichever is greater); legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. If not prohibited by the South Carolina Consumer Protection Code, I also shall pay all court costs, in addition to all other sums provided by law. This Agreement also secures all of these amounts.

DEFAULT: ADDITIONAL LENDER'S RIGHTS. If I am in default under this agreement or otherwise break any promise or obligation to Lender pursuant to this agreement, Lender may also demand that any other loan I have now or in the future with Lender be paid in full immediately and, if I do not pay, Lender may seek any remedies afforded you under these loan documents.

ADDITIONAL RIGHT OF SETOFF.

Lender will not be liable for the dishonor of any check when the dishonor occurs because Lender set off this debt against any of my accounts. I agree to hold Lender harmless from any such claims arising as a result of Lender exercising Lender's right of set-off.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

NOTIFY US OF INACCURATE INFORMATION WE REPORT TO CONSUMER REPORTING AGENCIES. Please notify us if we report any inaccurate information about your account(s) to a consumer reporting agency. Your written notice describing the specific inaccuracy(ies) should be sent to us at the following address: First Federal Savings & Loan Association of Charleston P.O. Box 118068 Charleston, SC 29423-8068.

GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend (repeatedly and for any length of time) this loan or release any party or guarantor or collateral; or impair, fail to realize upon or perfect Lender's security interest in the collateral; and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE, INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

VDM / T LAND COMPANY, LLC

By: 

Raymond M. Travagione, Member of VDM / T Land Company, LLC

STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

Loan # 103099560

AMENDMENT TO COMMERCIAL NOTE AND MORTGAGE

THIS Amendment to Commercial Note and Mortgage (the "Amendment") is made and entered into as of the 2nd day of June, 2008, at Hilton Head Island, South Carolina, by and between FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF CHARLESTON (the "Lender") and VDM/T Land Company, LLC of Hilton Head Island, South Carolina, (the "Borrower"), (either Borrower or Lender being sometimes referred to singularly as a "Party" or collectively as the "Parties").

WITNESSETH:

WHEREAS, on or about June 2, 2006, Lender made a commercial loan to Borrower in the amount of ONE MILLION ONE HUNDRED THOUSAND AND NO/CENTS DOLLARS (\$1,100,000.00) (the "Loan") as evidenced by a promissory note of even date and in like amount executed and delivered by Borrower to Lender (the "Note") whereby Borrower promised to pay to the Lender the sum of ONE MILLION ONE HUNDRED THOUSAND AND NO/CENTS Dollars (\$1,100,000.00) on June 2, 2007 with interest thereon at ☐ a fixed rate of (%) PERCENT per annum or ☒ a variable rate of One Month London Interbank Offered Rate (LIBOR) plus 1.850% per annum; and

WHEREAS, the said Note is secured in whole or in part by that certain mortgage of real property executed and delivered by Borrower to Lender dated June 2, 2006, and recorded on June 27, 2006, in Book 02397, Page 1504, Office of the Register of Deeds, Beaufort County, South Carolina (the "Mortgage"); and

WHEREAS, the principal balance of the said Note currently amounts to ONE MILLION ONE HUNDRED FOUR THOUSAND FOUR HUNDRED AND SIX AND 79/100 DOLLARS (\$1,104,406.79) and interest has been paid through June 2, 2008, and

WHEREAS, Borrower(s), Mortgagor(s) and Guarantor(s) have requested that the Lender modify the repayment terms of the Note; and

WHEREAS, Borrower(s), Mortgagor(s) and Guarantor(s) desire to indemnify and hold harmless the Lender against any loss, damage, liability or deficiency including, without limitation, reasonable attorney's fees and other costs and expenses incident to any suit, action, investigation or other proceeding in connection with the entering into of the within Amendment by the Lender.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of One (\$1.00) Dollar paid by Borrower, the above recitals, and the mutual independent covenants set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree to amend the terms of payment of the indebtedness evidenced by said Note and secured by said Mortgage so that the same shall be due and payable as follows:

The Parties hereby adopt the foregoing recitals and incorporate them herein as part of this Amendment as fully as if restated verbatim and, except as amended herein, ratify and confirm the terms of the Note and Mortgage.

PAYMENT SCHEDULE: Principal and interest hereon will be paid as follows:

- ☐ TIME The principal amount of the Note is payable in full on N/A, with interest thereon payable beginning N/A.
- ☐ INSTALLMENT In consecutive n/a payments of ☐ including interest ☐ plus interest, beginning N/A. All principal and interest if not sooner paid shall be due and payable as a ☐ final ☐ regular, or ☐ balloon payment on N/A.
- ☒ LINE OF CREDIT The principal amount outstanding under this ☐ Revolving ☒ Non-Revolving Line of Credit is due on June 2, 2009, with interest thereon payable monthly beginning July 2, 2008.
- ☐ OTHER
- ☒ RATE Interest accrued on the unpaid balance will be calculated at ☐ a fixed rate of % per annum. ☒ a variable rate of First Federal Prime plus .500%, the rate to be adjusted from time to time. The change in the Variable Rate will become effective on the day that Lender's prime rate changes. The new interest rate floor will be 4.000%. The new interest rate ceiling will be %. ☐ a variable rate of One Month London Interbank Offered Rate (LIBOR) plus %. The rate will be adjusted on the first payment date and every month thereafter. The new interest rate floor will be %. The new interest rate ceiling will be %.
- ☒ LATE CHARGES If Payment is 16 days or more late, Borrower will be charged 5.00% of the unpaid portion of the payment amount.
- ☒ ACCRUAL BASIS This loan will accrue on an actual/360 basis.

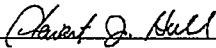
Except as specifically amended hereby, all other terms of the Note and Mortgage will remain in full force and effect as originally entered into and are hereby ratified, as may have been subsequently amended prior to this date. This modification in no way discharges the existing obligation under the Note and Mortgage which is hereby reaffirmed and which shall be and remain in full force and effect.

Borrower(s), mortgagor(s) and guarantor(s) agree to indemnify and hold harmless the Lender against any loss, damage, liability or deficiency including, without limitation, reasonable attorney's fees and other costs and expenses incident to any suit, action, investigation or other proceeding arising out of or resulting from the entering into of this modification agreement by the Lender.

This agreement shall be binding on the parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF, we have hereunto set out Hands and Seals the day and year written below:

WITNESS

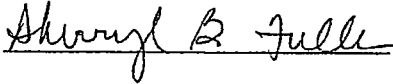


BORROWER(S) AND MORTGAGOR(S):
VDM / T Land Company, LLC

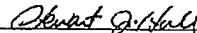
 (LS)
Raymond M. Travaglione, Member

_____ (LS)

WITNESS



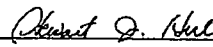
LENDER: FIRST FEDERAL SAVINGS AND LOAN
ASSOCIATION OF CHARLESTON

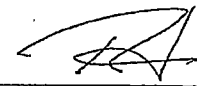
By: 

Its: Vice President

In consideration of the execution by Lender of this Amendment to Commercial Note and Mortgage, the undersigned (whether Guarantor, co-signer, joint maker, accommodation party or other party to either said Note or Mortgage or other undertaking) consents to the terms of this Amendment and shall continue to be bound according to the terms of the original transaction modified only as expressly set forth herein, this 2nd day of June, 2008.

WITNESS:



 (LS)
Raymond M. Travaglione, As Guarantor

_____ (LS)

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) FOR BORROWER(S), MORTGAGOR(S) AND
) GUARANTOR(S)

PERSONALLY appeared before me Stewart J. Hull (the first witness) and made oath that s/he saw the within-named Raymond Travagione sign, seal and as member act and deed deliver the within-written Amendment to Commercial Note and Mortgage; and that s/he with _____ (the second witness) witnessed the execution thereof.

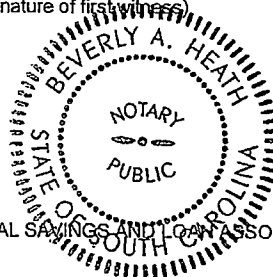
SWORN TO BEFORE ME this

2nd day of June, 2008

Beverly A. Heath (LS)
Notary Public for South Carolina

My Commission expires: 1-14-2018

Stewart J. Hull
(signature of first witness)



STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT) FOR FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF
) CHARLESTON

Personally appeared before me Sherry B. Fuller (the first witness) and made oath that s/he saw the within-named First Federal Savings and Loan Association of Charleston as mortgagee, sign, seal and as its act and deed deliver the within-written Amendment to Commercial Note and Mortgage; and that s/he with _____ (the second witness) witnessed the execution thereof.

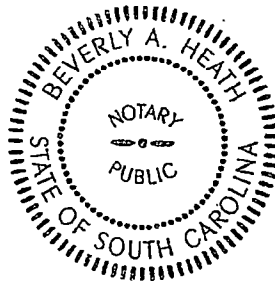
SWORN TO BEFORE ME this

2nd day of June, 2008

Beverly A. Heath (LS)
Notary Public for South Carolina

My Commission Expires: 1-14-2018

Sherry B. Fuller
(signature of first witness)



STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

Loan # 103099560

AMENDMENT TO COMMERCIAL NOTE AND MORTGAGE

THIS Amendment to Commercial Note and Mortgage (the "Amendment") is made and entered into as of the 2nd day of June, 2009, at Hilton Head Island, South Carolina, by and between FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF CHARLESTON (the "Lender") and VDM / T Company, LLC of Hilton Head Island, South Carolina, (the "Borrower"), (either Borrower or Lender being sometimes referred to singularly as a "Party" or collectively as the "Parties").

WITNESSETH:

WHEREAS, on or about June 2, 2006, Lender made a commercial loan to Borrower in the amount of One Million One Hundred Thousand and 00/100 DOLLARS (\$1,100,000.00) (the "Loan") as evidenced by a promissory note of even date and in like amount executed and delivered by Borrower to Lender (the "Note") whereby Borrower promised to pay to the Lender the sum of One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00) on June 2, 2007 with interest thereon at ☐ a fixed rate of (%) PERCENT per annum or ☒ a variable rate of One Month London Interbank Offered Rate (LIBOR) plus 1.850% per annum; and

WHEREAS, the said Note is secured in whole or in part by that certain mortgage of real property executed and delivered by Borrower to Lender dated June 2, 2006, and recorded on June 27, 2006, in Book 02397, Page 1504, Office of the Register of Deeds, Beaufort County, South Carolina (the "Mortgage"); and

WHEREAS, the principal balance of the said Note currently amounts to One Million Ninety Eight Thousand Six Hundred Eight and 80/100 DOLLARS (\$1,098,608.80) and interest has been paid through June 2, 2009, and

WHEREAS, Borrower(s), Mortgagor(s) and Guarantor(s) have requested that the Lender modify the repayment terms of the Note; and

WHEREAS, Borrower(s), Mortgagor(s) and Guarantor(s) desire to indemnify and hold harmless the Lender against any loss, damage, liability or deficiency including, without limitation, reasonable attorney's fees and other costs and expenses incident to any suit, action, investigation or other proceeding in connection with the entering into of the within Amendment by the Lender.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of One (\$1.00) Dollar paid by Borrower, the above recitals, and the mutual independent covenants set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree to amend the terms of payment of the indebtedness evidenced by said Note and secured by said Mortgage so that the same shall be due and payable as follows:

The Parties hereby adopt the foregoing recitals and incorporate them herein as part of this Amendment as fully as if restated verbatim and, except as amended herein, ratify and confirm the terms of the Note and Mortgage.

PAYMENT SCHEDULE: Principal and Interest hereon will be paid as follows:

- ☐ TIME The principal amount of the Note is payable in full on N/A, with interest thereon payable beginning N/A.
- ☐ INSTALLMENT In consecutive n/a payments of ☐ including interest ☐ plus interest, beginning N/A. All principal and interest if not sooner paid shall be due and payable as a ☐ final ☐ regular, or ☐ balloon payment on N/A.
- ☒ LINE OF CREDIT The principal amount outstanding under this ☐ Revolving ☒ Non-Revolving Line of Credit is due on June 2, 2010, with interest thereon payable monthly beginning July 2, 2009.
- ☐ OTHER
- ☒ RATE Interest accrued on the unpaid balance will be calculated at ☐ a fixed rate of % per annum. ☒ a variable rate of First Federal Prime plus 1.00%, the rate to be adjusted from time to time. The change in the Variable Rate will become effective on the day that Lender's prime rate changes. The new interest rate floor will be 5.00%. The new interest rate ceiling will be %.
- ☐ a variable rate of One Month London Interbank Offered Rate (LIBOR) plus %.
- The rate will be adjusted on the first payment date and every month thereafter. The new interest rate floor will be %. The new interest rate ceiling will be %.
- ☒ LATE CHARGES If Payment is 16 days or more late, Borrower will be charged 5.00% of the unpaid portion of the payment amount.
- ☒ ACCRUAL BASIS This loan will accrue on an actual/360 basis.

It is specifically agreed and understood by the Parties hereto that this Amendment is not intended to be and is not a novation and that any attempt to so construe the Amendment as such would be contrary to the express intent of the Parties.

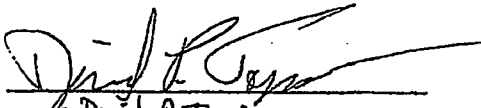
Except as specifically amended hereby, all other terms of the Note and Mortgage will remain in full force and effect as originally entered into and are hereby ratified, as may have been subsequently amended prior to this date. This modification in no way discharges the existing obligation under the Note and Mortgage which is hereby reaffirmed and which shall be and remain in full force and effect.

Borrower(s), mortgagor(s) and guarantor(s) agree to indemnify and hold harmless the Lender against any loss, damage, liability or deficiency including, without limitation, reasonable attorney's fees and other costs and expenses incident to any suit, action, investigation or other proceeding arising out of or resulting from the entering into of this modification agreement by the Lender.

This agreement shall be binding on the parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF, we have hereunto set out Hands and Seals the day and year written below:

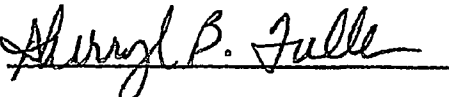
WITNESS


David P. Toppin

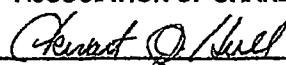
BORROWER(S) AND MORTGAGOR(S):
VDM / T COMPANY, LLC


Raymond M. Travaglione, Member (LS)

WITNESS

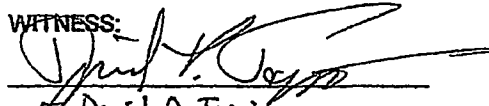

Cheryl B. Fulle

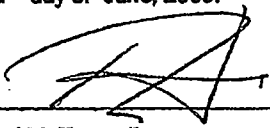
LENDER: FIRST FEDERAL SAVINGS AND LOAN
ASSOCIATION OF CHARLESTON

By: 
Its: Vice President

In consideration of the execution by Lender of this Amendment to Commercial Note and Mortgage, the undersigned (whether Guarantor, co-signer, joint maker, accommodation party or other party to either said Note or Mortgage or other undertaking) consents to the terms of this Amendment and shall continue to be bound according to the terms of the original transaction modified only as expressly set forth herein, this 2nd day of June, 2009.

WITNESS:


David P. Toppin


Raymond M. Travaglione, as guarantor (LS)

(LS)

STATE OF South Carolina)

COUNTY OF BEAUFORT)

FOR BORROWER(S), MORTGAGOR(S) AND
GUARANTOR(S)

PERSONALLY appeared before me David P. Toppin (the first witness) and made oath that s/he saw
the within-named Raymond M. Travaglio sign, seal and as act
and deed deliver the within-written Amendment to Commercial Note and Mortgage; and that s/he with
 (the second witness) witnessed the execution thereof.

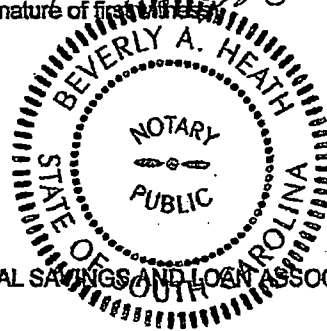
SWORN TO BEFORE ME this

2nd day of June, 2009

Beverly A. Heath (LS)
Notary Public for South Carolina

My Commission expires: 1-14-2018

Beverly A. Heath
Notary Public
State of South Carolina
My Commission Expires 01-14-2018



STATE OF SOUTH CAROLINA)

COUNTY OF BEAUFORT)

FOR FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF
CHARLESTON

Personally appeared before me Sherry B. Fuller (the first witness) and made oath that
s/he saw the within-named First Federal Savings and Loan Association of Charleston as mortgagee, sign, seal and as
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 (the second witness) witnessed the execution thereof.

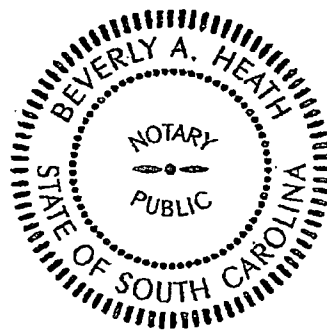
SWORN TO BEFORE ME this

2nd day of June, 2009

Beverly A. Heath (LS)
Notary Public for South Carolina

My Commission Expires: 1-14-2018

Beverly A. Heath
Notary Public
State of South Carolina
My Commission Expires 01-14-2018



STATE OF SOUTH CAROLINA)
COUNTY OF BEAUFORT)

Loan # 103099560

AMENDMENT TO COMMERCIAL NOTE AND MORTGAGE

THIS Amendment to Commercial Note and Mortgage (the "Amendment") is made and entered into as of the 15th day of June, 2010, at Hilton Head Island, South Carolina, by and between FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF CHARLESTON (the "Lender") and VDM/T Land Company, LLC of Hilton Head Island, South Carolina, (the "Borrower"), (either Borrower or Lender being sometimes referred to singularly as a "Party" or collectively as the "Parties").

WITNESSETH:

WHEREAS, on or about June 2nd, 2006, Lender made a commercial loan to Borrower in the amount of One Million One Hundred Thousand and 00/100 DOLLARS (\$1,100,000.00) (the "Loan") as evidenced by a promissory note of even date and in like amount executed and delivered by Borrower to Lender (the "Note") whereby Borrower promised to pay to the Lender the sum of One Million One Hundred Thousand and 00/100 Dollars (\$1,100,000.00) on June 2nd, 2007 with interest thereon at ☐ a fixed rate of (%) PERCENT per annum or ☒ a variable rate of One Month London Interbank Offered Rate (LIBOR) plus 1.850% per annum with a 6.961% floor; and

WHEREAS, the said Note is secured in whole or in part by that certain mortgage of real property executed and delivered by Borrower to Lender dated June 2nd, 2006, and recorded on June 27th, 2006, in Book 02397, Page 1504, Office of the Register of Deeds, Beaufort County, South Carolina (the "Mortgage"); and

WHEREAS, the principal balance of the said Note currently amounts to One Million and 00/100 DOLLARS (\$1,000,000.00) and interest has been paid through June 2nd, 2010, and

WHEREAS, Borrower(s), Mortgagor(s) and Guarantor(s) have requested that the Lender modify the repayment terms of the Note; and

WHEREAS, Borrower(s), Mortgagor(s) and Guarantor(s) desire to indemnify and hold harmless the Lender against any loss, damage, liability or deficiency including, without limitation, reasonable attorney's fees and other costs and expenses incident to any suit, action, investigation or other proceeding in connection with the entering into of the within Amendment by the Lender.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of One (\$1.00) Dollar paid by Borrower, the above recitals, and the mutual independent covenants set forth below, the receipt and sufficiency of which is hereby acknowledged, the Parties hereto agree to amend the terms of payment of the indebtedness evidenced by said Note and secured by said Mortgage so that the same shall be due and payable as follows:

The Parties hereby adopt the foregoing recitals and incorporate them herein as part of this Amendment as fully as if restated verbatim and, except as amended herein, ratify and confirm the terms of the Note and Mortgage.

PAYMENT SCHEDULE: Principal and interest hereon will be paid as follows:

- ☒ **TIME** The principal amount of the Note is payable in full on September 2nd, 2010 with interest thereon payable monthly beginning July 2nd, 2010.
- ☐ **INSTALLMENT** In consecutive n/a payments of ☐ including interest ☐ plus interest, beginning N/A, . All principal and interest if not sooner paid shall be due and payable as a ☐ final ☐ regular, or ☐ balloon payment on N/A, .
- ☐ **LINE OF CREDIT** The principal amount outstanding under this ☐ Revolving ☐ Non-Revolving Line of Credit is due on N/A, , with interest thereon payable n/a beginning N/A, .
- ☐ **OTHER**
- ☒ **RATE** Interest accrued on the unpaid balance will be calculated at ☐ a fixed rate of % per annum.
 ☒ a variable rate of First Federal Prime plus 1.000%, the rate to be adjusted from time to time. The change in the Variable Rate will become effective on the day that Lender's prime rate changes. The new interest rate floor will be 5.000%. The new interest rate ceiling will be %.
 ☐ a variable rate of One Month London Interbank Offered Rate (LIBOR) plus % . The rate will be adjusted on the first payment date and every month thereafter. The new interest rate floor will be % . The new interest rate ceiling will be %.
- ☒ **INTEREST RATE AFTER DEFAULT** Interest accrued on the unpaid balance will be calculated as follows:
 ☐ Fixed rate closed-end loan: Upon default, including failure to pay upon final maturity, the interest rate on this Note shall be increased by 2.00 (2.00%) percentage points. However, in

no event will the interest rate exceed the maximum interest rate limitations under applicable law.

☒ **Variable rate closed-end loan:** Upon default, including failure to pay upon final maturity, the interest rate of this Note shall be increased by adding a 2.00 (2.00%) percentage point margin ("Default Rate Margin"). The Default Rate Margin shall also apply to each succeeding interest rate change that would have applied had there been no default. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

☐ This section is not applicable to revolving lines of credit.

☒ **LATE CHARGES** If Payment is 16 days or more late, Borrower will be charged 5.00% of the unpaid portion of the payment amount.

☒ **ACCRUAL BASIS** This loan will accrue on an actual/360 basis.

It is specifically agreed and understood by the Parties hereto that this Amendment is not intended to be and is not a novation and that any attempt to so construe the Amendment as such would be contrary to the express intent of the Parties.

Except as specifically amended hereby, all other terms of the Note and Mortgage will remain in full force and effect as originally entered into and are hereby ratified, as may have been subsequently amended prior to this date. This modification in no way discharges the existing obligation under the Note and Mortgage which is hereby reaffirmed and which shall be and remain in full force and effect.

Borrower(s), mortgagor(s) and guarantor(s) agree to indemnify and hold harmless the Lender against any loss, damage, liability or deficiency including, without limitation, reasonable attorney's fees and other costs and expenses incident to any suit, action, investigation or other proceeding arising out of or resulting from the entering into of this modification agreement by the Lender.

This agreement shall be binding on the parties hereto, their heirs, successors and assigns.

IN WITNESS WHEREOF, we have hereunto set out Hands and Seals the day and year written below:

WITNESS

Robert D. Hull

BORROWER(S) AND MORTGAGOR(S):
VDM / T Land Company, LLC

Raymond M. Travaglione, Member (LS)

(LS)

WITNESS

Robert D. Hull

LENDER: FIRST FEDERAL SAVINGS AND LOAN
ASSOCIATION OF CHARLESTON

By: [Signature]

Its: First Federal

In consideration of the execution by Lender of this Amendment to Commercial Note and Mortgage, the undersigned (whether Guarantor, co-signer, joint maker, accommodation party or other party to either said Note or Mortgage or other undertaking) consents to the terms of this Amendment and shall continue to be bound according to the terms of the original transaction modified only as expressly set forth herein, this 15th day of June, 2010.

WITNESS:

Robert D. Hull

Raymond M. Travaglione, as Guarantor (LS)

(LS)

STATE OF ~~SOUTH~~ CAROLINA)
)
COUNTY OF ~~BEAUFORT~~) FOR BORROWER(S), MORTGAGOR(S) AND
) GUARANTOR(S)

PERSONALLY appeared before me Stewart J. Hull (the first witness) and made oath that s/he saw the within-named Raymond M. Travagione sign, seal and as Member act and deed deliver the within-written Amendment to Commercial Note and Mortgage; and that s/he with _____ (the second witness) witnessed the execution thereof.

SWORN TO BEFORE ME this

21st day of June, 2010
William J. Haunert (LS)
Notary Public for SOUTH CAROLINA

Stewart J. Hull
(signature of first witness)

My Commission expires: _____
William J. Haunert
My Commission Expires
June 14th, 2015

STATE OF ~~SOUTH~~ CAROLINA)
)
COUNTY OF ~~BEAUFORT~~) FOR FIRST FEDERAL SAVINGS AND LOAN ASSOCIATION OF
) CHARLESTON

Personally appeared before me Stewart J. Hull (the first witness) and made oath that s/he saw the within-named First Federal Savings and Loan Association of Charleston as mortgagee, sign, seal and as its act and deed deliver the within-written Amendment to Commercial Note and Mortgage; and that s/he with _____ (the second witness) witnessed the execution thereof.

SWORN TO BEFORE ME this

21st day of June, 2010
William J. Haunert (LS)
Notary Public for SOUTH Carolina

Stewart J. Hull
(signature of first witness)

My Commission Expires: _____
William J. Haunert
My Commission Expires
June 14th, 2015

RECORDATION REQUESTED BY:

First Federal Savings & Loan Association of Charleston
P.O. Box 118068
2440 Mall Drive Suite 100
Charleston, SC 29423-8068

WHEN RECORDED MAIL TO:

First Federal Savings & Loan Association of Charleston
P.O. Box 118068
2440 Mall Drive Suite 100
Charleston, SC 29423-8068

SEND TAX NOTICES TO:

VDM / T Land Company, LLC
PO Box 22659
Hilton Head Island, SC 29925

BEAUFORT COUNTY SC - ROD

BK 02397 PGS 1504-1510

FILE NUM 2006050750

06/27/2006 11:40:33 AM

REC'D BY S SMITH RCPT# 427576

RECORDING FEES 13.00

103099560

SPACE ABOVE THIS LINE IS FOR RECORDER'S USE ONLY

NSA/RMS/17817-2/LT

MORTGAGE

MAXIMUM LIEN. The lien of this Mortgage shall not exceed at any one time \$1,100,000.00.

THIS MORTGAGE dated June 2, 2006, is made and executed between VDM / T Land Company, LLC, whose address is PO Box 22659, Hilton Head Island, SC 29925 (referred to below as "Grantor") and First Federal Savings & Loan Association of Charleston, whose address is P.O. Box 118068, 2440 Mall Drive Suite 100, Charleston, SC 29423-8068 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, grants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently erected or affixed buildings, improvements and fixtures; all easements, rights of way, and appurtenances; all water, water rights, watercourses and ditch rights (including stock in utilities with ditch or irrigation rights); and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and similar matters, (the "Real Property") located in Beaufort County, State of South Carolina:

See Exhibit A, which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

The Real Property or its address is commonly known as Lot 350, Plat 2 Block B, Melrose Plantation, Daufuskie Island, SC 29915. The Real Property tax identification number is R800 025 00F 0023 0000 and R800 025 000 0001 0000.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rents from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THE NOTE, THE RELATED DOCUMENTS, AND THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Grantor shall pay to Lender all amounts secured by this Mortgage as they become due and shall strictly perform all of Grantor's obligations under this Mortgage.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Grantor agrees that Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenantable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws, (b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, about or from the Property by any prior owners or occupants of the Property, or (c) any actual or threatened litigation or claims of any kind by any person relating to such matters; and (3) Except as previously disclosed to and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, about or from the Property; and (b) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws; and (2) agrees to indemnify and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same was or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Nuisance, Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals (including oil and gas), coal, clay, scoria, soil, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and withhold compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security or a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this



EXHIBIT

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**MORTGAGE
(Continued)**

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Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property; whether legal, beneficial or equitable; whether voluntary or involuntary; whether by outright sale, deed, installment sale contract, land contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by South Carolina law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contest proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any mechanic's lien, materialmen's lien, or other lien could be asserted on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any coinsurance clause, and with a standard mortgagee clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage amounts as Lender may request with Lender being named as additional insureds in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be cancelled or diminished without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Should the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior liens on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make proof of loss if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not committed to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds after payment in full of the indebtedness, such proceeds shall be paid to Grantor as Grantor's interests may appear.

Grantor's Report on Insurance. Upon request of Lender, however not more than once a year, Grantor shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured, the then current replacement value of such property, and the manner of determining that value; and (5) the expiration date of the policy. Grantor shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantor fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantor's failure to discharge or pay when due any amounts Grantor is required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantor's behalf may (but shall not be obligated to) take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, at any time levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantor. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY; DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Mortgage:

Title. Grantor warrants that: (a) Grantor holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantor has the full right, power, and authority to execute and deliver this Mortgage to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantor warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantor's title or the interest of Lender under this Mortgage, Grantor shall defend the action at Grantor's expense. Grantor may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantor will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantor warrants that the Property and Grantor's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantor in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantor's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Mortgage:

Proceedings. If any proceeding in condemnation is filed, Grantor shall promptly notify Lender in writing, and Grantor shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantor may be the nominal party in such proceeding, but



**MORTGAGE
(Continued)**

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Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantor will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the Indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

Current Taxes, Fees and Charges. Upon request by Lender, Grantor shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantor shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or continuing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the Indebtedness secured by this Mortgage; (2) a specific tax on Grantor which Grantor is authorized or required to deduct from payments on the Indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the Indebtedness or on payments of principal and interest made by Grantor.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantor either (1) pays the tax before it becomes delinquent, or (2) contests the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCING STATEMENTS. The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantor shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Rents and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantor, file executed counterparts, copies or reproductions of this Mortgage as a financing statement. Grantor shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon default, Grantor shall not remove, sever or detach the Personal Property from the Property. Upon default, Grantor shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantor and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantor (debtor) and Lender (secured party) from which information concerning the security interest granted by this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantor will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refiled, or rerecorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurance, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantor's obligations under the Note, this Mortgage, and the Related Documents, and (2) the liens and security interests created by this Mortgage as first and prior liens on the Property, whether now owned or hereafter acquired by Grantor. Unless prohibited by law or Lender agrees to the contrary in writing, Grantor shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantor fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantor and at Grantor's expense. For such purposes, Grantor hereby irrevocably appoints Lender as Grantor's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

FULL PERFORMANCE. If Grantor pays all the Indebtedness when due, and otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of termination of any financing statement on file evidencing Lender's security interest in the Rents and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

Payment Default. Grantor fails to make any payment when due under the Indebtedness.

Default on Other Payments. Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Other Defaults. Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Grantor.

False Statements. Any warranty, representation or statement made or furnished to Lender by Grantor or on Grantor's behalf under this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Defective Collateralization. This Mortgage or any of the Related Documents ceases to be in full force and effect (including failure of any collateral document to create a valid and perfected security interest or lien) at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdraws from the limited liability company, or any other termination of Grantor's existence as a going business or the death of any member, the insolvency of Grantor, the appointment of a receiver for any part of Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Grantor.

Creditor or Forfeiture Proceedings. Commencement of foreclosure or forfeiture proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Grantor or by any governmental agency against any property securing the Indebtedness. This includes a garnishment of any of Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Grantor as to the validity or reasonableness of the claim which is the basis of the creditor or forfeiture proceeding and if Grantor gives Lender written notice of the creditor or forfeiture proceeding and deposits with Lender monies or a surety bond for the creditor or forfeiture proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreement. Any breach by Grantor under the terms of any other agreement between Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Grantor to Lender, whether existing now or later.

Events Affecting Guarantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or



performance of the Indebtedness is impaired.

Insecurity. Lender in good faith believes itself insecure.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fourteen (14) days; or (2) if the cure requires more than fourteen (14) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Grantor, to take possession of the Property and, as mortgagee-in-possession, collect the Rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property preceding foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

Nonjudicial Sale. If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or the Real Property by non-judicial sale.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Appraisal. Grantor hereby waives the right to assert any statute providing appraisal rights which may reduce any deficiency judgment obtained by Lender against Grantor in the event of foreclosure under this Mortgage.

Tenancy at Sufferance. If Grantor remains in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

Sale of the Property. To the extent permitted by applicable law, Grantor hereby waives any and all right to have the Property marshalled. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other intended disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the time of the sale or disposition. Any sale of the Personal Property may be made in conjunction with any sale of the Real Property.

Election of Remedies. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an Event of Default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or against any other co-maker, guarantor, surety or endorser and/or to proceed against any other collateral directly or indirectly securing the Indebtedness.

Attorneys' Fees; Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may adjudge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest or the enforcement of its rights shall become a part of the Indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until repaid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on the Indebtedness and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of searching records, obtaining title reports (including foreclosure reports), surveyors' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other sums provided by law.

NOTICES. Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

ASSOCIATION OF UNIT OWNERS. The following provisions apply if the Real Property has been submitted to unit ownership law or similar law for the establishment of condominiums or cooperative ownership of the Real Property: **Power Of Attorney.** Grantor grants an irrevocable power of attorney to Lender to vote in Lender's discretion on any matter that may come before the association of unit owners. Lender will have the right to exercise this power of attorney only after Grantor's default; however, Lender may decline to exercise this power as Lender sees fit. **Insurance.** The insurance as required above may be carried by the association of unit owners on Grantor's behalf, and the proceeds of such insurance may be paid to the association of unit owners for the purpose of repairing or reconstructing the Property. If not so used by the association, such proceeds shall be paid to Lender. Compliance with Regulations of Association. Grantor shall perform all of the obligations imposed on Grantor by the declaration submitting the Real Property to unit ownership, by the bylaws of the association of unit owners, or by any rules or regulations thereunder. If Grantor's interest in the Real Property is a leasehold interest and such property has been submitted to unit ownership, Grantor shall perform all of the obligations imposed on Grantor by the lease of the Real Property from its owner. Default. Grantor's failure to perform any of the obligations imposed on Grantor by the Declaration submitting the Real Property to unit ownership, by the bylaws of the association of unit owners, or by any rules or regulations thereunder, shall be an event of default under this Mortgage.

ADDITIONAL ATTORNEYS' FEES; EXPENSES. I agree to pay all of Lender's costs and expenses, including Lender's reasonable attorney's fees and Lender's legal expenses, incurred in connection with the enforcement of this Agreement. Lender may hire or pay an attorney to help enforce this Agreement, to collect the Indebtedness, to protect its collateral and rights, or to defend itself in a lawsuit, including one brought by me, and I shall pay the costs and expenses, including reasonable attorney's fees, of such enforcement. Costs and expenses include, subject to any limits under the South Carolina Consumer Protection Code: Lender's attorney fees in the amount of fifteen percent (15%) of the amount



owing on the indebtedness or the actual attorney fees incurred (whichever is greater); legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. If not prohibited by the South Carolina Consumer Protection Code, I also shall pay all court costs, in addition to all other sums provided by law. This Agreement also secures all of these amounts.

PAYOFF PROCESSING FEE. When you repay your loan balance in full (or payoff and close your line of credit), the payoff balance will include a fee charged by the county to record the lien release and a small fee retained by us for preparing and delivering the lien release. The estimated amount of this future fee is \$25.00.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

Amendments. This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration of or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Annual Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income received from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Arbitration. Grantor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Mortgage or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Mortgage shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Governing Law. This Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Mortgage has been accepted by Lender in the State of South Carolina.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If feasible, the offending provision shall be considered modified so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

Merger. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Successors and Assigns. Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of forbearance or extension without releasing Grantor from the obligations of this Mortgage or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Mortgage.

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of South Carolina as to all indebtedness secured by this Mortgage.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings attributed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means VDM / T Land Company, LLC and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Default. The word "Default" means the Default set forth in this Mortgage in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-499 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

Grantor. The word "Grantor" means VDM / T Land Company, LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may cause or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes affixed on the Real Property, facilities, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, earned interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, consolidations of and substitutions for the Note



MORTGAGE
(Continued)

Page 6

or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage.

Lender. The word "Lender" means First Federal Savings & Loan Association of Charleston, its successors and assigns.

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender.

Note. The word "Note" means the promissory note dated June 2, 2006, in the original principal amount of \$1,100,000.00 from Grantor to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement. NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property; together with all accessions, parts, and additions to, all replacements of, and all substitutions for, any of such property; and together with all proceeds (including without limitation all insurance proceeds and refunds of premiums) from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

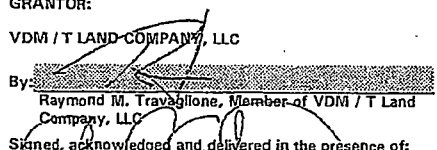
Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

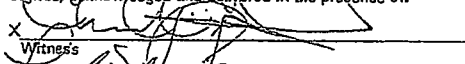
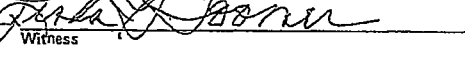
GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

VDM / T LAND COMPANY, LLC

By: 
Raymond M. Travaglione, Member of VDM / T Land Company, LLC

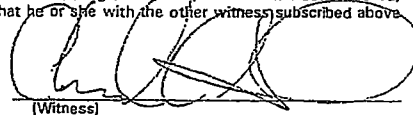
Signed, acknowledged and delivered in the presence of:

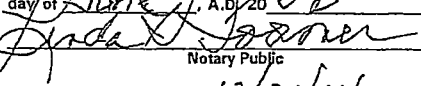
X 
Witness

Witness

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF SC)
COUNTY OF Beaufort) SS)

PERSONALLY appeared before me and made oath that he or she saw the within-named Grantor(s) sign, seal, and, as his or her act and deed, deliver the within-written Mortgage for the uses and purposes therein mentioned, and that he or she with the other witness subscribed above witnessed the execution thereof.


(Witness)

SWORN to before me this 18th
day of June, A.D. 2006

Notary Public (Seal)

My Commission expires: 12/21/14

Parcel "A": School Parcel

ALL that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as "IIGA, 57,446 SF, 1.32 Ac.," on that certain plat prepared by William S. Sanders, PLS # 16122, dated June 23, 2005, and recorded in Plat Book 107 at Page 81 in the ROD Office for Beaufort County, South Carolina.

Parcel "B": Housing Parcel

ALL that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as 10.90 acres on that certain plat entitled, "A Boundary and Wetlands Survey of 10.90 acres, being a portion of Melrose Plantation, Daufuskie Island, Beaufort County, South Carolina," prepared by William S. Sanders, PLS #16122, and recorded in Plat Book 114 at Page 13 in the ROD Office for Beaufort County, South Carolina.

AND ALSO a perpetual, non-exclusive easement for ingress and egress over that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as Fifty (50') Easement on that certain plat entitled, "A Boundary and Wetlands Survey of 10.90 acres, being a portion of Melrose Plantation, Daufuskie Island, Beaufort County, South Carolina," prepared by William S. Sanders, PLS #16122, and recorded in Plat Book 114 at Page 13 in the ROD Office for Beaufort County, South Carolina.

These being the same property conveyed to the Mortgagor herein by Deed of Daufuskie Island Properties, LLC dated June 2nd, 2006 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2397 at Page 1486.

This Mortgage was prepared in the Law Offices of Novit, Scarminach & Akins, PA, Post Office Drawer 14, Hilton Head Island, South Carolina, 29938, by Charles A. Scarminach, Esquire.

R

4
S
10/10/11
4528

BEAUFORT COUNTY SC - ROD
BK 03123 PPS 0939-0942
FILE NUM 2012016467
03/25/2012 04:03:21 PM
REC'D BY H LAMIE RCPT# 671919
RECORDING FEES 9.00

This document prepared by:

Clawson and Staubes, LLC
126 Seven Farms Drive, Suite 200
Charleston, SC 29492-8144

After recording return to:

FirstCity Servicing Corporation
Attn: Debbie Scott
P.O. Box 8216
Waco, TX 76714-8216

9501027000

(Space above this line for Recorder's use)

**ASSIGNMENT OF MORTGAGE
AND COLLATERAL DOCUMENTS**

First Federal Savings and Loan Association of Charleston ("Assignor"), having an address of 2440 Mall Drive, Charleston, South Carolina 29406, the holder of that certain mortgage referenced on the attached Exhibit A (together with any amendments, renewals, extensions, or modifications thereto, the "Mortgage") and certain other collateral documents referenced on the attached Exhibit A, if any (together with any amendments, renewals, extensions, or modifications thereto, collectively, the "Collateral Documents") hereby assigns the Mortgage and the Collateral Documents, together with all other documents and instruments securing, governing and guaranteeing any and all promissory notes and other indebtedness and obligations therein described or referred to, all sums of money due or to become due thereon with interest as provided for therein, and all rights accrued or to accrue under such Mortgage and such Collateral Documents, as such Mortgage, Collateral Documents, promissory notes, other indebtedness and obligations, and rights have been, or may have been, previously amended, to:

VFC Partners 15 LLC
("Assignee")

with an address of:

6400 Imperial Drive

Waco, TX 76712

This assignment is made without recourse, representations or warranties of any kind except as set forth in that certain Asset Purchase and Interim Servicing Agreement dated as of October 25, 2011 by and between Assignor and Low Country Ventures SC, LLC, on behalf of itself and Assignee.

[SIGNATURES TO FOLLOW ON NEXT PAGE]



IN WITNESS WHEREOF, Assignor has duly executed this Assignment as of November 12th, 2011.

First Federal Savings and Loan Association of
Charleston

Witnesses:

(Kathleen) Gump
S. D. O'Boyle

By: [Signature]
Name: Michael K. Connolly

Title: Senior Vice President - Director of
Special Assets

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

On this 12th day of November, 2011, before me, a Notary Public in and for the State of South Carolina appeared Michael K. Connolly, to me personally known, who, being by me first duly sworn did depose that he is Senior Vice President - Director of Special Assets of First Federal Savings and Loan Association of Charleston (the "Bank"), in whose name the foregoing Assignment of Mortgage and Collateral Documents was executed and subscribed, and the said Assignment of Mortgage and Collateral Documents was executed and subscribed on behalf of the said Bank, and the said Michael K. Connolly acknowledged said Assignment of Mortgage and Collateral Documents to be the free act and deed of said Bank.

Sworn to before me this 12th day of
November, 2011.

Shelley Davis Hat
Notary Public for South Carolina

My Commission Expires: 9/27/14

EXHIBIT A

Asset Name: VDM/T Land Company, LLC
Purchaser's Asset No.: 9501027000
Property Location: DAUFUSKIE ISLAND, Beaufort SC 29915

Mortgage dated June 02, 2008, executed by VDM/T Land Company, LLC in favor of First Federal Savings & Loan Association of Charleston in the amount of \$1,100,000.00 recorded on June 27, 2008 in Book 02397 at Page 1504 as File Num 2006050750 in the Office of the Register of Deeds, Beaufort County, State of South Carolina.

Parcel "A": School Parcel

ALL that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as "TIGA, 57,446 SF, 1.32 Ac.," on that certain plat prepared by William S. Sanders, PLS # 16122, dated June 23, 2005, and recorded in Plat Book 107 at Page 81 in the ROD Office for Beaufort County, South Carolina.

Parcel "B": Housing Parcel

ALL that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as 10.90 acres on that certain plat entitled, "A Boundary and Wetlands Survey of 10.90 acres, being a portion of Melrose Plantation, Daufuskie Island, Beaufort County, South Carolina," prepared by William S. Sanders, PLS #16122, and recorded in Plat Book 114 at Page 13 in the ROD Office for Beaufort County, South Carolina.

AND ALSO a perpetual, non-exclusive easement for ingress and egress over that certain piece, parcel or tract of land, situate, lying and being on Daufuskie Island, Beaufort County, South Carolina, and being more particularly shown and described as Fifty (50') Easement on that certain plat entitled, "A Boundary and Wetlands Survey of 10.90 acres, being a portion of Melrose Plantation, Daufuskie Island, Beaufort County, South Carolina," prepared by William S. Sanders, PLS #16122, and recorded in Plat Book 114 at Page 13 in the ROD Office for Beaufort County, South Carolina.

These being the same property conveyed to the Mortgagor herein by Deed of Daufuskie Island Properties, LLC dated June 2nd, 2006 and recorded in the Office of the Register of Deeds for Beaufort County, South Carolina in Book 2397 at Page 1486.

This Mortgage was prepared in the Law Offices of Novit, Scarminach & Akins, PA, Post Office Drawer 14, Hilton Head Island, South Carolina, 29938, by Charles A. Scarminach, Esquire.

R

ALLONGE

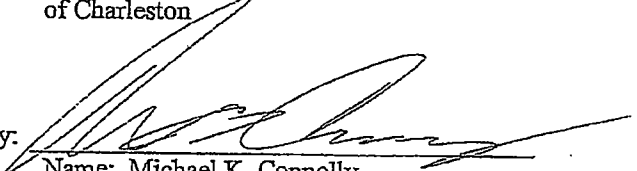
THIS ALLONGE is made to that certain Promissory Note dated June 02, 2006, in the original principal amount of \$1,100,000.00, executed by VDM / T Land Company, LLC payable to the order of First Federal Savings & Loan Association of Charleston ("Assignor"), as the same may have been assigned, amended, supplemented, restated or modified (the "Note").

It is intended that this Allonge be attached to and made a permanent part of the Note.

Pay to the order of VFC Partners 15 LLC ("Assignee"), without recourse, representations or warranties of any kind except as set forth in that certain Asset Purchase and Interim Servicing Agreement dated as of October 25, 2011 by and between Assignor and Low Country Ventures SC, LLC, on behalf of itself and Assignee.

Executed this 12th day of November, 2011.

First Federal Savings and Loan Association
of Charleston

By. 

Name: Michael K. Connolly

Title: Senior Vice President - Director of
Special Assets

3 RW
8
nansen
960

BEAUFORT COUNTY REC
BK 03265 P88 1530-1532
FILE NUM 2013047746
7/23/2013 02:43:11 PM
NOTED BY LARIE SCOTT 720290
RECORDING FEE 3.00

RECORDING REQUESTED BY
AND WHEN RECORDED MAIL TO:

Jeffrey D. Locker, Esq.
Nexsen Pruet, LLC
P.O. Box 23526
Hilton Head Island, SC 29925

Space Above Line For Recorder's Use Only

ASSIGNMENT AND ASSUMPTION
OF MORTGAGE AND LOAN DOCUMENTS

This ASSIGNMENT AND ASSUMPTION OF MORTGAGE AND LOAN DOCUMENTS (this "Assignment") is made as of August 1, 2013, by VFC PARTNERS 15 LLC, a Delaware limited liability company ("Assignor"), in favor of JMT CAPITAL HOLDINGS LLC ("Assignee").

I. FOR VALUE RECEIVED, Assignor hereby sells, assigns, conveys, and transfers to Assignee all of Assignor's right, title, and interest in and to the "Loans" (such term is defined in a Loan Sale Agreement dated as of July 30, 2013, between Assignor and Assignee), including, without limitation, all of Assignor's right, title, and interest in and to the following:

Amendment to Commercial Note and Mortgage dated June 02, 2008, executed by and between VDM T Land Company, LLC, as Borrower and Raymond M. Travaglione, as Guarantor and First Federal Savings and Loan Association of Charleston.

Amendment to Commercial Note and Mortgage dated June 02, 2009, executed by and between VDM/ T Company, LLC and First Federal Savings and Loan Association of Charleston and Raymond M. Travaglione.

Amendment to Commercial Note and Mortgage dated June 15, 2010, executed by and between VDM/ T Land Company, LLC and First Federal Saving and Loan Association of Charleston and Raymond M. Travaglione.

Mortgage dated June 02, 2008, executed by VDM/T Land Company, LLC in favor of First Federal Savings & Loan Association of Charleston in the amount of \$1,100,000.00 recorded on June 27, 2006 in Book 02397 at Page 1504 as File Number 2006050750 in the Office of the Register of Deeds, Beaufort County, State of South Carolina.

J:\NEXSEN\CHANCERY\Loan Sale\JMT T Transfer over 6/24/2013.docx



IN WITNESS WHEREOF, Assignor and Assignee have executed this Assignment and Assumption of Mortgage and Loan Documents as of the date first set forth above.

WITNESSETH:

ASSIGNOR:

VFC Partners 15 LLC

Karen Hipsley
Dawn Anderson

By:

Deborah D. Butler
Deborah D. Butler
Vice President

WITNESSETH:

ASSIGNEE:

JMT Capital Holdings LLC

Natalie Cruz
[Signature]

By:

Travis T. Kozlowski
Name: Travis T. Kozlowski
Title: Manager

THE STATE OF TEXAS
COUNTY OF MELANDRA

§
§

BEFORE ME, the undersigned, a Notary Public in and for said county and state, on this day personally appeared Deborah D. Butler, who is the Vice President for VFC Partners 15 LLC, a Delaware limited liability company, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed, as the act and deed of said limited liability company and in the capacity therein stated.

Given under my hand and seal of office this 1 day of August, 2013.



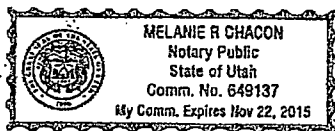
Debbie Scott
Notary Public, State of TX

THE STATE OF Utah
COUNTY OF Salt Lake

§
§

BEFORE ME, the undersigned, a Notary Public in and for said county and state, on this day personally appeared Travis Kozlowski, who is the Manager for JMT Capital Holdings, known to me to be the person whose name is subscribed to the foregoing instrument, and he acknowledged to me that he executed the same for the purposes and consideration therein expressed.

Given under my hand and seal of office this 8th day of August, 2013.



Melanie R Chacon
Notary Public
My commission expires: Nov. 22, 2015

I hereby certify the address of the within named Assignee to be:

JMT Capital Holdings LLC
Travis T. Kozlowski
770 East Main Street, Suite 134
Lehi, Utah 84043

By: [Signature]
Name: Travis T Kozlowski
Title: Manager

ALLONGE

This ALLONGE is affixed to and made a part of that certain Promissory Note dated June 2, 2006, made by VDM/T Land Company, LLC, payable to the order of First Federal Savings & Loan Association of Charleston, in the face principal amount of \$1,100,000.00, as such evidence of indebtedness has been amended, modified, supplemented, renewed, endorsed, negotiated, sold, assigned, conveyed, or otherwise transferred to date.

PAY TO THE ORDER OF JMT CAPITAL HOLDINGS LLC ("BUYER"), WITHOUT RECOURSE, REPRESENTATION OR WARRANTY¹ WHATSOEVER, EXPRESS OR IMPLIED, EXCEPT AS EXPRESSLY PROVIDED IN THAT CERTAIN LOAN SALE AGREEMENT, DATED AS OF JULY 30, 2013, BETWEEN VFC PARTNERS 15 LLC AND BUYER.

Dated: As of August 1, 2013.

SELLER(S):

VFC PARTNERS 15 LLC

By:



Deborah D. Butler
Vice President

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON
COUNTY OF BEAUFORT) PLEAS FOR THE FOURTEENTH
JUDICIAL CIRCUIT

JMT Capitol Holdings, LLC,

Plaintiff,

vs.

VDM/T Land Company, LLC, and
Daufuskie Island Properties, LLC,

Defendants.

Case No. 2014-CP-07-0380

ANSWER & THIRD-PARTY
COMPLAINT AGAINST
RAYMOND TRAVAGLIONE

Daufuskie Island Properties, LLC,
and its successor in interest, Ace
Basin Investments, LLC,

Third-Party Plaintiff,

vs.

Raymond Travaglione,

Third-Party Defendant.

2014 APR 16 AM 12:23
JERRI ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

AS A FIRST DEFENSE TO COMPLAINT

COMES NOW Defendant Daufuskie Island Properties, LLC ("DIP"),
and its successor in interest Ace Basin Investments, LLC ("Ace Basin," and

Ace Basin and DIP will be collectively referred to as "Defendant")¹, by and through undersigned counsel of record, and hereby answers to the numbered allegations in the complaint as follows:

1. Defendant lacks sufficient knowledge or information upon which to form a belief as to the allegations in paragraphs 1 and 2, which are therefore denied.
2. Defendant admits the allegations in paragraph 3 and 4.
3. Defendant lacks sufficient knowledge or information upon which to form a belief as to the allegations in paragraphs 5, which are therefore denied.
4. Defendant admits the allegations in paragraphs 6 to 12.
5. Defendant admits the allegations in paragraphs 13 to 25 to the extent they are consistent with the exhibits attached thereto and the public record, and denies the remainder.
6. In response to paragraph 26, Defendant reincorporates its responses to paragraphs 1 to 5 above as if alleged verbatim herein.
7. Defendant denies the allegations in paragraphs 27 and 28.

¹ Prior to filing this answer and third-party complaint, counsel for DIP and Ace Basin sent a consent motion to substitute Ace Basin as the real parties in interest, but plaintiff's counsel did not respond. DIP and Ace Basin are filing a motion to substitute parties with the Court, if they cannot receive the parties' consents.

8. Defendant admits the allegations in paragraph 29 as it is consistent with the filing of the recorded documents that was failed to be rectified by First Federal within a reasonable amount of time.

9. Defendant denies the allegations in paragraphs 30 and 31.

10. In response to paragraph 32, DIP reincorporates its responses to paragraphs 1 to 9 above as if alleged verbatim herein.

11. Defendant denies the allegations in paragraph 33.

12. Defendant admits the allegations in paragraph 34 to the extent plaintiff may bring a foreclosure action, and denies the remainder.

13. Defendant denies the allegations in paragraph 35.

14. Defendant admits the allegations in paragraphs 36 to 40 to the extent they comport with the documentation, and denies the remainder.

15. Defendant denies the allegations in paragraphs 41 and 42, and denies Plaintiff's prayer for relief.

AS A SECOND AND AFFIRMATIVE DEFENSE

16. Defendant reincorporates paragraphs 1 through 15 above as if fully set forth verbatim herein.

17. DIP is not the real party in interest as it sold, assigned and transferred any rights and causes of action under DIP's note, mortgage, the

Guaranty Agreement of Ray Travaglione and any other related documents to Ace Basin.

18. DIP and Ace Basin have requested plaintiff's counsel to consent to an order of substitution of Ace Basin as the party prior to filing this answer and third-party complaint, and upon substitution, Ace Basin will adopt and incorporate this Answer and Third-Party complaint as its own upon entry of the order of substitution.

AS A THIRD AND AFFIRMATIVE DEFENSE

19. Defendant reincorporates paragraphs 1 through 18 above as if fully set forth verbatim herein.

20. That some or all of the claims asserted by the Plaintiff are barred by consent, justification, acquiescence, estoppels, unclean hands, and/or general standards of equity and fairness.

AS A FOURTH AND AFFIRMATIVE DEFENSE

21. Defendant reincorporates paragraphs 1 through 20 above as if fully set forth verbatim herein.

22. That the relief requested by Plaintiff is barred by the negligence, malfeasance, and/or misfeasance of the Plaintiff, or their agents.

AS A FIFTH AND AFFIRMATIVE DEFENSE

23. Defendant reincorporates paragraphs 1 through 22 above as if fully set forth verbatim herein.

24. Pursuant to the doctrine of waiver, estoppels, laches, comparative negligence, contributory negligence, duress, misrepresentation, mistake, ratification or any other matter constituting an avoidance or affirmative defense which may arise and develop as discovery in this litigation progresses, the Plaintiff should be barred, in whole or in part as this Court deems appropriate from obtaining any monetary judgment against DIP.

AS A SIXTH AND AFFIRMATIVE DEFENSE

25. Defendant reincorporates paragraphs 1 through 24 above is if fully set forth verbatim herein.

26. That some or all of the Plaintiff's claims are barred by the Plaintiff's own failure to exercise due diligence.

WHEREFORE, having fully answered Plaintiff's Complaint, Defendant prays the court consider the matters presented in the complaint and this answer, dismiss Plaintiff's complaint, declare that Defendants have a first lien priority in the property, and grant such other and further relief as may be deemed just and proper under the circumstances.

**THIRD-PARTY COMPLAINT AGAINST
RAYMOND TRAVAGLIONE**

COMES NOW DIP, and its successor in interest Ace Basin
(collectively, "Third-Party Plaintiff") by and through undersigned counsel
of record, hereby asserts this third-party complaint against Raymond
Travaglione and alleges as follows:

BREACH OF GUARANTEE

27. Under S.C.R.C.P. 14, Third-Party Plaintiff brings this action
against Travaglione because he is and will be liable to Third-Party Plaintiff
for all or part of plaintiff's complaint.

28. Upon information and belief, Raymond Travaglione resides in
Beaufort County, South Carolina, and the acts and omissions giving rise to
this third-party complaint occurred in Beaufort County.

29. In addition to the agreements, the notes and mortgages
entered into between DIP and VDM/T as set forth in plaintiff's complaint
and the exhibits attached thereto, Raymond M. Travaglione executed an
absolute and unconditional personal guarantee to secure the repayment of
the obligations to DIP in the amount of \$500,000.00 ("Travaglione
Guarantee"). A true and correct copy of the Travaglione Guarantee is
attached hereto as Exhibit 1.

30. The Travaglione Guarantee was given as additional consideration in order to induce DIP to make the loan to VDM/T, which was an entity wholly owned by Travaglione.

31. VDM/T is in breach and in default of its notes, mortgages and agreements to the Third-Party Plaintiff.

32. Because of the breach, Travaglione is personally and primarily liable for the entire amount of principle, interest, and other additions due and owing under the notes, mortgages and agreements owed by VDM/T to the Third-Party Plaintiff.

33. The Travaglione Guarantee is a guarantee of repayment not of collection.

34. The Travaglione Guarantee specifically permits its assignment of the guarantee and its obligations to another.

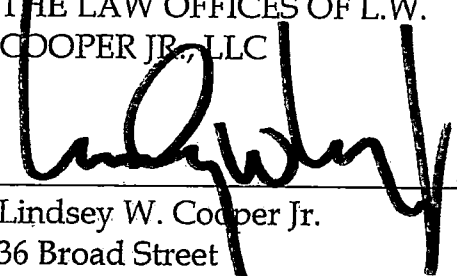
35. Under the terms of the Travaglione Guarantee, he is personally liable for the Third-Party Plaintiff's costs of collection, including – but not limited to – attorneys' fees and costs.

36. Travaglione is liable to Third-Party Plaintiff in an amount not less than FIVE HUNDRED THOUSAND DOLLARS 00/100 USD (\$500,000.00), plus interest, and other additions, including – but not limited

to - penalties, Third-Party Plaintiff's attorneys' fees and other costs of collection.

WHEREFORE, Third-Party Plaintiff prays the court to enter judgment against Travaglione in an amount no less than \$500,000.00, plus interest, penalties and other additions, including - but not limited to - attorneys' fees and costs, and grant such other and further relief as may be deemed just and proper under the circumstances.

THE LAW OFFICES OF L.W.
COOPER JR., LLC



Lindsey W. Cooper Jr.
36 Broad Street
Charleston, SC 29401
Telephone: 843.375.6622
Facsimile: 843.375.6623

*Counsel to Daufuskie Island Properties,
LLC, and its successor in interest Ace
Basin Investments, LLC*

Dated: April 14, 2014
Charleston, South Carolina

CERTIFICATE OF SERVICE

It is hereby certified that on April 14, 2014, I caused the foregoing
ANSWER AND THIRD-PARTY COMPLAINT to be served on counsel via
first-class mail at the following address:

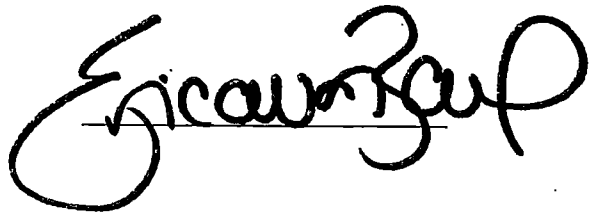
Suzanne Taylor Graham Grigg
Jeffrey D. Locker
Nexsen Pruet, LLC
PO Drawer 2426
Columbia, SC 29202

Attorneys for Plaintiff, JMT Capital Holdings, LLC

Jannine M. Mutterer
West Olivetti, LLC
PO Box 7906
Hilton Head, SC 29938

Attorney for Defendant, VDM/T

2014 APR 16 AM 12:24
JENNIFER M. ROSENBAUM
CLERK OF COURT
BEAUFORT COUNTY, S.C.



GUARANTY AGREEMENT

This Guaranty ("Guaranty") is given by **RAYMOND M. TRAVAGLIONE**, with an address of 7 Office Park Road, Suite 105-A, Hilton Head Island, SC 29928 ("Guarantor") to **DAUFUSKIE ISLAND PROPERTIES LLC d/b/a DAUFUSKIE ISLAND RESORT & BREATHE SPA** with an address of 421 Squire Pope Road, Hilton Head Island, South Carolina 29925, ("Lender").

WITNESSETH:

WHEREAS, Lender owns and operates the Daufuskie Island Resort & Breathe Spa which includes certain real and personal property, amenities and facilities on Daufuskie Island, South Carolina operated as a full service golf resort (the "Resort"); and

WHEREAS, the **INTERNATIONAL JUNIOR GOLF TOUR, INC., d/b/a INTERNATIONAL JUNIOR GOLF ACADEMY** with an address of 7 Office Park Road, Suite 105-A, Hilton Head Island, South Carolina 29928 ("IJGA") provides various in-residence instructional programs for male and female students (the "School"); and

WHEREAS, Guarantor is the President and sole shareholder of IJGA; and

WHEREAS, Lender and IJGA have entered into certain agreements for the acquisition of certain real property owned by Lender within the Resort (the "Property") for the construction of facilities for the School by IJGA to provide for the housing, training (the "Agreement for Land - Housing Parcel and Amenities Parcel") and the schooling (the "Agreement for Land - School Site") of the students of the School (collectively, the Agreement for Land - Housing Parcel and Amenities Parcel and an Agreement for Land - School Site hereinafter the "Agreements"), which Agreements are incorporated herein by reference hereto; and

WHEREAS, Guarantor has assigned his interest under the Agreements to a solely owned entity known as **VDM/T Land Company LLC**, a South Carolina limited liability company ("Borrower"); and

WHEREAS, pursuant to the Agreements, Lender has provided purchase money financing in the sum of **FIVE HUNDRED THOUSAND and 00/00 DOLLARS (\$500,000.00)** ("Loan") from Lender under the terms and conditions of certain Promissory Notes (collectively the "Note"), between Borrower and Lender, which Note is incorporated herein by reference as if more fully set out herein;

WHEREAS, Guarantor desires Lender to make the above-referenced Loan to Borrower and is willing to enter into this Guaranty as further consideration to the Lender to make the Loan and agree to the assignment to Borrower of Guarantor rights under the Agreements; and

WHEREAS, for the reasons hereinabove stated, the undersigned has agreed to guarantee and by these presents does agree to guarantee payment to Lender of the Note.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the aforesaid loan and commitment to loan and to induce such lending by Lender to Borrower, Guarantor, hereby absolutely and unconditionally guarantees to Lender, irrespective of the validity, regularity or enforceability of any instrument, writing or arrangement relating to the Note, or the obligations thereunder, and irrespective of any present or future law or order of any government (whether of right or in fact) or of any

agency thereof purporting to reduce, amend or otherwise affect any obligation of Borrower or other obligor or to vary the terms of payment, the prompt payment of the Note from Borrower to Lender in the amount of FIVE HUNDRED THOUSAND and 00/00 DOLLARS (\$500,000.00) when due from Borrower to Lender now or hereafter, plus such interest as may accrue thereon, and, in addition, Guarantor agrees to pay the costs of collection, including legal expenses and attorney's fees paid or incurred by Lender in collecting and/or enforcing the amount of the obligations of Borrower guaranteed hereunder, whether at maturity or earlier by reason of acceleration or otherwise, or if now due, when payment thereof shall be demanded by Lender, and in case of one or more extensions of time or renewals in whole or in part of the Note, that the same shall be promptly paid when due, according to each such extension or renewal, whether at maturity or earlier by reason of acceleration or otherwise. It is specifically understood and agreed that this Guaranty is a guarantee of payment and not of collection. Notwithstanding the foregoing, this Guaranty shall terminate and be of no force and effect without any action of the Lender simultaneously with the cancellation or other satisfaction of the Note.

Guarantor agrees that whenever at any time or from time to time the undersigned shall make any payment to Lender hereunder on account of the amount guaranteed hereunder, the undersigned will notify Lender in writing that such payment is made under this Guaranty for such purpose. No payment by the undersigned pursuant to any provisions hereof shall entitle Guarantor, by subrogation or otherwise, to the rights of Lender to any payment by Borrower or out of the property of Borrower, except after payment in full of the amount of the obligations of Borrower guaranteed hereunder plus the costs of collection as aforesaid.

Guarantor consents that the whole or any part of the security now or hereafter held for any debts of Borrower may be exchanged, compromised, or surrendered from time to time; that the time or place of payment of any debt of Borrower or of any securities therefor may be changed or extended in whole or in part to a time certain or otherwise, and may be renewed or accelerated in whole or in part; that Borrower may be granted indulgences generally; that any of the provisions of any note or other instrument evidencing any debt of Borrower or any security therefor may be modified or waived; that any party liable for the payment thereof (including but not being limited to any co-guarantor) may be granted indulgences or released; that neither the death, bankruptcy nor disability of any one or more of Guarantors shall affect the continuing obligation of any other guarantor, and that no claim need be asserted against the personal representative, guardian, trustee in bankruptcy or receiver of any deceased, incompetent, bankrupt or insolvent guarantor; and that any deposit balance to the credit of Borrower or any other party liable for the payment of debts of Borrower or liable upon any security therefor may be released in whole or in part, at, before and/or after the stated, extended or accelerated maturity of any debt of Borrower, all without notice to or further assent by the undersigned who shall remain bound thereon, notwithstanding any such exchange, compromise, surrender, extension, renewal, acceleration, modification, indulgence or release.

As security for the amount guaranteed by the undersigned, Guarantor hereby grants to Lender a security interest in, a general lien upon and/or right of setoff of, the following ("Collateral"): the balance of every deposit account, now or hereafter existing, of the undersigned with Lender and all money, instruments, securities, documents, chattel paper, credits, claims, demands and any other property, rights and interest of the undersigned now or hereafter existing, which at any time shall come into the possession or custody or under the control of Lender or any of its agents, associates or correspondents, for any purpose, and shall include the proceeds, products and accessions of and to any thereof. Lender shall be deemed to have possession of any of the Collateral in transit to or set apart for it or any of its agents, associates or correspondents. The right is expressly granted to Lender, at its discretion, to file one or more financing statements under the Uniform Commercial Code of South Carolina (which the undersigned agrees to sign) naming any one or more of the undersigned as debtor and Lender as secured party and indicating therein the types or describing the items of

III LTONHEAD-11624250-v1 116793.00049

McNair/Box #13 00152

RA

security herein specified. Lender shall not be required to take any steps necessary to preserve any rights against prior parties to any of the Collateral.

Guarantor expressly waives: (a) notice of acceptance of this Guaranty and of all extensions of credit to Borrower; (b) presentment and demand for payment of any of the debts of Borrower; (c) protest and notice of dishonor or of default to the undersigned or to any other party with respect to any of the debts of Borrower or with respect to any security therefor; (d) all other notices to which the undersigned might otherwise be entitled; and (e) demand for payment under this Guaranty.

Lender may assign this Guaranty or any of its rights and powers hereunder with the Note hereby guaranteed, and may assign and/or deliver to any such assignee any of the security herefor and, in the event of such assignment, the assignee hereof or of such rights and powers and of such Collateral, if any of such Collateral be so assigned and/or delivered, shall have the same rights and remedies as if originally named herein in place of Lender, and Lender shall be thereafter fully discharged from all responsibility with respect to any such Collateral so assigned and/or delivered.

Notice of acceptance of this Guaranty and of the incurring of any and all of the obligations of Borrower hereinbefore mentioned is hereby waived by the undersigned. All of the provisions hereof regarding the Collateral of the undersigned shall apply to the Collateral of any or all of them if there be more than one of the undersigned. This Guaranty and all rights, obligations and liabilities arising hereunder shall be construed according to the laws of the State of South Carolina. Unless the context otherwise requires, all terms used herein which are defined in the Uniform Commercial Code of South Carolina shall have the meanings therein stated.

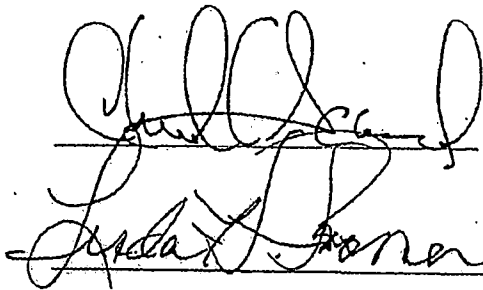
This obligation and liability on the part of Guarantor shall be a primary and not a secondary obligation and liability, payable immediately upon demand without recourse first having been had by Lender against Borrower or any person, firm or corporation. This is a guarantee of payment and not of collection. The liability of Guarantor on this Guaranty shall be direct and immediate and not conditioned or contingent upon the pursuit of any remedies against Borrower or any other person; or against any other guarantors, nor against securities or liens available to Lender, its successors, endorsees or assigns. The undersigned waives any right to require that an action be brought against Borrower or any other person or to require that resort be had to any security or to any balance of any deposit account or credit on the books of Lender in favor of Borrower or any other person. Nothing except payment to Lender of the full amount of the Note together with interest thereon and all other costs and expenses paid or incurred by Lender in collecting and/or enforcing the amount of Borrower's obligation guaranteed hereunder shall terminate the obligations of the undersigned to Lender incurred hereunder. Upon failure of the undersigned to pay immediately all amounts due under this Guaranty upon demand as aforesaid, the undersigned agree to pay all legal and other costs and expenses, including legal fees, paid or incurred by Lender in connection with the enforcement of this Guaranty. It is further expressly agreed that Lender, upon such default, may exercise its rights and remedies as a secured party as set out above. The right of Lender to sell the aforesaid Collateral and the disposition of proceeds therefrom shall be governed by the provisions of the Uniform Commercial Code of South Carolina, if applicable.

The undersigned submit to the jurisdiction of the courts of the State of South Carolina. The undersigned do further consent to the service of process in any such action by certified or registered mail directed to the undersigned at the address herein set out and that any such service shall be complete three (3) days after the same shall have been posted as aforesaid.

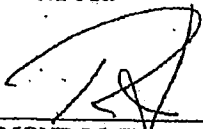
Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal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

2 IN WITNESS WHEREOF, this instrument has been duly executed by the undersigned this
day of June, 2006

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



GUARANTOR:


RAYMOND M. TRAVAGLIONE

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

Case No. 2014-CP-07-0380

JMT Capitol Holdings, LLC,

Plaintiff,

vs.

VDM/T Land Company, LLC and
Daufuskie Island Properties, LLC,

Defendants.

Daufuskie Island Properties, LLC and its
successor in interest, Ace Basin Investments,
LLC,

Third-Party Plaintiff,

vs.

Raymond Travaglione,

Third-Party Defendant.

**THIRD-PARTY DEFENDANT RAYMOND
TRAVAGLIONE'S NOTICE AND MOTION
TO DISMISS THIRD-PARTY COMPLAINT**

TO: LINDSEY W. COOPER, JR., ATTORNEY FOR THE THIRD-PARTY PLAINTIFF
DAUFUSKIE ISLAND PROPERTIES, LLC AND ITS SUCCESSOR IN INTEREST, ACE
BASIN INVESTMENTS, LLC:

YOU WILL PLEASE TAKE NOTICE that third-party defendant Raymond Travaglione ("Travaglione"), by and through his undersigned attorneys, will move before the Presiding Judge for the Court of Common Pleas for Beaufort County in the Beaufort County Courthouse on the tenth day after the service hereof for an order dismissing the third-party plaintiff Daufuskie Island Properties, LLC and its successor in interest, Ace Basin Investments, LLC's ("Third-Party Plaintiff") Third-Party Complaint, pursuant to S.C. Rules of Civil Procedure 12 and 14, on the following grounds:

1. Third-Party Plaintiff Daufuskie Island Properties, LLC failed to list the guaranty on which its Third-Party Complaint is based as an asset in the schedules filed in its Chapter 11 bankruptcy case and therefore, as a matter of law, Daufuskie Island Properties, LLC and its alleged assignee are judicially estopped from attempting to enforce the guaranty.
2. Travaglione is informed and believes that, due to its chapter 11 bankruptcy case, Third-Party Plaintiff Daufuskie Island Properties, LLC no longer exists.
3. Travaglione is informed and believes that Third-Party Plaintiff Daufuskie Island Properties, LLC and its alleged assignee lack standing to bring the claims they are purporting to assert against Travaglione.
4. To the extent relevant, any claims that could be brought against Travaglione are barred by the applicable statute of limitations.
5. The Third-Party Complaint is not a proper third-party complaint because Third-Party Plaintiff's claims against Travaglione are not derivative of any liability it has to JMT Capitol Holdings, LLC, the plaintiff in this action, particularly given the fact that JMT Capitol Holdings, LLC has waived its right to a deficiency against its borrower and any guarantors of its debt.

The motion will be based on the pleadings, applicable statutory and case law, and any other memoranda filed prior to the hearing date on the Motion.

[signature on next page]

ADAMS AND REESE LLP

By: Tara E. Nauful

Tara E. Nauful

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May 22, 2014

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

JMT Capitol Holdings, LLC,

Plaintiff,

vs.

Case No. 2014-CP-07-0380

VDM/T Land Company, LLC and
Daufuskie Island Properties, LLC,

Defendants.

Daufuskie Island Properties, LLC and its
successor in interest, Ace Basin Investments,
LLC,

Third-Party Plaintiff,

vs.
Raymond Travaglione,

Third-Party Defendant.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on May 22, 2014, I caused the below named parties to be served with a copy of the following documents:

1. Motion and Order Information Form and Cover Sheet; and
2. Third-Party Defendant Raymond Travaglione's Notice and Motion to Dismiss Third-Party Complaint.

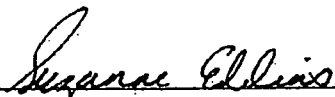
by causing said documents to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, with return address clearly shown, as set forth below.

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STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

JMT Capitol Holdings, LLC,
Plaintiff,

vs.

VDM/T Land Company, LLC, and
Daufuskie Island Properties, LLC,
Defendants.

Daufuskie Island Properties, LLC,
and its successor in interest, Ace
Basin Investments, LLC,

Third-Party Plaintiff,

vs.

Raymond Travaglione,

Third-Party Defendant.

) IN THE COURT OF COMMON
) PLEAS FOR THE FOURTEENTH
) JUDICIAL CIRCUIT
)
)
)

) Case No. 2014-CP-07-0380
)
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) **OPPOSITION TO**
) **THIRD PARTY DEFENDANT'S**
) **MOTION TO DISMISS**
)
)
)

2014 AUG -8 PM 1:30
JERIL ANN ROSENEAU
BEAUFORT COUNTY, S.C.
CLERK OF COURT

TO: TARA E. NAUFUL AND DAWN M. HARDESTY, ATTORNEYS FOR
THE THIRD PARTY DEFENDANT RAYMOND TRAVAGLIONE:

The third party plaintiff Daufuskie Island Properties, LLC ("DIP"), and its
successor in interest, Ace Basin Investments, LLC, ("Ace Basin"), will, by and
through his undersigned attorney, oppose third-party defendant, Raymond
Travaglione's, motion to dismiss on the following grounds:

INTRODUCTION

From the brief motion counsel for Mr. Travaglione has filed, it appears that there are five grounds upon which their motion to dismiss is based: (1) Judicial Estoppel; (2) DIP no longer exists; (3) lack of standing; (4) the statute of limitations has expired; and (5) the third-party complaint is not the proper means of asserting this claim. All of these grounds are without merit. First, Judicial Estoppel is inapplicable. Second, Ace Basin is the successor to DIP's interests in this action. Third, Ace Basin has standing. Fourth, the statute of limitations has not run. Lastly, it is not only 'proper' to assert this claim in the present action but also necessary.

I. JUDICIAL ESTOPPEL IS INAPPLICABLE

Raymond Travaglione ("Travaglione") alleges that Ace Basin is judicially estopped from attempting to enforce the guaranty that is the subject of the third-party complaint. This allegation is not only without merit, but it is also a misapplication of the doctrine of judicial estoppel.

"Judicial estoppel is an equitable concept that prevents a litigant from asserting a position inconsistent with, or in conflict with, one the litigant has previously asserted in the same or related proceeding." *Auto-Owners Ins. Co. v. Rhodes*, 405 S.C. 584, 598 (2013) citing *Cothran v. Brown*, 357 S.C. 210, 215 (2004).

"The purpose of the doctrine is to ensure the integrity of the judicial process, not to protect the parties from allegedly dishonest conduct by their adversary." *Id.*

The doctrine of judicial estoppel applies when the following elements are present: "(1) two inconsistent positions taken by the same party or parties in privity with one another; (2) the positions must be taken in the same or related proceedings involving the same party or parties in privity with each other; (3) the party taking the position must have been successful in maintaining that position and have received some benefit; (4) the inconsistency must be part of an intentional effort to mislead the court; and (5) the two positions must be totally inconsistent." *Id.*

In this case, judicial estoppel is not applicable because the two proceedings are unrelated. There is simply no connection between a lien holder's chapter 11 bankruptcy and a conflicting lien holder's foreclosure on an asset that serves as collateral to multiple loans. Furthermore, even if these cases were related, judicial estoppel would still be inapplicable because the elements are not present. The \$500,000.00 promissory note was listed as a foreclosure claim against VDM/T in Schedule B of the bankruptcy petition. At the time of the petition a "foreclosure claim" was, and remains, the accurate way of describing the interest and the asset. Travaglione's guarantee is evidenced on the face of the documentation of the obligation, and the agreements incorporated thereto by

reference, giving rise to the foreclosure claim, and thus is incorporated by reference and to the extent necessary in the chapter 11 petition.

Lastly, opposing counsel has not alleged, and the undersigned counsel rejects any insinuation of, an intentional effort to mislead either the South Carolina Court of Common Pleas for Beaufort County or the United States Bankruptcy Court for the District of South Carolina. In short the assertion of judicial estoppel is not applicable procedurally to the case, the elements for asserting judicial estoppel are not present under the facts of the case, and it is not supported by any allegations of opposing counsel.

II. DIP'S INTERESTS WERE NOT DISCHARGED IN BANKRUPTCY

Opposing counsel alleges that DIP no longer exists because of its Chapter 11 Bankruptcy. First of all, opposing counsel is mistaken as to the purpose of Chapter 11 Bankruptcy. Chapter 11 allows for reorganization – Chapter 7, on the other hand, is for liquidation. The various types of bankruptcy aside, DIP's bankruptcy proceeding was dismissed, not discharged, and, subsequently, Ace Basin assumed a variety of DIP's rights and interests including DIP's interests in the promissory note underlying this litigation. Furthermore, Ace Basin has corresponded with the other parties seeking consent to substitute parties, which has not been given. Ace Basin will move for a consent order to substitute the parties and correct the procedural aspects of the case.

III. ACE BASIN HAS STANDING

A Plaintiff has standing when three elements are satisfied. First, the plaintiff must have suffered "an injury-in-fact which is a concrete, particularized, and actual or imminent invasion of a legally protected interest". *Sea Pines Ass'n for the Prot. of Wildlife v. S.C. Dep't of Natural Res.*, 345 S.C. 594, 600-01, 550 S.E.2d 287, 291-92 (2001). Secondly, there must be "a causal connection" between "the injury and the challenged conduct". *Id.* Lastly, it must be "likely that a favorable decision will redress the injury." *Id.*

In the instant case, Ace Basin, as successor in interest to DIP, suffered an injury in the default on the promissory note that it holds and Travaglione's failure to honor his obligation as the guarantor of the note. There is, obviously a connection between the harm and the conduct - Ace Basin is owed \$500,000.00 and has not been paid. Lastly, if Travaglione is ordered to honor his obligation as guarantor of the debt, Ace Basin's injury will be redressed.

IV. THIS ACTION IS THE PROPER MEANS OF ASSERTING THE CLAIM

Not only does Ace Basin have standing to assert this claim, but it is also a compulsory claim. Opposing counsel asserts that it is "not a proper third party-complaint because Third-Party Plaintiff's against Travaglione are not derivative of any liability it has to JMT Capitol Holdings, LLC...particularly given the fact that JMT Capitol Holdings, LLC has waived its right to a deficiency against its

borrower and any guarantors of its debt." *See* Travaglione's Third-Party Motion to Dismiss ¶5. This assertion is fundamentally at odds with the foreclosure process when multiple creditors are involved.

JMT Capitol Holdings, LLC's ("JMT") foreclosure has the effect of discharging all junior liens, which is why Ace Basin is a party to the proceedings - Ace Basin's interests will be discharged in this action. JMT's waiver of claims to the extent that its rights and interests are not satisfied by foreclosure upon the collateral asset are precisely why Ace Basin has the right to pursue deficiency judgments and the guarantor of its unsatisfied obligations. When the senior lien holder relinquishes the right to pursue that particular means of satisfying a debt, it does not remove those means from the foreclosure action, but rather it allows junior lien holders to pursue those means.

If Ace Basin does not pursue its rights against the accommodation party in this action, Ace Basin will lose the right to pursue the guarantor of the obligation to the extent that it allowed its rights in the debtor's collateral to be impaired without Travaglione's consent. Thus it is not only appropriate but necessary to adjudicate Ace Basin's claim in the present matter.

V. THE STATUTE OF LIMITATIONS HAS NOT RUN

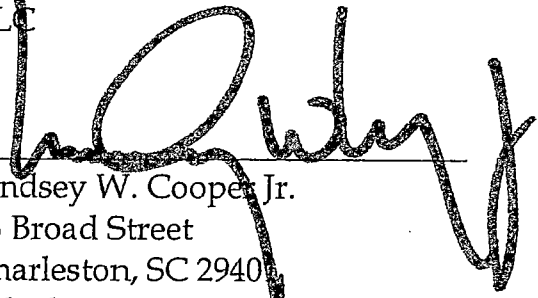
Counsel for Travaglione asserts that the statute of limitations ran on the enforcement of the debt that supports this action. This assertion is neither

supported by the facts nor the law. Under S.C. Code Ann. § 15-3-520 (2005), the statute of limitations for an action "upon a bond or other contract in writing secured by a mortgage in real property" is twenty years. This obligation, which Travaglione guaranteed, was and is secured by a mortgage interest in real property. This fact is evidenced by Plaintiff's Exhibit "C" and Exhibit "D", the mortgage, which by its terms incorporates the "Housing and Parcel Agreement" of August 2004 and the "Partial Release and Subordination Agreement" Exhibit "A" and Exhibit "B". Thus, this action for enforcement, well within the twenty year statute of limitations, is timely, and the allegations to the contrary are in error.

CONCLUSION

To the extent that the motion to dismiss is based upon legal conclusions without supportive facts or allegations and for the foregoing reasons, Ace Basin, by its undersigned counsel, opposes the motion to dismiss.

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*Counsel to Daufuskie Island Properties, LLC,
and its successor in interest Ace Basin
Investments, LLC*

Dated: August 6, 2014
Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF BEAUFORT

IN THE COURT OF COMMON PLEAS

JMT Capitol Holdings, LLC,

Case No. 2014-CP-07-0380

Plaintiff,

vs.

VDM/T Land Company, LLC and
Daufuskie Island Properties, LLC,

Defendants.

Daufuskie Island Properties, LLC and its
successor in interest, Ace Basin Investments,
LLC,

Third-Party Plaintiff,

vs.

Raymond Travaglione,

Third-Party Defendant.

**MEMORANDUM OF LAW IN SUPPORT OF THIRD-PARTY DEFENDANT
RAYMOND TRAVAGLIONE'S NOTICE AND MOTION TO DISMISS THIRD-PARTY
COMPLAINT**

Third-Party Defendant Raymond Travaglione ("Travaglione"), by and through his undersigned counsel, submits this Memorandum of Law in support of his Motion, filed on May 27, 2014, for an order dismissing the Third-Party Complaint (hereinafter, the "Third-Party Complaint") of third-party plaintiff Daufuskie Island Properties, LLC ("Daufuskie") and its alleged successor in interest, Ace Basin Investments, LLC ("Ace") (collectively, "Third-Party Plaintiff").

For the reasons set forth below, the Third-Party Complaint should be dismissed.

STATEMENT OF FACTS

The following facts are undisputed:

On or about December 19, 2004, Daufuskie, Travaglione, and International Junior Golf Tour d/b/a International Junior Golf Academy ("IJGT") entered into two agreements (the "Agreements") for Travaglione's purchase from Daufuskie of two parcels of real property (the "Properties").¹ Thereafter, Travaglione assigned his interest in the Agreements to VDM/T Land Company, LLC ("VDM/T").²

As set forth in Partial Release and Subordination Agreements entered into by Daufuskie, Travaglione and others,³ on or about June 2, 2006 (the "Subordination Agreements"),⁴ Daufuskie seller financed sales of the Properties.⁵ To this end, VDM/T executed and delivered to Daufuskie two promissory notes in the amount of \$400,000.00 and \$100,000.00 each (collectively, the "Daufuskie Notes").⁶ To secure the Daufuskie Notes, VDM/T executed and delivered to Daufuskie a mortgage on each of the Properties (the "Daufuskie Mortgages").⁷ As additional security for the Daufuskie Notes, Travaglione executed and delivered to Daufuskie a Guaranty.⁸

On the same day as the transaction described above, VDM/T executed and delivered to First Federal Savings & Loan Association of Charleston ("Bank") a promissory note and a

¹ JMT Capital Holdings, LLC's Complaint, filed February 19, 2014 (hereinafter the "Complaint") at ¶ 9 and 10; Third-Party Complaint at ¶ 4.

² Guaranty Agreement, attached to Third-Party Complaint as Exhibit 1 (hereinafter the "Guaranty"), at 1; Third-Party Complaint at ¶ 5.

³ IJGT and Clubcorp USA, Inc., a Delaware corporation, as successor by merger to Club Financial Corp. were also parties to the Subordination Agreements.

⁴ See Exhibits A and B to Complaint.

⁵ Complaint at ¶ 15; Third-Party Complaint at ¶ 5.

⁶ Complaint at ¶ 15 and 16; Third-Party Complaint at ¶ 5.

⁷ Complaint at ¶ 16 and 18; Third-Party Complaint at ¶ 5.

⁸ Third-Party Complaint at ¶ 29 and Exhibit 1.

mortgage, pursuant to which VDM/T granted Bank a mortgage on the Properties.⁹ Bank later sold and assigned its note and mortgage to VFC Partners 15, LLC ("VFC"), who later assigned the note and mortgage to Plaintiff (hereinafter, the "JMT Note" and the "JMT Mortgage").¹⁰

On January 20, 2009, Daufuskie filed a voluntary chapter 11 bankruptcy petition in the United States Bankruptcy Court for the District of South Carolina (the "Bankruptcy Case"). Daufuskie's initial bankruptcy schedules, filed on January 20, 2009 and under penalty of perjury, list all obligations and assets of Daufuskie.¹¹ Listed as an asset of the bankruptcy estate are potential claims for foreclosure against VDM/T arising under the Daufuskie Notes.¹² The bankruptcy schedules list no claims against Travaglione.¹³

Daufuskie filed amended bankruptcy schedules on March 6, 2009. The amended schedules again list as an asset of the estate foreclosure claims against VDM/T arising under the Daufuskie Notes, but list no claims against Travaglione.¹⁴

Daufuskie, as debtor, sold all assets of value that it owned to a third party.¹⁵ Thereafter, on October 12, 2012, the Bankruptcy Case was dismissed, and the Bankruptcy Case was closed on October 29, 2012.

At some point, VDM/T defaulted on its note to the Plaintiff.¹⁶ Plaintiff commenced this action on February 19, 2014, seeking to foreclose its mortgage, and waiving any deficiency claim.¹⁷ In addition to the foreclosure of the JMT Mortgage, Plaintiff also seeks a declaratory judgment that the JMT Mortgage is a valid and enforceable first mortgage lien against the

⁹ Complaint at ¶ 19 and 20; Third-Party Complaint at ¶ 5.

¹⁰ Complaint at ¶ 22 and 23; Third-Party Complaint at ¶ 5.

¹¹ See the Bankruptcy Schedules, certified copies of which are attached hereto as Exhibit A.

¹² *Id.*

¹³ *Id.*

¹⁴ See Amended Schedules, certified copies of which are attached hereto as Exhibit B.

¹⁵ Motion and Memorandum to Dismiss Bankruptcy Case, filed September 19, 2012, attached hereto as Exhibit C.

¹⁶ Complaint at ¶ 36 and 39; Third-Party Complaint at ¶ 14.

¹⁷ See Complaint.

Properties.¹⁸ Daufuskie was named as a defendant by virtue of its status as a lienholder on the Properties.¹⁹

In response to the foreclosure complaint, Daufuskie filed its Answer and Third-Party Complaint on April 16, 2014, wherein it asserted a single cause of action against Travaglione for alleged breach of his Guarantee of the Daufuskie Notes.²⁰

ARGUMENT AND CITATION OF LAW IN SUPPORT

I. The Third-Party Complaint is not a proper third-party complaint because the claims asserted therein are not derivative.

South Carolina Rule of Civil Procedure 14(a) states that “At any time after commencement of the action a defending party, [a defendant] as a third-party plaintiff, may cause a summons and complaint to be served upon a person not a party to the action who is or may be liable to him for all or part of the plaintiff’s claim against him.”

In analyzing Rule 14, the South Carolina Supreme Court has stated:

Under Rule 14, the third-party plaintiff must have a substantive claim against the third-party defendant founded upon derivative liability. The outcome of the principal claim must impact the third-party defendant’s liability; however, no right exists to implead a third-party defendant who is *directly* liable to the plaintiff.

First Gen. Servs. of Charleston, Inc. v. Miller, 314 S.C. 439, 442, 445 S.E.2d 446, 447 (1994) (citing Wright, Miller & Kane, *Federal Practice and Procedure: Civil 2d* § 1446) (emphasis added) (italics original).

Daufuskie’s Third-Party Complaint alleges that Travaglione “is and will be liable to Third-Party Plaintiff for all or part of plaintiff’s complaint.”²¹ This is incorrect as a matter of

¹⁸ Complaint at ¶ 31; Third-Party Complaint at ¶ 7-9 (denying that Plaintiff is entitled to the relief requested in its declaratory judgment action).

¹⁹ Complaint at ¶ 13-18; Third-Party Complaint at ¶ 5.

²⁰ See Third-Party Complaint.

²¹ Third-Party Complaint at ¶ 27.

fact and law by virtue of the simple fact that Plaintiff is not asserting any claim against Daufuskie, and Daufuskie has no liability under the Complaint.

In its Complaint, Plaintiff is seeking foreclosure of its mortgage on the Properties. Daufuskie is named as a defendant in the Complaint because it also has liens on the Properties. Daufuskie has no liability to Plaintiff, and there are no affirmative claims against Daufuskie. Plaintiff is seeking only to foreclose its mortgage and wipe out any junior liens. Under no scenario would Daufuskie have any liability to Plaintiff. Because Plaintiff is seeking no affirmative relief against Daufuskie, there is no scenario under which Daufuskie can found its Third-Party Complaint against Travaglione.

Daufuskie's Third-Party Complaint is defective and must be dismissed.

II. Daufuskie is judicially estopped from attempting to enforce the Guaranty.

Even assuming, for the sake of argument, that Daufuskie has some liability to Plaintiff, and further assuming that this might give rise to a derivative claim, Daufuskie is judicially estopped from pursuing its breach of guaranty claim by the doctrine of judicial estoppel.

The doctrine of judicial estoppel prevents a party from asserting in a proceeding a position inconsistent with the position the party has previously asserted in the same or a related proceeding. *Cothran v. Brown*, 357 S.C. 210, 215, 592 S.E.2d 629, 631 (2004). Bankruptcy courts consistently find that the doctrine of judicial estoppel precludes a debtor who fails to list claims on his bankruptcy schedules from later asserting those claims against another party, if the debtor knew about the claims at the time of the bankruptcy and "had a motive to conceal them from the bankruptcy court." *De Leon v. Comcar Indus., Inc.*, 321 F.3d 1289, 1291 (11th Cir. 2003); *Brockington v. Jones*, No. 4:05-3267-RBH-TER, 2007 WL 4812205, at *5 (D.S.C. 2007) ("District Courts within the Fourth Circuit have applied the doctrine of judicial estoppel to bar

plaintiffs from pursuing claims that were not disclosed to the bankruptcy court during bankruptcy proceedings.”); *In re Family Dollar FLSA Litigation*, No. 3:08 MD 1932, 2009 WL 1750908, at *3 (W.D.N.C. 2009) (“Courts within the Fourth Circuit have explicitly held that a plaintiff’s failure to list a claim on his or her bankruptcy schedule of assets, either initially or through an amendment, judicially estops the plaintiff from pursuing such undisclosed claims in a lawsuit.”). “A plaintiff’s failure to disclose can only be deemed ‘inadvertent,’ when the ‘debtor lacks knowledge of the undisclosed claims or has no motive for their concealment.’” *Family Dollar*, 2009 WL 1750908, at *4 (citing *Brockington v. Jones*, No. 4:05-3267, 2007 WL 4812205, at *4 (D.S.C. Nov. 28, 2007)).

Title 11 U.S.C. § 521(a)(1)(B)(i) mandates that a debtor file “a schedule of assets and liabilities.” Schedule B of the federal bankruptcy forms states that a debtor must list “all personal property of whatever kind.” Schedule B, Item 21, requires the debtor to list “contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims.” *As a matter of federal law and as a chapter 11 debtor, Daufuskie was required by § 521 to list any and all assets in its bankruptcy schedules.*²²

The reason for this mandate is simple: it is essential to the proper functioning of the bankruptcy process that a bankruptcy debtor list all of his assets and liabilities in his bankruptcy schedules. See *In re JK Harris & Co., LLC*, 475 B.R. 470, 479-480 (quoting *In re Yefimova*, No. 08-20049, 2012 WL 2087081 (Bankr. D. Md. Jun. 8, 2012)) (“[T]he Court notes that ‘the submission of accurate schedules of assets and debts is a cornerstone of the bankruptcy process that requires a full, candid, and complete disclosure of debtors of their financial affairs.’”); *In re Simpson*, 306 B.R. 793 (Bankr. D.S.C. 2003) (“[A]ccuracy, honesty, and full disclosure are critical to the functioning of bankruptcy and are inherent in the bargain for a debtor’s

²² See Exhibit A; Exhibit B.

discharge.”). Bankruptcy debtors are required to make complete disclosure of assets and liabilities to the Court, as well as to their creditors and to the trustee, so that parties in interest to the bankruptcy case can ascertain how they will be treated through the bankruptcy and can make decisions regarding what actions and/or inactions must be taken in order to protect their interests. See *In re Weldon*, 184 B.R. 710, 715 (Bankr. D.S.C. 1995) (“The bankruptcy schedules and statements of affairs are carefully designed to elicit certain information necessary to the proper administration and adjudication of the case.”); *In re Yefimova*, No. 08-20049, 2012 WL 2087081, at *3 (citing *In re Searles*, 317 B.R. 368, 378 (B.A.P. 9th Cir. 2004)).

While Daufuskie listed its claims against VDM/T in its bankruptcy pleadings, Daufuskie failed to disclose that it also had claims against Travaglione.²³ As evidenced by Daufuskie’s inclusion of its claims against VDM/T under the Daufuskie Notes, Daufuskie was aware of its potential claims it allegedly had against Travaglione under the Guaranty, yet failed to list these claims against Travaglione in any of the bankruptcy schedules.

Daufuskie’s failure to disclose its claims against Travaglione in its bankruptcy schedules is sufficient to cause the application of judicial estoppel to prevent Daufuskie’s current attempt to sue Travaglione under the Guaranty. It is not enough that Daufuskie listed its claims against VDM/T. It was required to also list its claims against Travaglione.²⁴

²³ See Exhibit A; Exhibit B.

²⁴ “The general rule in South Carolina . . . is that a guaranty of payment is an obligation separate and distinct from the original note.” *CoastalStates Bank v. Hanover Homes of South Carolina, LLC*, 759 S.E.2d 152 (S.C. Ct. App. 2014) (quoting *Citizens & S. Nat’l Bank of S.C. v. Lanford*, 313 S.C. 540, 543, 443 S.E.2d 549, 550 (1994)). The South Carolina Supreme Court has stated:

The debtor is not a party to the guaranty, and the guarantor is not a party to the principal obligation. The undertaking of the former is independent of the promise of the latter; and the responsibilities which are imposed by the contract of guaranty differ from those which are created by the contract to which the guaranty is collateral.

Daufuskie was required as a matter of federal law, to list all assets in its Bankruptcy Schedules and Amended Schedules--including its claims against Travaglione. Its failure to do so prevents it from now attempting to assert any claim against Travaglione pursuant to the Guaranty.

III. The claims against Travaglione are barred by the applicable statute of limitations.

The South Carolina Court of Appeals has recently indicated that the statute of limitations for an action on a guaranty begins to run upon default of the obligor. *Hanover Homes*, 759 S.E.2d 152. The applicable statute of limitations in this case is three years, as set forth in S.C. Code § 15-3-530: "Within three years . . . an action upon a contract, obligation, or liability, express or implied."

While Travaglione has no information regarding the exact date of VDM/T's default on the Daufuskie Notes, he is informed and believes that when Daufuskie filed bankruptcy in January 2009, the Daufuskie Notes were already in default.²⁵ Assuming, for the sake of argument, that VDM/T defaulted in January 2009, § 15-3-530's three year statute of limitations on Travaglione's Guaranty also began to run in January 2009. It is clear that Daufuskie's attempt to sue Travaglione on the Guaranty was commenced well after the expiration of the statute of limitations, indeed, over five years after the filing of Daufuskie's Bankruptcy Case and long after VDM/T's default. Daufuskie's Third-Party Complaint against Travaglione is barred by the applicable statute of limitations and should be dismissed.

Citizens & S. Nat'l Bank of S.C. v. Lanford, 313 S.C. 540, 544, 443 S.E.2d 549, 551 (1994) (quoting 38 Am. Jur.2d *Guaranty* § 4). Put another way, the Guaranty is a separate and distinct contract from the Daufuskie Loan Documents, and claims pursuant to the Guaranty must be listed separately.

²⁵ See Exhibit A; Exhibit B.

IV. Ace lacks standing to bring the claims asserted against Travaglione in the Third-Party Complaint.

Ace, Daufuskie's purported assignee, lacks standing to bring the claims asserted against Travaglione in the Third-Party Complaint. First, Ace is not a defendant in Plaintiff's foreclosure action and therefore, pursuant to S.C. R. Civ. P. 14(a), Ace cannot assert any claims against a third-party defendant in this action. In an attempt to evade this procedural fact, Ace's counsel has requested that all parties consent to the substitution of Ace as the "proper defendant and third-party plaintiff." However, even this substitution request is improper as Ace has no claim against Travaglione because it does not own the Guaranty.

The Assignment of Mortgage between Daufuskie and Ace, dated October 28, 2013, states that Daufuskie assigned the Mortgage, "together with the note(s) and obligations therein described." However, the Mortgage, attached as Exhibit C to the Plaintiff's Complaint, fails to reference or describe the Guaranty.²⁶ Therefore, counsel's claims, the Assignment of the Mortgage only transferred the mortgage; it did not transfer, assign, or otherwise convey the Guaranty to Ace, and Ace cannot attempt to enforce it against Travaglione.

CONCLUSION

For the reasons set forth above, Travaglione submits that his Motion should be granted and Daufuskie's Third-Party Complaint should be dismissed.

[signature on following page]

²⁶ See Plaintiff's Complaint, Exhibit C.

ADAMS AND REESE LLP

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August 5, 2014

Attorneys for Raymond Travaglione

In re DAUFUSKIE ISLAND PROPERTIES, LLC

Debtor(s)

Case No. _____

(if known)

SCHEDULE B-PERSONAL PROPERTY

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G-Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	None	Description and Location of Property	Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
		Husband--H Wife--W Joint--J Community--C	
1. Cash on hand.		Cash Location: In debtor's possession	\$ 22,000.00
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Deposit Accounts Location: In debtor's possession	\$ 44,000.00
3. Security deposits with public utilities, telephone companies, landlords, and others.		Security Deposits Location: In debtor's possession	\$ 99,717.35
4. Household goods and furnishings, including audio, video, and computer equipment.	X		
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X		
6. Wearing apparel.	X		
7. Furs and jewelry.	X		
8. Firearms and sports, photographic, and other hobby equipment.	X		
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X		
10. Annuities. Itemize and name each issuer.	X		
11. Interest in an education IRA as defined in 26 U.S.C. 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. 521(c).)	X		
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X		

EXHIBIT

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A

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DISTRICT OF SC

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In re DAUFUSKIE ISLAND PROPERTIES, LLC

Debtor(s)

Case No. _____

(if known)

SCHEDULE B-PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	N o n e	Description and Location of Property	Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		Husband--H Wife--W Joint--J Community--C <i>Shares, Beach Cottages</i> <i>Location: In debtor's possession</i> <i>Shares, Daufuskie Isld Props Ga LLC</i> <i>Location: In debtor's possession</i> <i>Shares, Daufuskie Isld Resort Realty</i> <i>Location: In debtor's possession</i> <i>Shares, Eprop LLC</i> <i>Location: In debtor's possession</i> <i>Shares, Swift Cat LLC</i> <i>Location: In debtor's possession</i>	<i>Unknown</i> <i>Unknown</i> <i>Unknown</i> <i>Unknown</i> <i>Unknown</i>
14. Interests in partnerships or joint ventures. Itemize.	X		
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X		
16. Accounts Receivable.		<i>Accounts Receivable</i> <i>Location: In debtor's possession</i>	<i>\$ 375,866.00</i>
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X		
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X		
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X		
20. Contingent and non-contingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X		
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of each.		<i>Claim vs. VDM/T LAND COMPANY LLC (foreclosure for land that was the Golf Academy)</i> <i>Location: In debtor's possession</i>	<i>\$ 500,000.00</i>

In re DAUFUSKIE ISLAND PROPERTIES, LLC

Debtor(s)

Case No. _____

(if known)

SCHEDULE B-PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	N o n e	Description and Location of Property	Husband--H Wife--W Joint--J Community--C	Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
22. Patents, copyrights, and other intellectual property. Give particulars.	X			
23. Licenses, franchises, and other general intangibles. Give particulars.	X			
24. Customer lists or other compilations containing personally identifiable information (as described in 11 U.S.C. 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X			
25. Automobiles, trucks, trailers and other vehicles and accessories.		Vehicles (see attached) Location: In debtor's possession		\$ 330,786.40
26. Boats, motors, and accessories.		Boats (titled) (see attached) Location: In debtor's possession		\$ 1,045,000.00
27. Aircraft and accessories.	X			
28. Office equipment, furnishings, and supplies.		Misc Office Equipment (see attached) Location: In debtor's possession		\$ 6,544,343.00
29. Machinery, fixtures, equipment and supplies used in business.		1 - Toro Workman 3200.1 - Toro Multi Pro 1200.1 - Toro Pro Core 880.1 - Dakota 4, 10 Topdresser.1 - Toro NSN Classic Support Plan 1 - Toro NSN Essentials Support, Plan. Location: In debtor's possession		Unknown
		1 BOBCAT ALL WHEEL STEER LOADER A300 S/N 539911*** HIGH FLOW HYDLIC ALARM PKG ATTACHMNT CNTRL KIT, BOIN LP BKT FORK FRAME/4BIN FORKS1 BOBCAT STUMP CUTTER/GRINDER SGX60 S/N A00700*** BOBCAT TRENCHER LT313 SN 04540*** 3FTX6FT CUP TEETH SS PATTERN Together with all present and future attachments, accessories, replacement parts, additions, and all cash and non-cash proceeds thereof. Location: In debtor's possession		Unknown

In re DAUFUSKIE ISLAND PROPERTIES, LLC

Debtor(s)

Case No. _____

(if known)

SCHEDULE B-PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	None	Description and Location of Property	Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
		Husband--H Wife--W Joint--J Community--C	
		2 - Toro Debris Blower 600.1 - Toro Turf Sweeper 4800.10 - Toro Workman 1100.1 Toro Sand Pro 3020.1 - Toro Spiker for Sand Pro.2 - Toro Reelmaster 5400-D.7 Toro Greensmaster 1000.7 - Toro Trans Pro 80 Trailer.2 - Toro Greensmaster 3150. 4 - Toro Groundsmaster 4500-D.1 - Lely Spreader.2 - Buffalo Turbine Blower. Location: In debtor's possession	Unknown
		All equipment and inventory. financed by Textron Financial Corporation and/or manufactured and/or distributed by Textron Golf. Turf and Specialty Products. a division of Textron Inc.. wherever located. in which Debtor now or hereafter has rights, none of which the debtor is authorized to sell. lease or otherwise dispose of without the written consent of secured party. whether or not bearing the E-Z-Go trademark or trade name. including, but not limited to golf cars and utility vehicles; all present and future attachments. accessories and accessions to such equipment and inventory. all spare parts, replacements, substitutions and exchanges therefore; all trade-ins relating thereto; all instruments. accounts and chattel paper arising therefrom (including leases and conditional sale contracts); and the proceeds of all of the foregoing. including proceeds in the form of goods. accounts. chattel paper. documents, instruments and/or general intangibles. All cash and non-cash proceeds of any of the foregoing in whatever form (including proceeds in the form of inventory. equipment or any other form of personal property), including proceeds of proceeds. Location: In debtor's possession	Unknown
		ONE (1) CATERPILLAR 420EIT BACKHOE LOADER SIn: KMW01125And substitutions, replacements, additions and accessions	Unknown

In re DAUFUSKIE ISLAND PROPERTIES, LLC

Debtor(s)

Case No. _____

(if known)

SCHEDULE B-PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	N o n e	Description and Location of Property	Husband--H Wife--W Joint--J Community--C Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
30. Inventory.		thereto, now owned or hereafter acquired and proceeds thereof Location: In debtor's possession	
31. Animals.		Inventory (food, beverage, golf and fuel) Location: In debtor's possession	\$ 459,632.38
32. Crops - growing or harvested. Give particulars.	X	Horses/Animals Location: In debtor's possession	\$ 10,000.00
33. Farming equipment and implements.	X		
34. Farm supplies, chemicals, and feed.	X		
35. Other personal property of any kind not already listed. Itemize.		Misc personal property (collectively, the "Collateral"), which is related to, used in connection with or located on, in or under the real property legally described in Exhibit "A" attached hereto (the "Property"): (a) all instruments, including, without limitation, promissory notes and associated security therewith that may be owned by Debtors, or any of them; (b) all general intangibles of Debtors, or any of them; (c) all documents, including, without limitation, contracts, sales and purchase contracts, leases, subleases of Debtors, or any of them; (d) all software owned by Debtors, or any of them; (e) all accounts, deposit accounts (including consumer deposit accounts), accounts receivable, escrow accounts, consignments, chattel paper (including both tangible, intangible and electronic chattel paper), payment intangibles, letter of credit rights, certificates of title, bonds, escrow accounts, commercial tort claims, bank accounts, and the like of Debtors, or any of them; (f) all	Unknown

In re DAUFUSKIE ISLAND PROPERTIES, LLC

Debtor(s)

Case No. _____

(if known)

SCHEDULE B-PERSONAL PROPERTY

(Continuation Sheet)

Type of Property	N o n e	Description and Location of Property	Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
		Husband--H Wife--W Joint--J Community--C goods, materials, supplies, chattels, furniture, fixtures, licenses, equipment and inventory; (g) all development rights, agricultural lien rights (including both possessory and non-possessory agricultural lien rights), farm products, water taps and tap rights, water rights, water stock and permits of Debtors, or any of them; (h) all contracts and contract rights and all and all ownership interests, distribution rights, proceeds and all other things of value attributable therewith owned by Debtors, or any of them; (i) all interests of Debtors, or any of them, in any trusts, estates, joint ventures and associations, and all other things of value attributable therewith; and (0) all accessions, increases, renewals, replacements, proceeds (including both cash and non-cash proceeds), products, related securities (whether certificated or uncertificated), general intangibles, supporting obligations, and insurance proceeds related to any the above enumerated interests. Location: In debtor's possession NOTE ONLY-Many broadly described assets on Schedule B may be duplications on the attachments. Location: In debtor's possession	N/A

Total →

\$ 9,431,345.13

(Report total also on Summary of Schedules.)
Include amounts from any continuation sheets attached.

DIP ID #	VIN #	Year	Make	Style	Model (per Title)	Department/usage	Status
DIP TO RETAIN							
* 7	GKCS13W6Y2345180	2000	GMC	SUV	JIMMY		In service
* 17	GKCS13W5Y2299051	2000	GMC	SUV	JIMMY		In service
* 43	GDHG31R7V1028193	1997	GMC	PICKUP	3500	Real Estate	In service
* 45	TEFI4YXSNB10070	1995	FORD	PICKUP	COFF15	Warehouse	In service
* 82	FMVU02295KA87262	2005	FORD	ESCAPE	U02	Melrose utilities	In service
* 86	FMZA57664BA13458	2003	FORD	Mini-Van	Freestar	SECURITY	In service
* 87	FTRF17243NA02361	2003	FORD	PICKUP	F-150		In service
* *	JK1AFCE0X5B339088	2005	KAWASAKI	MULE	KAF620E5	Warehouse	In service
* *	1FTRF12Z06NB75717	2006	Ford		F-150	F&B - lift gate	In service
* *	1FTDA14U8TZB38693	1996	Ford	VAN	Acrostar	Engineering	In service
golf 14	DKF37H1PNB23836	1993	FORD	flat bed	COFF35	Jolt /grounds maint	In service
golf 15	IGJHG39R3Y1218062	2000	GMC	VAN	3500	Golf - bag drop	In service
golf 22	FTCRJ0A8PTA86135	1993	FORD	PICKUP	RNGRNG	Golf /grounds	In service
golf 26	IGJHG39R4Y1201626	2000	GMC	VAN	3500	Golf - bag drop	In service
golf 57	TNE24L8DA69057	2006	FORD	E350 van	100 MILES	Golf operations	In service
golf 69	DLF47M8MCA01354	1991	FORD	PICKUP	COFFSD	Grounds dump bed	does not run
golf 91	TNE24L66DA96791	2006	FORD	E350 van	4,000 MILES	Golf operations	In service
LAMIE KARABINCHAK							
JK 20	GJHG39R5V1080959	1997	GMC	VAN		Land Trans	In service
JK 27	TRE1429KH824440	1999	FORD	VAN	E150	Engineering	In service
JK 83	1FBSS31L76HA53919	2006	FORD	VAN	S31	Land Trans	In service
JK 84	TNE24L95HA20246	2005	FORD	VAN	E24	Bell Services	In service
JK 85	TNE24L25HA20363	2005	FORD	VAN	E24	Bell Services	In service
JK **	TNS24W67DA88209	2007	Ford	VAN	top, ADA lift	Land Trans	In service
JK	5B4MGF7G573421679	2008	Ward	Trolley	Supertour	Land Trans	In service
JK	5B4MGF7G373421678	2008	Ward	Trolley	Supertour	Land Trans	In service
JK	JALC4B1KIS7004757	1995	ISUZU	VAN	PRN	Warehouse	In service
ANTICIPATE TO BE SOLD							
sell 11	FTCR10AXPTA86136	1993	FORD	PICKUP	RNGRNG	Golf /grounds supv	In service
sell 16	IGKCS13W9Y2319155	2000	GMC	SUV	JIMMY		In service
sell 18	FNDD1J3W9S2104970	1995	CHEVY	SUV	RZR	vehicle maint mgr	does not run
sell 19	GCD C1423LE230064	1990	CHEVY	PICKUP	GM4GCI	Trash Truck service	barely
sell 20	DNF60H1GVA46362	1986	FORD	F600	HASSIS CAB	Golf /grounds	not running
sell 30	FTCRJ0A7SUA95301	1995	FORD	PICKUP	RNGRNG	Engineering	In service
sell 34	FTJE34V8LHA36516	1990	FORD	VAN	VAN35V	Engineering	In service
sell 36	ALC4B1KOS7004748	1995	ISUZU	VAN	PRN	Banquets	In service
sell 38	TPE24L7WHC01288	1998	FORD	VAN	VAN 25V	Bellman for condition	
sell 40	GKCS13W1Y2300678	2000	GMC	SUV	JIMMY	Managing Director	In service
sell 42	1B3U6A7A6B422440	1988	VOLVO	VAN	FE6FE6		in service - minimal
sell 44	1DGD7D1B4FV605843	1985	GMC	CCH	C6VC7D		in service - minimal
sell 48	KE30MXRHCO5446	1995	FORD	VAN	ELDORA	Land Trans	1 on property
sell 49	DKE30M1RHC05447	1995	FORD	VAN	ELDORA	Land Trans	1 on property
sell 52	1AGHBSA1TF070144	1996	BLUEBIRD	BUS	CSRE3	Land Trans	1 on property
sell 53	1AGHBSA5TF070145	1996	BLUEBIRD	BUS	CS RE	Land Trans	reginal engine
sell 54	1AGHBSA1TF070143	1996	BLUEBIRD	BUS	CS RE	Land Trans	1 on property
sell 61	1NEV16K8MF127627	1991	CHEVY	SUV	V15	BP Golf Maint	In service
sell 64	1JCFG15W9W1021604	1998	CHEVY	VAN	1500	Housekeeping	In service
sell 71	1THP32M5CJ503140	1982	GMC	STEP VAN		Eng - point dept.	1 on property
sell 72	TEFI4N9S1NB54227	1995	FORD	Truck		Melrose utilities	In service
sell 80	MRDA222X5B101834	2005	Mercury	Mini-Van	10NTEREV	site visit / Land trans	WRECKED
sell 81	1PMYU0275DA87258	2005	FORD	ESCAPE	U02	SECURITY	In service
sell	42dvl1w8pdj78091	1993	Mercury	Van		removed from fleet	Totaled 2005
sell	1FTEE14Y1THA92058	1996	Ford	VAN	E150	Engineering	In service
sell	1GTS9C4C7DV514859	1986	GMC	truck tractor			In service

VESSEL	HULL VALUE	STATUS	# CREW	MAX #		OWNED BY	Notes
				PASSENGER	S		
Clipper I Island	\$ 1,000,000	Active	3	100		DIP LLC	Lease to: Daufuskie Island Ferry Company
Pursuit	\$ 45,000	Active	1	-		DIP LLC	

In re DAUFUSKIE ISLAND PROPERTIES, LLC

Case No. 2:09-bk-389

Debtor(s)

(if known)

SCHEDULE B-PERSONAL PROPERTY

Amended 03/06/2009

Except as directed below, list all personal property of the debtor of whatever kind. If the debtor has no property in one or more of the categories, place an "X" in the appropriate position in the column labeled "None." If additional space is needed in any category, attach a separate sheet properly identified with the case name, case number, and the number of the category. If the debtor is married, state whether the husband, wife, both, or the marital community own the property by placing an "H," "W," "J," or "C" in the column labeled "Husband, Wife, Joint, or Community." If the debtor is an individual or a joint petition is filed, state the amount of any exemptions claimed only in Schedule C - Property Claimed as Exempt.

Do not list interests in executory contracts and unexpired leases on this schedule. List them in Schedule G-Executory Contracts and Unexpired Leases.

If the property is being held for the debtor by someone else, state that person's name and address under "Description and Location of Property." If the property is being held for a minor child, simply state the child's initials and the name and address of the child's parent or guardian, such as "A.B., a minor child, by John Doe, guardian." Do not disclose the child's name. See, 11 U.S.C. §112 and Fed. R. Bankr. P. 1007(m).

Type of Property	None	Description and Location of Property	Current Value of Debtor's Interest, In Property Without Deducting any Secured Claim or Exemption
		Husband--H Wife--W Joint--J Community--C	
1. Cash on hand.		Cash Location: In debtor's possession	\$ 22,000.00
2. Checking, savings or other financial accounts, certificates of deposit, or shares in banks, savings and loan, thrift, building and loan, and homestead associations, or credit unions, brokerage houses, or cooperatives.		Deposit Accounts Location: In debtor's possession	\$ 44,000.00
3. Security deposits with public utilities, telephone companies, landlords, and others.		Security Deposits Location: In debtor's possession	\$ 99,717.35
4. Household goods and furnishings, including audio, video, and computer equipment.	X		
5. Books, pictures and other art objects, antiques, stamp, coin, record, tape, compact disc, and other collections or collectibles.	X		
6. Wearing apparel.	X		
7. Furs and jewelry.	X		
8. Firearms and sports, photographic, and other hobby equipment.	X		
9. Interests in insurance policies. Name insurance company of each policy and itemize surrender or refund value of each.	X		
10. Annuities. Itemize and name each issuer.	X		
11. Interest in an education IRA as defined in 26 U.S.C. 530(b)(1) or under a qualified State tuition plan as defined in 26 U.S.C. 529(b)(1). Give particulars. (File separately the record(s) of any such interest(s). 11 U.S.C. 621(c).)	X		
12. Interests in IRA, ERISA, Keogh, or other pension or profit sharing plans. Give particulars.	X		

EXHIBIT

B

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DISTRICT OF SC

BY: DEPUTY CLERK (4)

/s/Gayle Bulls Dixon, Member 03/06/09
In re DAUFUSKIE ISLAND PROPERTIES, LLC

Case No. 2:09-bk-389

Debtor(s)

(if known)

SCHEDULE B-PERSONAL PROPERTY

Amended 03/06/2009

(Continuation Sheet)

Type of Property	None	Description and Location of Property	Husband--H Wife--W Joint--J Community--C	Current Value of Debtor's Interest, In Property Without Deducting any Secured Claim or Exemption
13. Stock and interests in incorporated and unincorporated businesses. Itemize.		Shares, Beach Cottages Location: In debtor's possession Shares, Daufuskie Isld Props Ga LLC Location: In debtor's possession Shares, Daufuskie Isld Resort Realty Location: In debtor's possession Shares, Eprop LLC (Value determined by estimated values of realty, \$18,000,000 and \$100,000, less CSE Mortgage claim of c. \$8,963,584.54) Location: In debtor's possession Shares, Swift Cat LLC Location: In debtor's possession Shares, Melrose Utility Company		Unknown Unknown Unknown \$ 9,136,415.46 Unknown Unknown
14. Interests in partnerships or joint ventures. Itemize.	X			
15. Government and corporate bonds and other negotiable and non-negotiable instruments.	X			
16. Accounts Receivable.		Accounts Receivable Location: In debtor's possession		\$ 375,866.00
17. Alimony, maintenance, support, and property settlements to which the debtor is or may be entitled. Give particulars.	X			
18. Other liquidated debts owed to debtor including tax refunds. Give particulars.	X			
19. Equitable or future interests, life estates, and rights or powers exercisable for the benefit of the debtor other than those listed in Schedule of Real Property.	X			
20. Contingent and non-contingent interests in estate of a decedent, death benefit plan, life insurance policy, or trust.	X			
21. Other contingent and unliquidated claims of every nature, including tax refunds, counterclaims of the debtor, and rights to setoff claims. Give estimated value of		Claim vs. VDM/T LAND COMPANY LLC (foreclosure for land that was the Golf Academy)		\$ 500,000.00

In re DAUFUSKIE ISLAND PROPERTIES, LLC

Debtor(s)

Case No. 2:09-bk-389

(if known)

SCHEDULE B-PERSONAL PROPERTY

Amended 03/06/2009

(Continuation Sheet)

Type of Property	N o n e	Description and Location of Property	Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
each.		Location: In debtor's possession Claims via Lawsuits. See SOFA #4A Location: In debtor's possession	TBD
22. Patents, copyrights, and other intellectual property. Give particulars.	X		
23. Licenses, franchises, and other general intangibles. Give particulars.	X		
24. Customer lists or other compilations containing personally identifiable information (as described in 11 U.S.C. 101(41A)) provided to the debtor by individuals in connection with obtaining a product or service from the debtor primarily for personal, family, or household purposes.	X		
25. Automobiles, trucks, trailers and other vehicles and accessories.		Vehicles (see attached) Location: In debtor's possession	\$ 330,786.40
26. Boats, motors, and accessories.		Boats (titled) (see attached) Location: In debtor's possession	\$ 1,045,000.00
27. Aircraft and accessories.	X		
28. Office equipment, furnishings, and supplies.		Misc Office Equipment (see attached) Location: In debtor's possession	\$ 6,544,343.00
29. Machinery, fixtures, equipment and supplies used in business.		1 - Toro Workman 3200.1 - Toro Multi Pro 1200.1 - Toro Pro Core 880.1 - Dakota 4, 10 Topdresser.1 - Toro NSN Classic Support Plan 1 - Toro NSN Essentials Support, Plan. Location: In debtor's possession	Unknown
		1 BOBCAT ALL WHEEL STEER LOADER A300 S/N 539911*** HIGH FLOW HYDLYC ALARM PKG ATTACHMNT CNTRL KIT, BOIN LP BKT FORK FRAME/4BIN FORKS1 BOBCAT STUMP CUTTER/GRINDER SGX60 S/N A00700*** BOBCAT TRENCHER LT313 SN 04540***	Unknown

In re DAUFUSKIE ISLAND PROPERTIES, LLC

Debtor(s)

Case No. 2:09-bk-389

(if known)

SCHEDULE B-PERSONAL PROPERTY

Amended 03/06/2009

(Continuation Sheet)

Type of Property	N o n e	Description and Location of Property	Husband--H Wife--W Joint--J Community--C	Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
		3FTX6FT CUP TEETH SS PATTERN Together with all present and future attachments, accessories, replacement parts, additions, and all cash and non-cash proceeds thereof. Location: In debtor's possession		
		2 - Toro Debris Blower 600.1 - Toro Turf Sweeper 4800.10 - Toro Workman 1100.1 Toro Sand Pro 3020.1 - Toro Spiker for Sand Pro.2 - Toro Reelmaster 5400-D.7 Toro Greensmaster 1000.7 - Toro Trans Pro 80 Trailer.2 - Toro Greensmaster 3150. 4 - Toro Groundsmaster 4500-D.1 - Lely Spreader.2 - Buffalo Turbine Blower. Location: In debtor's possession		Unknown
		All equipment and inventory. financed by Textron Financial Corporation and/or manufactured and/or distributed by Textron Golf. Turf and Specialty Products. a division of Textron Inc.. wherever located. in which Debtor now or hereafter has rights, none of which the debtor is authorized to sell, lease or otherwise dispose of without the written consent of secured party. whether or not bearing the E-Z-Go trademark or trade name. including. but not limited to golf cars and utility vehicles; all present and future attachments. accessories and accessions to such equipment and inventory. all spare parts, replacements, substitutions and exchanges therefore; all trade-ins relating thereto; all instruments. accounts and chattel paper arising therefrom (including leases and conditional sale contracts); and the proceeds of all of the foregoing. including proceeds in the form of oods. accounts. chattel paper. documents, instruments and/or general intangibles. All cash and non-cash proceeds of any of the foregoing in whatever form (including proceeds in the form of inventory. equipment or any other form of personal		Unknown

In re DAUFUSKIE ISLAND PROPERTIES, LLC
Debtor(s)

Case No. 2:09-bk-389

(if known)

SCHEDULE B-PERSONAL PROPERTY
Amended 03/06/2009
(Continuation Sheet)

Type of Property	N o n e	Description and Location of Property Husband--H Wife--W Joint--J Community--C	Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
		property), including proceeds of proceeds. Location: In debtor's possession ONE (1) CATERPILLAR 420EIT BACKHOE LOADER SiN: KMW01125 And substitutions, replacements, additions and accessions thereto, now owned or hereafter acquired and proceeds thereof Location: In debtor's possession	Unknown
30. Inventory.		Inventory (food, beverage, golf and fuel) Location: In debtor's possession	\$ 459,632.38
31. Animals.		Horses/Animals Location: In debtor's possession	\$ 10,000.00
32. Crops - growing or harvested. Give particulars.	X		
33. Farming equipment and implements.	X		
34. Farm supplies, chemicals, and feed.	X		
35. Other personal property of any kind not already listed. Itemize.		Misc personal property (collectively, the "Collateral"), which is related to, used in connection with or located on, in or under the real property legally described in Exhibit "A" attached hereto (the "Property"): (a) all instruments, including, without limitation, promissory notes and associated security therewith that may be owned by Debtors, or any of them; (b) all general intangibles of Debtors, or any of them; (c) all documents, including, without limitation, contracts, sales and purchase contracts, leases, subleases of Debtors, or any of them; (d) all software owned by Debtors, or any of them; (e) all accounts, deposit accounts (including consumer deposit accounts), accounts receivable, escrow	Unknown

In re DAUFUSKIE ISLAND PROPERTIES, LLC

Debtor(s)

Case No. 2:09-bk-389

(if known)

SCHEDULE B-PERSONAL PROPERTY

Amended 03/06/2009

(Continuation Sheet)

Type of Property	N o n e	Description and Location of Property	Husband--H Wife--W Joint--J Community--C Current Value of Debtor's Interest, in Property Without Deducting any Secured Claim or Exemption
		accounts, consignments, chattel paper (including both tangible, intangible and electronic chattel paper), payment intangibles, letter of credit rights, certificates of title, bonds, escrow accounts, commercial tort claims, bank accounts, and the like of Debtors, or any of them; (f) all goods, materials, supplies, chattels, furniture, fixtures, licenses, equipment and inventory; (g) all development rights, agricultural lien rights (including both possessory and non-possessory agricultural lien rights), farm products, water taps and tap rights, water rights, water stock and permits of Debtors, or any of them; (h) all contracts and contract rights and all and all ownership interests, distribution rights, proceeds and all other things of value attributable therewith owned by Debtors, or any of them; (i) all interests of Debtors, or any of them, in any trusts, estates, joint ventures and associations, and all other things of value attributable therewith; and (o) all accessions, increases, renewals, replacements, proceeds (including both cash and non-cash proceeds), products, related securities (whether certificated or uncertificated), general intangibles, supporting obligations, and insurance proceeds related to any the above enumerated interests. Location: In debtor's possession NOTE ONLY-Many broadly described assets on Schedule B may be duplications on the attachments. Location: In debtor's possession	N/A
Total →			\$ 18,567,760.59

(Report total also on Summary of Schedules.)
Include amounts from any continuation sheets attached.

THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

In re:

Daufuskie Island Properties, LLC, a/k/a
Daufuskie Island Resort & Breathe Spa,

Debtor.

Case No. 09-00389-jw

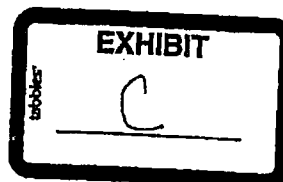
Chapter 11

MOTION AND MEMORANDUM TO DISMISS BANKRUPTCY CASE
PURSUANT TO 11 U.S.C. § 1112(b)(1)

Robert C. Onorato, Trustee (the "Trustee") for the bankruptcy estate (the "Estate") of Daufuskie Island Properties, LLC (the "Debtor"), hereby moves for the dismissal of this case pursuant to 11 U.S.C. § 1112(b)(1), and for his release and discharge from his appointment as Trustee upon the dismissal of this case. Dismissal of this bankruptcy case is in the best interest of the creditors and the Estate. Conversion of the case to Chapter 7 would serve no useful purpose, and would create additional burdens on the creditors and a Chapter 7 trustee. Therefore, dismissal of this case is appropriate and should be granted.

In support of this motion, the Trustee would show as follows:

1. The Debtor filed its petition for relief under Chapter 11 of the United States Bankruptcy Code (11 U.S.C. § 101, *et seq.*) on January 20, 2009 (the "Petition Date"). The Debtor initially operated as a Chapter 11 debtor-in-possession from the Petition Date until the Trustee's appointment.
2. Following the commencement of this case, the Debtor was unable to obtain financing it needed to continue its business, including the operation and maintenance of the



properties comprising the Debtor's business. As a result, on or about March 16, 2009, the Debtor closed all operations and released all of its employees.

3. On March 17, 2009, the Court entered its Order Granting Joint Motion for Appointment of Chapter 11 Trustee Pursuant to 11 U.S.C. § 1104, granting the joint motion of the Official Committee of Unsecured Creditors (the "Committee"), Beach First National Bank and AFG, LLC, for the appointment of a trustee in this case. Thereafter, on March 23, 2009, the Court entered its Order Approving Appointment of Trustee, approving the United States Trustee's appointment of the Trustee in this case.

4. From the start, the Trustee has worked with very limited funds to maintain the assets of the Estate while he attempted to sell them, and to administer the Estate. The course of this case is well documented with numerous filings and orders. The efforts to sell the assets at prices parties previously expected, or at least hoped, to see realized for the assets were unsuccessful, for various reasons, including the depressed real estate market, the accessibility of the Estate's primary assets only be water, the history of operating losses for the Debtor and prior owners of the property, the need for very substantial capital improvements on the property, the paucity of funding for potential buyers, and other factors.

5. The Trustee has sold all assets of the Estate having realizable value for the Estate, and he has now disbursed the unencumbered proceeds to administrative priority creditors having allowed claims. Unfortunately, the Estate did not have sufficient funds to fully pay the allowed administrative priority claims. The Trustee disbursed the funds to the administrative priority creditors on a *pro rata* basis, however, after such payment, there still remains over \$1.6 million of unpaid allowed administrative priority claim debt in this case.

6. In simplest and most direct terms, there is nothing left to be done in this case. As such, there would be no useful purpose, only burdens, by the conversion of this case to Chapter 7. Dismissal is the appropriate disposition of this case.

7. Pursuant to 11 U.S.C. § 1112(b)(1), the Court may convert to Chapter 7 or dismiss a case under Chapter 11, "whichever is in the best interests of creditors and the estate," for cause. Ample cause exists in this case for dismissal, as there is nothing left to be done, there is no prospect of further recovery for creditors, the case has extended over three and one-half years, and continuation of the case would be without purpose and only result in additional burdens, administrative and otherwise. Dismissal is in the best interests of the Debtor's creditors and the Estate.

WHEREFORE, the Trustee prays that the Court enter its order dismissing this bankruptcy case pursuant to 11 U.S.C. § 1112(b)(1), and releasing and discharging the Trustee upon such dismissal.

/s/ Julio E. Mendoza, Jr.
Julio E. Mendoza, Jr. (I.D. No. 3365)
Nexsen Pruet, LLC
1230 Main Street, Suite 700 (29201)
Post Office Drawer 2426
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September 19, 2012
Columbia, South Carolina

Attorneys for Robert C. Onorato, Trustee

IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

In re:

Daufuskie Island Properties, LLC a/k/a
Daufuskie Island Resort & Breathe Spa,

Debtor.

Case No. 09-00389-jw

Chapter 11

CERTIFICATE OF SERVICE

I, Julio E. Mendoza, Jr., do hereby certify that copies of the MOTION AND MEMORANDUM TO DISMISS BANKRUPTCY CASE PURSUANT TO 11 U.S.C. § 1112(b)(1); the NOTICE OF TRUSTEE MOTION FOR DIMISSAL OF BANKRUPTCY CASE, AND POSSIBLE HEARING ON THE MOTION; and the ORDER DISMISSING BANKRUPTCY CASE were served on the attorneys and parties in interest via CM/ECF electronic notification, and on the parties in interest shown on the attached list, by depositing copies of the same in the U.S. Mail, first class postage prepaid, on September 19, 2012, at Columbia, South Carolina.

/s/ Julio E. Mendoza, Jr.

Julio E. Mendoza, Jr. (I.D. No. 3365)

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September 19, 2012

Columbia, South Carolina

Attorneys for Robert C. Onorato, Trustee

THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA

In re:

Daufuskie Island Properties, LLC, a/k/a
Daufuskie Island Resort & Breathe Spa,

Debtor.

Case No. 09-00389-jw

Chapter 11

NOTICE OF TRUSTEE MOTION FOR DISMISSAL OF BANKRUPTCY CASE,
AND POSSIBLE HEARING ON THE MOTION

TAKE NOTICE that Robert C. Onorato, Trustee (the "Trustee") for the Chapter 11 bankruptcy estate (the "Estate") of Daufuskie Island Properties, LLC (the "Debtor"), filed his Motion and Memorandum to Dismiss Bankruptcy Case Pursuant to 11 U.S.C. § 1112(b)(1) (the "Motion") on September 19, 2012, in which the Trustee seeks the entry of an order of the Court dismissing this bankruptcy case, pursuant to 11 U.S.C. § 1112(b)(1), and releasing and discharging the Trustee from his appointment upon such dismissal of the case.

A copy of the Motion and the proposed order granting it accompany this notice.¹ Pursuant to SC LBR 9013-4, this motion is under the passive notice procedure. See Exhibit A to SC LBR 9013-4.

TAKE FURTHER NOTICE that any response, return and/or objection to the Motion should be filed with the Court no later than twenty-one (21) days from the service of the Motion.

TAKE FURTHER NOTICE that no hearing will be held on the Motion, except at the direction of the Court, unless a response, return and/or objection to it is timely filed and served, in which case the Court will conduct a hearing on October 16, 2012 at 9:00 a.m., in the courtroom at 145 King Street, Room 225, Charleston, South Carolina 29401. No further notice of this hearing will be given.

¹ Pursuant to SC LBR 9013-4, this motion to dismiss this Chapter 11 case is under the passive notice procedure. See Exhibit A to SC LBR 9013-4.

/s/ Julio E. Mendoza, Jr.

Julio E. Mendoza, Jr. (I.D. No. 3365)

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September 19, 2012
Columbia, South Carolina

Attorneys for Robert C. Onorato, Trustee

**IN THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

Case No.: 09-00389-jw

ORDER DISMISSING BANKRUPTCY CASE

The relief set forth on the following pages, for a total of 3 pages including this page is hereby **ORDERED**.

**THE UNITED STATES BANKRUPTCY COURT
FOR THE DISTRICT OF SOUTH CAROLINA**

In re:

Daufuskie Island Properties, LLC, a/k/a
Daufuskie Island Resort & Breathe Spa,

Debtor.

Case No. 09-00389-jw

Chapter 11.

ORDER DISMISSING BANKRUPTCY CASE

This matter came before the Court upon the motion (the "Motion") of Robert C. Onorato, Trustee (the "Trustee") for the Chapter 11 bankruptcy estate (the "Estate") of Daufuskie Island Properties, LLC (the "Debtor"), for the dismissal of this bankruptcy case pursuant to 11 U.S.C. § 1112(b)(1), and for the release and discharge of the Trustee upon such dismissal. In the Motion, the Trustee asserts that dismissal of this bankruptcy case is proper, for cause, and that dismissal is in the best interests of the Debtor's creditors and the Estate.

It appears from the record in this case that the Trustee served notice of the Motion, the Motion, and his proposed order granting the Motion, on the creditors and parties in interest in this case on September 19, 2012, that more than twenty-one (21) days have elapsed since such service, and that no response, return or objection to the Motion was filed within the prescribed time. *See* SC LBR 9013-4.

It further appears from the Motion that all assets of the Estate having realizable value for the Estate have been sold, that the unencumbered funds have been distributed to administrative priority creditors on a *pro rata* basis, that the distributed funds were insufficient to pay all administrative priority claims in full, and that there is nothing further to be done in this case. Upon the circumstances of this case, as summarized in the Motion, requisite and compelling

cause exists for dismissal of this case. No useful purpose would be served by conversion of the case to Chapter 7, and conversion would likely result in only additional administrative burdens. Dismissal of the case is in the best interests of the Debtor's creditors and the Estate.

Therefore, it is ORDERED, ADJUDGED AND DECREED that this bankruptcy case of Daufuskie Island Properties, LLC, is hereby dismissed, and the Trustee is hereby released and discharged from his appointment as Trustee upon the entry of this Order.

AND IT IS SO ORDERED.

#####

1 State of South Carolina) Court of Common Pleas
2 County of Beaufort) 14th Judicial Circuit
3) No.: 2014-CP-07-0380

4 JMT Capitol Holdings,
5 LLC,

6 Plaintiff,

7 vs.

8 VDM/T Land Company, LLC
9 and Daufuskie Island
Properties, LLC,

10 Defendants.

HEARING

August 11, 2014

11
12 Hearing reported by Deborah S. Thomas,
13 Certified Verbatim Reporter and Notary Public in and
14 for the State of South Carolina; said hearing held
15 before the Honorable Marvin H. Dukes, III, Beaufort
16 County Master in Equity and Special Circuit Court
17 Judge in accordance with the South Carolina Rules of
18 Civil Procedure, at the Beaufort County Courthouse,
19 102 Ribaut Road, Room 212, Beaufort, South Carolina,
20 on August 11, 2014, at the hour of 3:08 p.m.

21
22 ABACTIS REPORTING SERVICES
23 15 Pineapple Drive
Bluffton, South Carolina 29909
24 (803) 206-7390
25

1 Appearances

2 Representing the Plaintiff:

3 LINDSAY W. COOPER, JR., ESQUIRE
Page 1

4 8-11-14 vdmr hearing
The Law Offices of L.W. Cooper, Jr., LLC
36 Broad Street
5 Charleston, South Carolina 29401
lwc@lwcooper.com

6
7 Representing the Defendants:

8 TARA ELIZABETH NAUFUL, ESQUIRE
Adams and Reese, LLP
211 King Street, #330
9 Charleston, South Carolina 29401
tara.nauful@arlaw.com

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1 EXHIBIT INDEX

2 Exhibits: Marked at Page
3 (None were proffered.)

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1 This hearing is taken in accordance
2 with the South Carolina Rules of Civil Procedure.

3 JUDGE DUKES: We are here then in JMT
4 Capitol Holdings versus VDM/T Land Company and
5 Daufuskie versus Travaglione, Case 14-CP-07-380.
6 And today is a motion -- Travaglione's motion to
7 dismiss third-party complaint. I think that is all
8 we have; is that right?

9 MR. COOPER: Yes, sir.

10 MS. NAUFUL: Yes, sir.

11 JUDGE DUKES: All right. Happy to
12 hear from you.

13 MS. NAUFUL: Thank you, Your Honor.
14 For the record, Tara Nauful for Raymond Travaglione.
15 Your Honor, this motion to dismiss is to dismiss a
16 third party complaint that was brought by Daufuskie
17 Island Properties against Mr. Travaglione.

18 The procedural facts are as follows.

8-11-14 vdm hearing
19 Daufuskie Island has a note and mortgage dated
20 June 2nd, 2006, on two parcels of real estate that
21 are currently owned by VDM/T. Mr. Travaglione
22 guaranteed that debt by a guarantee dated June 2nd,
23 2006.

24 Daufuskie's mortgages on these properties
25 ~~are second to the lien of the Plaintiff JMT Capitol~~

8

6

1 Holdings. And the original lender was, I believe,
2 First Federal. And through various assignments the
3 Plaintiff, JMT Capitol Holdings, took an assignment
4 of the -- what is the first on these two pieces of
5 property.

6 And they are parcels of property located
7 in Beaufort County out on Daufuskie Island.
8 Daufuskie Island Properties filed for Chapter 11
9 bankruptcy on January 20th of 2009. And in their
10 schedules, their Schedule B that they filed as they
11 are required to under the bankruptcy code, they
12 properly listed as an asset of the bankruptcy estate
13 the claims that they had against VDM/T for
14 foreclosure.

15 They failed to list their claims against
16 Mr. Travaglione under his guarantee. The debtor,
17 Daufuskie, amended its schedules and again listed
18 VDM/T, the claims it had against VDM/T, as an asset
19 in schedule B, but didn't list the claims against
20 Mr. Travaglione under his guarantee.

21 The majority of the assets of Daufuskie
22 were sold. And the bankruptcy case was dismissed in
23 October of 2012. JMT Capitol started this

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24 foreclosure action in February of this year to
25 foreclose its first mortgage lien. And it lists as 7

1 defendants VDM/T, its borrower, and Daufuskie Island
2 Properties.

3 Daufuskie answered the complaint and then
4 brought this third-party complaint against
5 Mr. Travaglione suing him under his guarantee. And
6 it's this third-party complaint we are seeking to
7 have dismissed.

8 The three primary reasons for our motion
9 to dismiss are -- one of them is procedural and two
10 of them are not so much procedural, but it's legal.
11 The first reason is that the third-party complaint
12 is not a proper third-party complaint under
13 Rule 14-A. The second basis is that Daufuskie -- it
14 our position that Daufuskie is judicially estopped
15 from asserting these claims against Mr. Travaglione
16 because he failed to -- they failed to identify
17 these claims in their bankruptcy like they are
18 required to do under the bankruptcy code.

19 And as a result they are judicially
20 estopped. And the third one is that the claims are
21 barred by the statute of limitations. And I'll just
22 start with Number 1 and move on.

23 As Your Honor knows, 14-A says the
24 Defendant can bring a third-party complaint against
25 someone who is derivatively liable to them on the 8

1 Plaintiff's underlying complaint. And the
2 third-party Plaintiff has to have a substantive

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3 claim against the third-party Defendant founded upon
4 derivative liability.

5 And the perfect example in my mind of the
6 perfect third-party complaint is if Mr. Cooper and I
7 agreed that we would be jointly liable to you. You
8 sue me. I could third-party him in because he's

9 derivatively liable.

10 That is not the situation that we have in
11 this case. The Plaintiff in this case is seeking to
12 to foreclose its mortgage which it's entitled to do.
13 And it's seeking to wipe out the second, the junior
14 lien, which it's entitled to do.

15 The Plaintiff is not seeking any
16 affirmative relief against Daufuskie. So for that
17 reason alone there is no way -- Daufuskie has no
18 liability to the Plaintiff, so there is no way that
19 it can claim that Mr. Travaglione has derivative
20 liability to it.

21 I tried mightily to think of a scenario
22 that Mr. Travaglione would have derivative liability
23 to the third-party Plaintiff and I could not. So
24 for that reason in and of itself I think this is an
25 improper third-party claim under 14-A.

9

1 Moving on on the judicial estoppel
2 argument, we've attached as exhibits to the motion
3 certified copies of Daufuskie's Schedule B that they
4 filed in the bankruptcy case. And nowhere in either
5 the first Schedule B. that was listed that was filed
6 January 20th of 2009 or in the amendment that was
7 filed in March of 2009, are the claims or any claims

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8 against Mr. Travaglione listed separately.

9 In Line Item 21, which is Page 2 of 6 in
10 these schedules, they list properly a claim that
11 they have against VDM/T Land Company for
12 foreclosure, but they don't separately list the
13 claim against Mr. Travaglione.

14 And as Your Honor is aware, a guarantee is
15 a separate stand alone obligation from the
16 underlying note. And a valuable claim, like the
17 claim against Mr. Travaglione or valuable asset like
18 the claim against my client should have been listed
19 separately in the schedules. That is something the
20 debtor is required to do by the bankruptcy code.

21 And the bankruptcy schedules are signed
22 and filed under penalty of perjury so they are
23 pretty serious things. And the failure of the
24 debtor to list them not once but twice now precludes
25 the debtor from attempting to say, yeah, we've got

10

1 this valuable asset, this claim that we can assert
2 against Mr. Travaglione because the debtor has got
3 an affirmative duty to list all assets and
4 liabilities of any kind in the bankruptcy codes, and
5 they failed to do that.

6 The third grounds or that -- in our view
7 of this case, is barred by the statute of
8 limitations. And I have gone through both the
9 Plaintiff's complaint and the third-party complaint
10 and tried to determine when the default date was on
11 the note. And it's not listed.

12 I believe given the fact or the way that
Page 8

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13 I've been doing the analysis is that Daufuskie
14 listed a claim for foreclosure against VDM/T in its
15 bankruptcy schedules that were filed in 2009. So
16 presumably the default was at least in 2009.

17 If you fast-forward to now, the claim
18 against Mr. Travaglione wasn't brought until April
19 of this year. And that is much longer than the
20 three-year statute of limitations that they have
21 under the code to bring a claim under the guarantee.

22 So in our view this complaint not only is
23 improper because it's not a proper third-party
24 complaint. Not only is it not proper because it's
25 barred by the doctrine of judicial estoppel, it's

11

1 time barred because it wasn't brought within the
2 three years of the default of the underlying note.

3 JUDGE DUKES: Okay. Thank you.

4 Happy to hear the other side.

5 MR. COOPER: Thank you, Your Honor.

6 I'll just address it in the same order they have.

7 JUDGE DUKES: Sure.

8 MR. COOPER: So as far as a
9 third-party complaint, there is no dispute that
10 there is a guarantee that Mr. Travaglione signed
11 that relates to the note that was entered into with
12 Daufuskie and VDM/T. And that was a 2006 note, but
13 if you go prior to that the actual original
14 documents that were signed as part of a land
15 agreement started in 2004.

16 And that was a note that Mr. Travaglione
17 signed individually. And that was for the use of

Page 9

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18 the school and the inn. And in 2006 Daufuskie
19 allowed him to put it in VDM/T. And as part of that
20 they wanted to keep Mr. Travaglione as part of the
21 guarantee as well because he's -- I guess you would
22 put it he's an individual with means.

23 And then that note was secured by a
24 mortgage that is part of the litigation on whether
25 it's a first or second mortgage on the piece of

12

1 property. So as far as bringing the third-party
2 complaint, we were brought in by the Plaintiff
3 because we are a note holder. They waived the
4 deficiency, so on Mr. Travaglione who is a guarantor
5 as well on the original First Federal. So we did
6 not give up any rights under the guarantee.

7 So for judicial economy we brought in the
8 guarantor in the third-party complaint because his
9 liability under the guarantee is going to set -- be
10 set by the amount of money or lack of money that we
11 get at the foreclosure sale. So that will liquidate
12 the guarantee amount at that point in time.

13 So instead of bringing two causes of
14 action in the court, we saw that the liability was
15 derivative based upon them suing us to basically
16 wipe out our foreclosure. And because of us not
17 getting any money, we were able to recoup against
18 Mr. Travaglione under the guarantee. And that is
19 why it is derivative of them suing us as a
20 lienholder in the foreclosure case.

21 And I know it's been done in this court
22 where the guarantors are brought in the lawsuit.

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23 So, for example, if they had not waived deficiency
24 and had sued Mr. Travaglione as part of the
25 foreclosure as a guarantor we could have brought

13

1 cross claims or counterclaims.

2 ~~Because that wasn't done the correct~~

3 procedural thing was to bring him in as a
4 third-party Defendant -- third-party Defendant in
5 the proceeding. So it was done as -- because the
6 liability will be set by the foreclosure, 1; and
7 Number 2, it arises from the liability of them
8 wiping out the -- if they do, the note and mortgage
9 that we have with Daufuskie.

10 JUDGE DUKES: Okay. All right.

11 MR. COOPER: For the estoppel matter.
12 So -- and I would like you to look at the schedules,
13 Your Honor. And I'll show you -- so if you look at
14 the Schedule B that is attached to their complaint
15 at Line 21 --

16 JUDGE DUKES: I'm looking at 2 of 6?

17 MR. COOPER: Yes, sir.

18 JUDGE DUKES: Okay. There is one of
19 six. Two of six. Okay.

20 MR. COOPER: So you can see, it's
21 plainly listed as a contingent liability which would
22 be the direct note holder if they would sue VDM/T
23 under the note and mortgage. The guarantee was part
24 and parcel of that transaction and was a different
25 payment source for the same debt.

14

1 So for that way if you look at the
2 judicial estoppel doctrine that they are asserting
3 in this matter, there has to be an intent to deceive
4 the court. And I would just suggest to Your Honor
5 that listing the cause of action directly in here is
6 not intending to mislead the court in any regard.

7 ~~Moreover, if you will go farther back in~~
8 the bankruptcy schedule, and if you -- and this is
9 in Item 35 which is 5 of 6. That it's part of
10 bankruptcy practice -- and I know you are familiar
11 with it because I've got other cases involving
12 bankruptcy with you, that this is sort of the
13 catchall provision where they try to let them know
14 of other rights or property out there.

15 And this is the exact reason that Ivan
16 Nausacoff at the time this was done with the
17 assistance of counsel put that in there was to list
18 the specific assets but also have this catchall that
19 there is other instruments or paper out there
20 related to what is in this document or the real
21 property.

22 So if you are going to read this as the
23 catchall phrase, it was closed in some non-specific,
24 but it was disclosed that there were other rights
25 out there.

15

1 The other reason that it fails as a matter
2 of law that if you read the -- I believe it was the
3 Family Dollar case that you cited to. If you -- and
4 this is a fourth circuit case that they cited to in
5 their brief, Your Honor. If you look at Footnote 3,

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6 it says Plaintiff debtor is not barred by judicial
7 estoppel because her debt has not been discharged
8 and the court has not approved the plan.

9 So as you know the Daufuskie and as
10 attached to her own pleading, there was no discharge
11 given. There was no plan ever submitted and there
12 ~~was no plan ever approved, excuse me. The case was~~
13 dismissed. There was no discharge.

14 In the Family Dollar case that she cites
15 actually says that if there is no discharge, there
16 is no judicial estoppel because as part of judicial
17 estoppel one of the factors is the position has to
18 be accepted by the court. Well, if there is a
19 discharge -- there is no discharge, pardon me, and
20 there is no plan approved. There has been no
21 acceptance of the position and judicial estoppel
22 didn't apply.

23 And, in fact, there are five prongs under
24 South Carolina law. And the two that they fail in
25 most easily is the court never accepted the

16

1 position. And there was no intent to deceive. And,
2 in fact, it was disclosed. So it's non-applicable
3 here. And if it -- even if you did, there is enough
4 here just in the document attached that it's
5 inappropriate on a motion to dismiss. It should be
6 more of a motion for summary judgment.

7 Going on to the statute of limitations.
8 Your Honor, you know when there is a note secured by
9 a mortgage that the statute of limitations for
10 collection is 20 years under South Carolina statute.

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11 And a guarantee is an additional payment source.

12 And this guarantee is a continuing guarantee. And

13 by its very terms the guarantee is a continuing

14 obligation with the underlying note which doesn't

15 expire for 20 years on collection.

16 And a guarantee as an independent contract

17 ~~is governed by the terms of that contract. And,~~

18 again, this is getting into documents that are not

19 part of the motion to dismiss or not properly heard

20 here. It says this guarantee shall terminate and be

21 of no force and effect without any action of the

22 lender simultaneously with the cancellation or the

23 satisfaction of the note.

24 So they agreed to when they entered into

25 this contract that this guarantee would be good for

17

1 the term of the note and the mortgage and the

2 ability to collect on that. And as Your Honor

3 knows, under South Carolina law, that is 20 years.

4 So we are well within the statute of limitations.

5 JUDGE DUKES: All right. Let me make

6 sure I have this straight. Capitol Holdings has the

7 first, which has been through two or three different

8 people, First Federal, somebody. And now JMT

9 Capitol Holdings is the first. Daufuskie Island

10 Properties has the second, what is left over of the

11 second post-bankruptcy which probably has no equity,

12 I guess. That is why we are all sitting here

13 talking about this.

14 VDM/T Land is still the owner of this

15 property. Let's see. Who is Ace Basin Investments?

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16 MR. COOPER: Well, we listed that,
17 Your Honor, because particularly with the -- not the
18 third-party Defendant, but the regular Plaintiff
19 when they started we gave them the filed assignments
20 with the courthouse that the note, mortgage, and
21 other documents were assigned to Ace Basin and sold.
22 So we tried to substitute party. We will file a

23 motion to substitute Ace Basin Investments.

24 JUDGE DUKES: Okay. And so the
25 underlying debt that was guaranteed was the debt

18

1 associated with the second mortgage at the time of
2 the sale. And that note was held by the bankrupt
3 party, Island -- what were they called?

4 MS. NAUFUL: Daufuskie Island
5 Properties.

6 JUDGE DUKES: Daufuskie Island
7 Properties. Okay. And that was dismissed. Nothing
8 was ever discharged or anything. They just filed
9 it.

10 MS. NAUFUL: They filed -- liquidated
11 the major assets and then the case was dismissed,
12 but I will point out that corporations don't receive
13 a discharge. Individuals do. Corporations are not
14 eligible to discharge under the code.

15 JUDGE DUKES: So what happened, if
16 anything, to this debt and this asset through
17 bankruptcy?

18 MS. NAUFUL: Any assets that were not
19 administered in the case reverted back to the debtor
20 which is how the debtor Daufuskie holds the VDM/T

8-11-14 vdmr hearing
21 note. And holds the Travaglione guarantee.
22 JUDGE DUKES: Okay.
23 MR. COOPER: But even if what she
24 said about the discharge, the Family Dollar case
25 also talks about it being accepted in the plan.

19

1 JUDGE DUKES: I'm still trying to
2 figure out why it's a third-party complaint. And, I
3 mean, the reason -- you said the primary reason you
4 brought it this way was for judicial economy just
5 because we are going to figure this number in this
6 case any way and why not do it this way. I mean, is
7 that kind of the main reason?

8 MR. COOPER: Well, that, Your Honor.
9 I mean, I think you could see that it would be
10 judicial economy if it's going to liquidate the
11 damages on the number. But as well as you talk
12 about the liability being set, the case all talks
13 about the Plaintiff can't have a direct client. And
14 that is true in this case because they waived the
15 deficiency.

16 But as well, she's talking about a joint
17 tortfeasor way to measure damages on contribution.
18 This in the same way is much the same in the measure
19 of damages is going to be set by the amount that is
20 applied towards the note in the foreclosure sale of
21 this case. So in a way it does set that
22 contribution amount by the guarantor.

23 MS. NAUFUL: But that is not
24 necessarily one determines the other. I mean, what
25 the Plaintiff gets in foreclosure is what the

20

1 Plaintiff gets in foreclosure. If there happen to
2 be surplus funds that would inure to the benefit of
3 Daufuskie, but that -- but they are not necessarily
4 one on one because Mr. Travaglione might have other
5 defenses that would -- the statute of limitations,
6 for example, that would reduce or eliminate his
7 liability.

8 JUDGE DUKES: Were you here for in
9 one?

10 MR. LOCKER: Yes, sir. I'm Jeff
11 Locker. We represent the Plaintiff. I was just
12 sitting in.

13 MS. NAUFUL: I'm sorry. I didn't
14 think you all were coming.

15 MR. LOCKER: That's okay. I know
16 they didn't usually start early.

17 JUDGE DUKES: I apologize. I
18 thought --

19 MR. LOCKER: No worries. No worries.

20 JUDGE DUKES: But you've kind of got
21 no dog in this fight?

22 MR. LOCKER: No, I don't. I don't.

23 JUDGE DUKES: Okay. All right. I
24 missed the last part. What did you say?

25 MS. NAUFUL: Just because there may 21

‡

1 or may not be surplus funds that would reduce
2 VDM/T's liability, that doesn't necessarily lead to
3 the conclusion that it would determine
4 Mr. Travaglione's liability. while I won't disagree
Page 17

8-11-14 vdmr hearing

5 that it might be more convenient for them to bring
6 this third-party claim, it's not procedurally
7 proper. They've got the ability to file a separate
8 guarantee suit which would have been the proper
9 thing to do.

10 MR. COOPER: Well, Your Honor, I

11 think from what she just said in the event there
12 would be surplus fund, and they were attributable to
13 us, that would set the liability because it would
14 reduce it.

15 MS. NAUFUL: It might establish your
16 damages, but your damages are not necessarily equal
17 to the liability of VDM/T or Mr. Travaglione.

18 MR. COOPER: It's an unconditional
19 obligation. It's going to set the debt.

20 JUDGE DUKES: And I'm trying to
21 figure out why it would be different. Why wouldn't
22 it be the difference --

23 MS. NAUFUL: Again, he has defenses.
24 Statute of limitations is one of them.

25 MR. COOPER: She is raising them

22

1 here, so what is the benefit of bringing separate
2 lawsuits?

3 JUDGE DUKES: I guess they don't want
4 to get tangled up in their situation. Yeah.
5 Probably should be separated out. I don't know if
6 I -- obviously we can separate it out and deal with
7 the estoppel and statute of limitations issues
8 another day.

9 Tell me -- the statute of limitations
Page 18

8-11-14 vdmr hearing

10 issue, I mean it was part and parcel of the
11 mortgage, right?

12 MS. NAUFUL: The mortgage doesn't
13 mention the guarantee. And, Your Honor, the
14 guarantee is an unsecured guarantee. The guarantee
15 is not secured by the mortgage. And the case law
16 and the code are clear that the statute of
17 limitations on a guarantee is three years.

18 JUDGE DUKES: Have you -- is that in
19 your -- I was just handed all of this before I came
20 in so I don't have whatever the case you are
21 referring to.

22 MS. NAUFUL: Yes, sir. Well, on
23 Page 7, Footnote 24, the general rule in South
24 Carolina is that a guarantee of payment is an
25 obligation separate and distinct from the original

23

1 note. So there are two separate standalone
2 documents. So in any scenario if you have a lender
3 with a note and mortgage and a guarantee, they can
4 sue on the note. They can foreclose the mortgage
5 or they can sue on the guarantee or they can do all
6 three or none of them.

7 And in Hanover Homes the Court of Appeals
8 said the statute of limitations on a guarantee
9 action begins to run upon the default of the
10 obligor. If VDM/T defaulted in 2009, and presumably
11 they did because that is what the schedules say,
12 then that would trigger a default under the
13 guarantee and the action needed to be commenced
14 within three years.

Page 19

8-11-14 vdmr hearing

15 JUDGE DUKES: Anything else on that
16 issue?

17 MR. COOPER: Well, she says it's
18 unsecured. I mean, this is why this is the
19 documents for summary judgment. It says as security
20 for the amount guaranteed by the undersigned,

21 guarantor hereby grants the lender a security
22 interest and general lien or right or set off in the
23 following collateral. And I believe if you go
24 through here it does mention the note, the loan
25 right there that is secured by the mortgage. The

24

1 sixth whereas clause.

2 MS. NAUFUL: But Mr. Travaglione
3 doesn't own the real estate. VDM/T owns the real
4 estate. He pledged no collateral that he owned so
5 his guarantee is unsecured.

6 JUDGE DUKES: Let me read this again
7 and get back with you all on that. Anything else
8 for the record? Okay. We will conclude the record.

9 (Whereupon, the hearing was concluded
10 at 3:32 p.m.)

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Certificate of Reporter

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I, Deborah S. Thomas, Certified Verbatim Reporter and Notary Public in and for the State of South Carolina, do hereby certify that I reported the hearing of JMT Capitol Holdings vs. VDM/T Land Company, on the 11th day of August, 2014; and that the foregoing 24 pages constitute a true and correct transcription of the said hearing.

I further certify that I am neither attorney nor counsel for, nor related to or employed by, any of the parties connected with this action, nor am I financially interested in said cause.

I further certify that the original of said transcript shall be hereafter delivered to LINDSAY W. COOPER, JR., ESQUIRE, The Law Offices of L.W. Cooper, Jr., LLC, 36 Broad Street, Charleston, South Carolina.

In witness whereof I set my hand and seal this 17th day of December, 2014.

My Commission
expires 1/4/18

Deborah S. Thomas, CVRM
and Notary Public for the
State of South Carolina

8-11-14 vdmt hearing

25

♀



Linsay Allio <mla@lwcooper.com>

FW: JMT Capitol Holdings, LLC v VDM/T Land Company, LLC, et al., Case No. 2014 - CP - 07 - 0380

1 message

Lindsey W. Cooper Jr. <lwc@lwcooper.com>
To: Linsay Allio <mla@lwcooper.com>

Fri, Apr 24, 2015 at 9:58 AM

From: Heyward Grimball [mailto:heyward@lwcooper.com]
Sent: Thursday, September 04, 2014 10:26 AM
To: hmcleod@bcgov.net
Cc: mdukes@bcgov.net; 'Lindsey W. Cooper Jr.'; jannine@westolivetti.com; Tara.Nauful@arlaw.com; jlocker@nexsenpruet.com; sgrigg@nexsenpruet.com
Subject: JMT Capitol Holdings, LLC v VDM/T Land Company, LLC, et al., Case No. 2014 - CP - 07 - 0380

Dear Ms. Mcleod,

I hope you are well. Attached please find a letter to Judge Dukes regarding the above captioned case. Mr. Cooper would appreciate it if you will pass this letter on to Judge Dukes. This letter is to clarify a couple of principal issues in the case prior to the conference call scheduled for Friday, September 4, 2014 at 1:30 PM.

Please call if you have any questions or need anything further.

With best regards,

Heyward Grimball

The Law Offices of L.W. Cooper Jr.

36 Broad Street

Charleston, SC 29401

Telephone: 843.375.6622

Direct Dial: 843.375.6616

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 **LT Judge Duke (09.05.14).pdf**
2007K



LINDSEY W. COOPER JR.

LWC@LWCOOPER.COM

September 4, 2014

VIA ELECTRONIC & FIRST CLASS MAIL

The Honorable Marvin H. Dukes
Master-In-Equity Beaufort County
PO Drawer 12280
Beaufort, SC 29901-1228

Re: *JMT Capitol Holdings, LLC v VDM/T Land Company, LLC, et al.*,
Case No. 2014 - CP - 07 - 0380.

Dear Judge Dukes:

I hope this letter finds you well. Prior to our conference call on Friday, I would like to clarify and address the central issues raised at the hearing as it is important to any decision you make.

The central issue is the statute of limitations argument, which the relevant statute and case law demonstrates is twenty years not three. In the memorandum provided to you by Travaglione, counsel did not fully cite the three year statute. The full text of S.C. Code § 15-30-530(1) states: "An action upon a contract, obligation, or liability, express or implied, **excepting those provided for in Section 15-3-520**" (emphasis inserted). The emboldened language in the preceding sentence was omitted when cited in Travaglione's brief. Then turning to S.C. Code § 15-30-520(b), it addresses the 20 year statute of limitations:

Within twenty years:

* * *

(b) **an action upon a sealed instrument**, other than a sealed note and personal bond for the payment of money only whereon the

- 1 -

36 BROAD STREET
CHARLESTON, SC 29401

THE LAW OFFICES OF L.W. COOPER JR., LLC

TELEPHONE: 843.375.6622
WWW.LWCOOPER.COM

period of limitation is the same as prescribed in Section 15-3-530, except that a sealed contract for sale or an offer to buy or sell goods whereon the period of limitation is the same as prescribed in Section 36-2-725.

(emphasis inserted). As the attached guaranty indicates, the guaranty agreement at issue in this case is a sealed instrument. (See Ex. 1) Thus the twenty year statute of limitations applies.

In *Treadaway v. Smith*, 325 S.C. 367, 479 S.E.2d 849 (Ct.App.1996), the court "considered whether a non-sealed separation agreement entered into by former spouses was intended to be a sealed instrument, and thus subject to the twenty-year statute of limitations." *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 173, 609 S.E.2d 548, 551 (Ct. App. 2005). The agreement at issue in that case contained precisely the same language as the guaranty at issue in this case. "Immediately following this standard language [the attestation clause] in conspicuous type, was:

SIGNED SEALED AND DELIVERED IN THE PRESENCE OF
[signatures of parties and witnesses]"

Id. (citing *Treadaway*, 325 S.C. at 378.) The court "concluded that the language manifested the parties' intent to create a sealed instrument." *Id.* The last page of the Travaglione guaranty agreement has the same language demonstrating it is a sealed instrument and subject to the 20 year statute of limitations.

Further, South Carolina courts have been unequivocal in stating that "[a] guaranty is a contract and should be construed based on the language used by the parties to express their intention." *TranSouth Fin. Corp. v. Cochran*, 324 S.C. 290, 294, 478 S.E.2d 63, 65 (Ct.App.1996). "Courts must enforce, not write, contracts of insurance, and their language must be given its plain, ordinary and popular meaning." *CoastalStates Bank v. Hanover Homes of S. Carolina, LLC*, 408 S.C. 510, 518, 759 S.E.2d 152, 157 (Ct. App. 2014). In *TranSouth Fin. Corp. v. Cochran*, the Court examined the question of whether or not a guaranty could still be collected upon after the expiration of the ten-year judgement lien of the debt underlying guaranty. In *TranSouth Fin. Corp.*, as in this case, the instrument in issue was a sealed instrument subject to the twenty year statute of limitations. *TranSouth Fin. Corp. v. Cochran*, 324 S.C. 290, 294, 478 S.E.2d 63, 65

(Ct.App.1996)(fn. 2). The Court found "[b]ased on the terms of the guaranty, Cochran had an independent contractual obligation to TranSouth which was not extinguished by the expiration of the confession of judgment against Auto Sales." *Id.* In *TranSouth*, the guarantor unconditionally agreed to pay "all sums due" and "all losses" that TranSouth suffered due to default under the independent terms of the agreement. *Id.* Thus, the guaranty remained valid.

Similarly, in this case, Travaglione agreed that:

Nothing except payment to Lender [DIP] of the full amount of the Note together with interest thereon and all other costs and expenses paid or incurred by Lender in collecting and/or enforcing the amount of Borrower's obligation guaranteed hereunder shall terminate the obligations of the undersigned to Lender incurred hereunder.

(Ex. 1, p.3.) Under the language of the Travaglione guaranty, "[n]othing except pay . . . of the full amount of the Note" will terminate the guaranty. Because the note is clearly unpaid because of the foreclosure action, Travaglione agreed that the guarantee would be enforceable. This is consistent with the *TransSouth* holding, and this Court should rule consistent with it.

The second principal issue was the application of judicial estoppel based on DIP's bankruptcy schedules. The primary case that Travaglione cites is *In re Family Dollar FLSA Litig.*, 3:08MD1932, 2009 WL 1750908 (W.D.N.C. June 19, 2009), but it actually supports our position. One of the requirements for judicial estoppel is that "the prior position was accepted by the court in the first proceeding." *In re Family Dollar FLSA Litig.*, 3:08MD1932, 2009 WL 1750908 (W.D.N.C. June 19, 2009). The court explained that "the bankruptcy courts' mere confirmation of Plaintiffs' plans - even short of an actual discharge of debts - satisfies the acceptance element of the judicial estoppel test." *Id.* It is an uncontested matter of public record that the bankruptcy was dismissed without discharge or even acceptance, much less the filing, of a plan, and first court never addressed the validity of the note and Travaglione's guaranty. Thus, judicial estoppel is neither legally nor factually applicable.

Moreover, the note is specifically listed as an asset of the debtor on Schedule B, item 21. Although the guaranty is not listed, the guaranty is simply an additional source of payment for the same debt and amount of money. To list the guaranty as well is redundant. The bankruptcy attorneys also provided a catchall category that would cover the guaranty as well in Schedule B, item 35. (See 3rd Party Def. Memo., Ex. B.) The relevant portion of Item 35 states, among other descriptions: "(a) all instruments, including, without limitation, promissory notes and associated security therewith that may be owned by Debtors, or any of them."

Thus, neither the statute of limitations nor estoppel present a bar to this case. Even if the Court is not fully persuaded by our positions, it is clear that there are genuine disputes of fact and law as to the interpretation of the guaranty, and dismissal is inappropriate at this time.

Please do not hesitate to contact me should you wish to discuss the foregoing. I may be contacted at 843.375.6622.

Many thanks,

Sincerely yours,

Lindsey W. Cooper Jr.

Enclosures: Exhibit 1, Travaglion Guaranty

LWC/fhg

cc (via electronic mail):

Tara E. Nauful

Suzanne Taylor Graham Grigg

Jeffery D. Locker

Jannine M. Mutterer

GUARANTY AGREEMENT

This Guaranty ("Guaranty") is given by **RAYMOND M. TRAVAGLIONE**, with an address of 7 Office Park Road, Suite 105-A, Hilton Head Island, SC 29928 ("Guarantor") to **DAUFUSKIE ISLAND PROPERTIES LLC d/b/a DAUFUSKIE ISLAND RESORT & BREATHE SPA** with an address of 421 Squire Pope Road, Hilton Head Island, South Carolina 29925, ("Lender").

WITNESSETH:

WHEREAS, Lender owns and operates the Daufuskie Island Resort & Breathe Spa which includes certain real and personal property, amenities and facilities on Daufuskie Island, South Carolina operated as a full service golf resort (the "Resort"); and

WHEREAS, the **INTERNATIONAL JUNIOR GOLF TOUR, INC., d/b/a INTERNATIONAL JUNIOR GOLF ACADEMY** with an address of 7 Office Park Road, Suite 105-A, Hilton Head Island, South Carolina 29928 ("IJGA") provides various in-residence instructional programs for male and female students (the "School"); and

WHEREAS, Guarantor is the President and sole shareholder of IJGA; and

WHEREAS, Lender and IJGA have entered into certain agreements for the acquisition of certain real property owned by Lender within the Resort (the "Property") for the construction of facilities for the School by IJGA to provide for the housing, training (the "Agreement for Land - Housing Parcel and Amenities Parcel") and the schooling (the "Agreement for Land - School Site") of the students of the School (collectively, the Agreement for Land - Housing Parcel and Amenities Parcel and an Agreement for Land - School Site hereinafter the "Agreements"), which Agreements are incorporated herein by reference hereto; and

WHEREAS, Guarantor has assigned his interest under the Agreements to a solely owned entity known as **VDM/T Land Company LLC**, a South Carolina limited liability company ("Borrower"); and

WHEREAS, pursuant to the Agreements, Lender has provided purchase money financing in the sum of **FIVE HUNDRED THOUSAND and 00/100 DOLLARS (\$500,000.00)** ("Loan") from Lender under the terms and conditions of certain Promissory Notes (collectively the "Note"), between Borrower and Lender, which Note is incorporated herein by reference as if more fully set out herein;

WHEREAS, Guarantor desires Lender to make the above-referenced Loan to Borrower and is willing to enter into this Guaranty as further consideration to the Lender to make the Loan and agree to the assignment to Borrower of Guarantor rights under the Agreements; and

WHEREAS, for the reasons hereinabove stated, the undersigned has agreed to guarantee and by these presents does agree to guarantee payment to Lender of the Note.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the aforesaid loan and commitment to loan and to induce such lending by Lender to Borrower, Guarantor, hereby absolutely and unconditionally guarantees to Lender, irrespective of the validity, regularity or enforceability of any instrument, writing or arrangement relating to the Note, or the obligations thereunder, and irrespective of any present or future law or order of any government (whether of right or in fact) or of any



agency thereof purporting to reduce, amend or otherwise affect any obligation of Borrower or other obligor or to vary the terms of payment, the prompt payment of the Note from Borrower to Lender in the amount of FIVE HUNDRED THOUSAND and 00/100 DOLLARS (\$500,000.00) when due from Borrower to Lender now or hereafter, plus such interest as may accrue thereon, and, in addition, Guarantor agrees to pay the costs of collection, including legal expenses and attorney's fees paid or incurred by Lender in collecting and/or enforcing the amount of the obligations of Borrower guaranteed hereunder, whether at maturity or earlier by reason of acceleration or otherwise, or if now due, when payment thereof shall be demanded by Lender, and in case of one or more extensions of time or renewals in whole or in part of the Note, that the same shall be promptly paid when due, according to each such extension or renewal, whether at maturity or earlier by reason of acceleration or otherwise. It is specifically understood and agreed that this Guaranty is a guarantee of payment and not of collection. Notwithstanding the foregoing, this Guaranty shall terminate and be of no force and effect without any action of the Lender simultaneously with the cancellation or other satisfaction of the Note.

Guarantor agrees that whenever at any time or from time to time the undersigned shall make any payment to Lender hereunder on account of the amount guaranteed hereunder, the undersigned will notify Lender in writing that such payment is made under this Guaranty for such purpose. No payment by the undersigned pursuant to any provisions hereof shall entitle Guarantor, by subrogation or otherwise, to the rights of Lender to any payment by Borrower or out of the property of Borrower, except after payment in full of the amount of the obligations of Borrower guaranteed hereunder plus the costs of collection as aforesaid.

Guarantor consents that the whole or any part of the security now or hereafter held for any debts of Borrower may be exchanged, compromised, or surrendered from time to time; that the time or place of payment of any debt of Borrower or of any securities therefor may be changed or extended in whole or in part to a time certain or otherwise, and may be renewed or accelerated in whole or in part; that Borrower may be granted indulgences generally; that any of the provisions of any note or other instrument evidencing any debt of Borrower or any security therefor may be modified or waived; that any party liable for the payment thereof (including but not being limited to any co-guarantor) may be granted indulgences or released; that neither the death, bankruptcy nor disability of any one or more of Guarantors shall affect the continuing obligation of any other guarantor, and that no claim need be asserted against the personal representative, guardian, trustee in bankruptcy or receiver of any deceased, incompetent, bankrupt or insolvent guarantor; and that any deposit balance to the credit of Borrower or any other party liable for the payment of debts of Borrower or liable upon any security therefor may be released in whole or in part, at, before and/or after the stated, extended or accelerated maturity of any debt of Borrower, all without notice to or further assent by the undersigned who shall remain bound thereon, notwithstanding any such exchange, compromise, surrender, extension, renewal, acceleration, modification, indulgence or release.

As security for the amount guaranteed by the undersigned, Guarantor hereby grants to Lender a security interest in, a general lien upon and/or right of setoff of, the following ("Collateral"): the balance of every deposit account, now or hereafter existing, of the undersigned with Lender and all money, instruments, securities, documents, chattel paper, credits, claims, demands and any other property, rights and interest of the undersigned now or hereafter existing, which at any time shall come into the possession or custody or under the control of Lender or any of its agents, associates or correspondents, for any purpose, and shall include the proceeds, products and accessions of and to any thereof. Lender shall be deemed to have possession of any of the Collateral in transit to or set apart for it or any of its agents, associates or correspondents. The right is expressly granted to Lender, at its discretion, to file one or more financing statements under the Uniform Commercial Code of South Carolina (which the undersigned agrees to sign) naming any one or more of the undersigned as debtor and Lender as secured party and indicating therein the types or describing the items of

security herein specified. Lender shall not be required to take any steps necessary to preserve any rights against prior parties to any of the Collateral.

Guarantor expressly waives: (a) notice of acceptance of this Guaranty and of all extensions of credit to Borrower; (b) presentment and demand for payment of any of the debts of Borrower; (c) protest and notice of dishonor or of default to the undersigned or to any other party with respect to any of the debts of Borrower or with respect to any security therefor; (d) all other notices to which the undersigned might otherwise be entitled; and (e) demand for payment under this Guaranty.

Lender may assign this Guaranty or any of its rights and powers hereunder with the Note hereby guaranteed, and may assign and/or deliver to any such assignee any of the security herefor and, in the event of such assignment, the assignee hereof or of such rights and powers and of such Collateral, if any of such Collateral be so assigned and/or delivered, shall have the same rights and remedies as if originally named herein in place of Lender, and Lender shall be thereafter fully discharged from all responsibility with respect to any such Collateral so assigned and/or delivered.

Notice of acceptance of this Guaranty and of the incurring of any and all of the obligations of Borrower hereinbefore mentioned is hereby waived by the undersigned. All of the provisions hereof regarding the Collateral of the undersigned shall apply to the Collateral of any or all of them if there be more than one of the undersigned. This Guaranty and all rights, obligations and liabilities arising hereunder shall be construed according to the laws of the State of South Carolina. Unless the context otherwise requires, all terms used herein which are defined in the Uniform Commercial Code of South Carolina shall have the meanings therein stated.

This obligation and liability on the part of Guarantor shall be a primary and not a secondary obligation and liability, payable immediately upon demand without recourse first having been had by Lender against Borrower or any person, firm or corporation. This is a guarantee of payment and not of collection. The liability of Guarantor on this Guaranty shall be direct and immediate and not conditioned or contingent upon the pursuit of any remedies against Borrower or any other person, or against any other guarantors, nor against securities or liens available to Lender, its successors, endorsees or assigns. The undersigned waives any right to require that an action be brought against Borrower or any other person or to require that resort be had to any security or to any balance of any deposit account or credit on the books of Lender in favor of Borrower or any other person. Nothing except payment to Lender of the full amount of the Note together with interest thereon and all other costs and expenses paid or incurred by Lender in collecting and/or enforcing the amount of Borrower's obligation guaranteed hereunder shall terminate the obligations of the undersigned to Lender incurred hereunder. Upon failure of the undersigned to pay immediately all amounts due under this Guaranty upon demand as aforesaid, the undersigned agree to pay all legal and other costs and expenses, including legal fees, paid or incurred by Lender in connection with the enforcement of this Guaranty. It is further expressly agreed that Lender, upon such default, may exercise its rights and remedies as a secured party as set out above. The right of Lender to sell the aforesaid Collateral and the disposition of proceeds therefrom shall be governed by the provisions of the Uniform Commercial Code of South Carolina, if applicable.

HILTONHEAD-0624250-v1 116793.00049

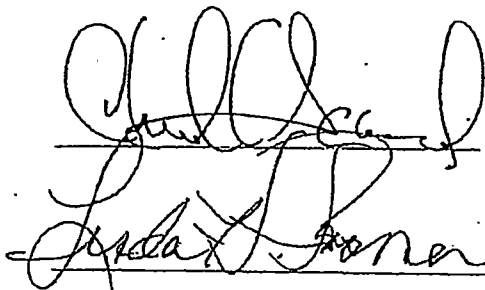
127
McNair/Box #13 00153

The undersigned submit to the jurisdiction of the courts of the State of South Carolina. The undersigned do further consent to the service of process in any such action by certified or registered mail directed to the undersigned at the address herein set out and that any such service shall be complete three (3) days after the same shall have been posted as aforesaid.

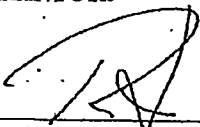
Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal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

2 IN WITNESS WHEREOF, this instrument has been duly executed by the undersigned this
day of June, 2006

SIGNED, SEALED AND DELIVERED
IN THE PRESENCE OF:



GUARANTOR:


RAYMOND M. TRAVAGLIONE



Linsay Allio <mia@lwcooper.com>

FW: JMT Capitol Holdings, LLC v. VDM/T Land Company et al, Case No. 2014-cp-07-0380 [IWOV-AR_DMS.FID1984553]

1 message

Lindsey W. Cooper Jr. <lwc@lwcooper.com>
To: Linsay Allio <mia@lwcooper.com>

Fri, Apr 24, 2015 at 10:01 AM

From: Dawn Hardesty [mailto:Dawn.Hardesty@arlaw.com]
Sent: Friday, September 05, 2014 11:28 AM
To: Judge Dukes (mdukes@bcgov.net)
Cc: Tara Naful; lwc@lwcooper.com; sgrigg@nexsenpruet.com; jlocker@nexsenpruet.com; jannine@westolivetti.com
Subject: JMT Capitol Holdings, LLC v. VDM/T Land Company et al, Case No. 2014-cp-07-0380 [IWOV-AR_DMS.FID1984553]

Judge Dukes,

Attached please find a letter from Ms. Naful in response to the letter sent to you yesterday by Mr. Cooper. By copy of all parties on this email, I am also providing them with a copy of the letter.

Sincerely,

Dawn M. Hardesty
Adams and Reese LLP
1501 Main Street, 5th Floor
Columbia, SC 29201
Main: (803) 254-4190
Fax: (803) 779-4749
Direct: (803) 212-4412
dawn.hardesty@arlaw.com
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Baton Rouge | Birmingham | Columbia | Houston | Jackson | Jacksonville | Memphis | Mobile | Nashville | New Orleans |
Sarasota | St. Petersburg | Tallahassee | Tampa | Washington, D.C.



**TEN Letter to Judge Dukes responding to Cooper_s letter asserting additional arguments on motion
to .DOCX
39K**

September 5, 2014

Via E-mail (mdukes@bcgov.net)
The Honorable Marvin H. Dukes, III
Master-in-Equity for Beaufort County
Post Office Drawer 1228
Beaufort, SC 29901-1228

Re: *JMT Capitol Holdings, LLC v. VDM/T Land Company, LLC and Daufuskie Island Properties, LLC/Daufuskie Island Properties, LLC and its successor in interest, Ace Basin Investments, LLC v. Raymond Travaglione*
Case No. 2014-CP-07-0380
Adams and Reese File No. 023270-000004

Dear Judge Dukes:

I am writing in response to Mr. Cooper's letter to the Court dated September 4, 2014.

By way of background, we were last before the Court on August 11, 2014 for the hearing on Third Party Defendant Mr. Travaglione's motion to dismiss. Before the hearing, both Mr. Cooper and I submitted legal memoranda on the issues before the Court. At the conclusion of the hearing on the Motion to Dismiss, Your Honor took the matter under advisement to allow additional time to consider the memoranda submitted by the parties. A telephonic status conference is scheduled for today, Friday, September 5, at 1:30 pm. Mr. Cooper's letter was submitted to the Court on September 4, 2014, one day prior to the scheduled status conference.

Although I did not intend to make any further written submissions to the Court in advance of today's status conference, in light of Mr. Cooper's letter and the new arguments contained therein, I feel I am left with no alternative but to respond.

Mr. Cooper's September 4 letter makes two primary arguments. First, the letter argues that the statute of limitations applicable to the Travaglione guaranty is 20 years, not 3 years, because the guaranty is allegedly a sealed instrument. Second, the letter claims that the application of judicial estoppel is inappropriate. For the reasons set forth below, each of these arguments is factually and legally incorrect.

I. The Applicable Statute of Limitations

With respect to Daufuskie's statute of limitations argument - Daufuskie is correct that the applicable statute of limitations for a sealed instrument is twenty years. However, the Guaranty at issue in this case is not a sealed instrument.

In support of its position, Daufuskie relies on *Treadway v. Smith*, 325 S.C. 367, 479 S.E.2d 849 (Ct. App. 1996) and *Carolina Marine Handling, Inc. v. Lasch*, 363 S.C. 169, 173, 609 S.E.2d 548, 551 (Ct. App. 2005) in arguing that the Guaranty is a sealed instrument. Daufuskie's reliance on these cases is misplaced.

In both *Treadway* and *Carolina Marine*, the Court of Appeals found that "Signed, Sealed and Delivered in the Presence of" language, standing alone, was insufficient to make a document a sealed instrument. Additional language is required to establish the parties' intent that a document to be a sealed instrument.¹ *Accord South Carolina Dept. of Social Services v. Winyah Nursing Homes, Inc.*, 282 S.C. 556, 320 S.E.2d 464 (Ct. App. 1984).

South Carolina Code § 19-1-160 addresses when a document is considered a sealed instrument.² Considering the statutory language, South Carolina courts have uniformly found that for a contract to be a sealed instrument, the parties' intent to create a sealed instrument must be established by the language of the document. *Carolina Marine*, 363 S.C. at 173, 609 S.E.2d at 551. The South Carolina Court of Appeals has stated that to construe language commonly used in non-sealed instruments as creating a sealed instrument "would likely transform the twenty-year statute of limitations into the standard period of limitations for contract actions in this state," and holding to the contrary "harmonizes the intent of the Legislature with respect to the general three-year statute of limitations in section 15-3-530 with the ability of contracting parties to create sealed instruments." *Id.* at 176, 609 S.E.2d at 552.

Like the cases cited above, in the present case, the only reference to a "seal" found in the guaranty appears directly above the parties' and the witnesses' signatures, and states, "Signed, Sealed and Delivered in the Presence of." South Carolina law demands more than this before a finding that a document is a sealed instrument. *See also Clifton, LLC v. Tadlock*, 2012 WL 909826, *aff'd*, 513 Fed. Appx. 255 (4th Cir. 2013) ("[B]ecause the Lease in our case contains only the clause "Signed, sealed and delivered," and no other indicia sufficient to evidence an intent to seal, the undersigned finds that the parties did not intend for the Lease to be sealed.").

Because the language of the Guaranty does not establish that the parties' intent was to create a sealed instrument, the Guaranty is not, in fact, sealed. Because it is unsealed, the three-year statute of limitations, not the twenty year statute of limitations, applies.

¹ In *Treadway*, the agreement contained language before the signatures which stated, "IN WITNESS WHEREOF, the parties have hereunto set their respective Hands and Seals in quadruplicate as of the day and year first above written." In *Carolina Marine*, the document stated, "IN WITNESS WHEREOF, the parties have hereunto set their hands and seals this ___ day of December, 1996." *Carolina Marine*, 363 S.C. at 172, 609 S.E.2d at 550. The court found that this language, without more, was insufficient to establish the parties' intent to create a sealed instrument.

² S.C. Code § 19-1-160 states, "Whenever it shall appear from the attestation clause or from any other part of any instrument in writing that it was the intention of the party or parties thereto that such instrument should be a sealed instrument then such instrument shall be construed to be, and shall have the effect of, a sealed instrument although no seal be actually attached thereto."

II. Judicial Estoppel

With respect to the issue of judicial estoppel, Mr. Travaglione refers the Court to its Memorandum of Law in support of its motion to dismiss. Additionally, Mr. Travaglione states that Daufuskie's arguments related to confirmation and discharge are merely "red herrings," and are not dispositive of the issues before the Court.

Federal law required Daufuskie to file bankruptcy schedules, signed under penalty of perjury. Federal law required Daufuskie to list in its bankruptcy schedules all of its assets and liabilities. At no time during the bankruptcy case did Daufuskie amend its schedules to add a claim against Mr. Travaglione on the Guaranty. The fact that Daufuskie did not have a plan confirmed is irrelevant to Daufuskie's obligation, under federal law, to disclose all assets and liabilities. Daufuskie's failure to list all assets is fatal to its claims against Mr. Travaglione on the Guaranty.

Daufuskie also argues that listing the Guaranty in addition to the underlying obligation would be "redundant." This too is incorrect as a matter of fact and law. First, the Bankruptcy Code does not state that a debtor can list only the assets it thinks it should. Debtors are required to disclose all assets. Further, as set forth more fully in Mr. Travaglione's Memorandum in Support of Motion to Dismiss, it is black letter South Carolina law that a Guaranty is a separate and distinct contract from the note upon which the guarantor guarantees payment. This fact is further buttressed by the language of the Guaranty, which provides:

This obligation and liability on the part of Guarantor shall be a primary and not a secondary obligation and liability, payable immediately upon demand without recourse first having been had by Lender against Borrower or any person, firm or corporation. . . . The liability of Guarantor on this Guaranty shall be direct and immediate and not conditioned or contingent upon the pursuit of any remedies against Borrower or any other person, or against any other guarantors, nor against securities or liens available to Lender, its successors, endorsees or assigns.

See Guaranty at page 3. Additionally, *TransSouth Fin. Corp. v. Cochran*, 324 S.C. 290, 294 478 S.E.2d 63, 65 (Ct. App. 1996), one of the very cases relied on by Daufuskie in the September 4 letter, states that a guaranty is an "independent contractual obligation, . . . separate and distinct from the original note." *TransSouth Fin. Corp.*, 324 S.C. at 295, 478 S.E.2d at 65 (quoting *Citizens and Southern Nat'l Bank of S.C. v. Lanford*, 313 S.C. 540, 543-45, 443 S.E.2d 549, 551 (1994)). The Guaranty is not simply "an additional source of payment for the same debt," as Daufuskie claims. The Guaranty was a separate contract between Mr. Travaglione and Daufuskie. Daufuskie was required to list its claim against Mr. Travaglione on the Guaranty on the bankruptcy schedules.

Daufuskie's argument in its September 4 letter that the "catchall category" of assets listed on the schedules would include the Guaranty is likewise incorrect. Broadly worded categories of generically listed assets provide no notice to the Bankruptcy Court or Creditors the existence of

the Guaranty. Further, Daufuskie was not simply required to list the Guaranty itself as an asset, but was required to list its claim against Mr. Travaglione pursuant to the Guaranty as an asset, as it did with its claim for foreclosure against VDM/T Land Company. Daufuskie failed to do so, and is now judicially estopped from asserting a claim on the Guaranty against Mr. Travaglione.

III. The Third Party Complaint is not Proper under the Rules.

Finally, Mr. Travaglione reiterates his argument, set forth more fully in his Memorandum in Support of Motion to Dismiss, that the third-party complaint asserted by Daufuskie is simply not a proper third-party complaint. Daufuskie has no liability to Plaintiff. Daufuskie's asserted claim against Mr. Travaglione is not founded upon any derivative liability, as is required for a third-party complaint pursuant to South Carolina Rule of Civil Procedure 14. The third-party complaint is defective.

Based on the arguments in the memoranda filed in this matter, and for the reasons set forth above, Mr. Travaglione's Motion to Dismiss should be granted and the third-party complaint should be dismissed.

Thank you for your consideration.

Sincerely,



Tara E. Nauful

c: Lindsey W. Cooper, Jr. (via e-mail)
Suzanne Taylor Graham Grigg (via e-mail)
Jeffery D. Locker (via e-mail)
Jannine M. Mutterer (via e-mail)



Linsay Allio <mla@lwcooper.com>

FW: Promisory Note Incorporated into the Guaranty referenced in Call

1 message

Lindsey W. Cooper Jr. <lwc@lwcooper.com>
To: Linsay Allio <mla@lwcooper.com>

Fri, Apr 24, 2015 at 10:28 AM

From: Heyward Grimball [mailto:heyward@lwcooper.com]
Sent: Friday, September 05, 2014 4:13 PM
To: mdukes@bcgov.net
Cc: Tara.Nauful@arlaw.com; 'Lindsey W. Cooper Jr.'
Subject: Promisory Note Incorporated into the Guaranty referenced in Call

Dear Judge Dukes,

I hope you are well. Attached please find the Contingent Promissory notes Mr. Cooper referenced in the conference call this afternoon. These notes are incorporated in the guaranty "by reference as if more fully set out herein" in the 6th WHEREAS clause because the guaranty was intended to run with the note.

Please feel free to call our office if there is any question we may answer or if your computer cannot open these files.

Best regards,

Heyward Grimball

The Law Offices of L.W. Cooper Jr.

36 Broad Street

Charleston, SC 29401

Telephone: 843.375.6622

Direct Dial: 843.375.6616

Facsimile: 843.375.6623

www.lwcooper.com

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IRS CIRCULAR 230 NOTICE: Internal Revenue Service regulations generally provide that, for the purpose of avoiding federal tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements. Any tax advice in this message, or in any attachment to this message, does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters.

2 attachments

Contingent Prom Note - June 2, 2006- SIGNED.pdf
129K



Contingent Prom Note Housing Parcel - June 2, 2006- SIGNED.pdf
805K

CONTINGENT

PROMISSORY NOTE - SCHOOL PROPERTY

Date: June 2, 2006

Amount: \$100,000.00

FOR VALUE RECEIVED, VDM/T LAND COMPANY, LLC, a South Carolina limited liability company (the "Borrower") promises to pay to the order of DAUFUSKIE ISLAND PROPERTIES LLC d/b/a DAUFUSKIE ISLAND RESORT AND BREATHE SPA, whose address is 421 Squire Pope Road, Hilton Head Island, SC 29925 ("DIRBS"), in lawful money of the United States of America, the principal sum of ONE HUNDRED THOUSAND AND NO/100 DOLLARS (\$100,000.00) without interest from the date hereof, the principal balance and all other sums due thereunder due and payable on or before July 1, 2010.

This Note may be prepaid in whole or in part without penalty. Any such prepayment shall be applied first to the outstanding interest accrued to date and thereafter to a reduction or elimination of the principal.

If, for any reason, any of said payments are not made promptly on the date due, there shall be a late charge of \$0.05 for each \$1.00 of the payment due. Should any payment be past due for more than twenty (20) days, the holder may at his option declare the entire loan due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of a subsequent default.

If default be made in the performance of or compliance with any of the covenants and conditions of the mortgage or any other instrument securing this Note, then in any of said events, said principal sum with all accrued interest thereon shall become at once due and payable at the option of holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. The unpaid principal balance of this Note and any instrument securing this Note shall bear an interest rate of eight percent (8%) per annum after default until paid in full.

If this Note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings, or through the probate or bankruptcy courts, or under foreclosure proceedings under the mortgage securing this Note, then all costs of collection, including reasonable attorney fees, shall be added hereto secured and collectible as the principal hereof.

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

Presentment, protest, and notice are hereby waived.

This Note is secured by a mortgage of even date conveying property in Beaufort County, South Carolina briefly described as the Mortgage - School Property.

This Note is subject to the terms of that certain Agreement For Land School Site of August 19, 2004 which provides that this Note shall be cancelled without any payment hereunder in the event the Borrower shall cause the Property which is described in said Mortgage to be sued for the construction and

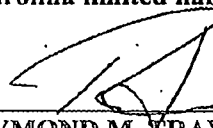
McNair/Box # 9 00332

operation of a school and associated training and recreational facility for a period of Five (5) consecutive years from the date of the commencement of the first full school year as described in said Agreement except as otherwise tolled as therein provided.

THIS NOTE IS NOT NEGOTIABLE AND PAYMENT IS SUBJECT TO THE CONTINGENCIES CONTAINED IN THAT CERTAIN AGREEMENT FOR LAND SCHOOL SITE OF AUGUST 19, 2004.

WITNESS the hand and seal of the signer hereof this 2 day of June, 2006.

VDM/T LAND COMPANY, LLC
A South Carolina limited liability company

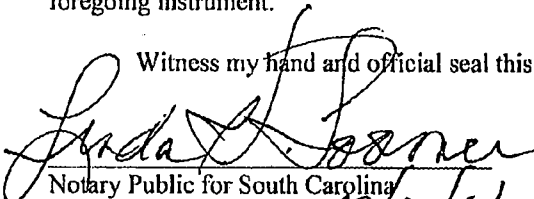
By: 
RAYMOND M. TRAVAGLIONE
Its: Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary, do hereby certify Raymond Travaglione as Manager of VDM/T Land Company, LLC personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 2 day of June, 2006.


Notary Public for South Carolina
My commission Expires: 12/21/14

CONTINGENT
PROMISSORY NOTE - HOUSING PARCEL

Date: June 2, 2006

Amount: \$400,000.00

FOR VALUE RECEIVED, VDM/T LAND COMPANY, LLC, a South Carolina limited liability company (the "Borrower") promises to pay to the order of DAUFUSKIE ISLAND PROPERTIES LLC d/b/a DAUFUSKIE ISLAND RESORT AND BREATHE SPA, whose address is 421 Squire Pope Road, Hilton Head Island, SC 29925 ("DIRBS"), in lawful money of the United States of America, the principal sum of FOUR HUNDRED THOUSAND AND NO/100 DOLLARS (\$400,000.00) without interest from the date hereof, the principal balance and all other sums due thereunder due and payable on or before July 1, 2010.

This Note may be prepaid in whole or in part without penalty. Any such prepayment shall be applied first to the outstanding interest accrued to date and thereafter to a reduction or elimination of the principal.

If, for any reason, any of said payments are not made promptly on the date due, there shall be a late charge of \$0.05 for each \$1.00 of the payment due. Should any payment be past due for more than twenty (20) days, the holder may at his option declare the entire loan due and payable. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of a subsequent default.

If default be made in the performance of or compliance with any of the covenants and conditions of the mortgage or any other instrument securing this Note, then in any of said events, said principal sum with all accrued interest thereon shall become at once due and payable at the option of holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default. The unpaid principal balance of this Note and any instrument securing this Note shall bear an interest rate of eight percent (8%) per annum after default until paid in full.

If this Note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings, or through the probate or bankruptcy courts, or under foreclosure proceedings under the mortgage securing this Note, then all costs of collection, including reasonable attorney fees, shall be added hereto secured and collectible as the principal hereof.

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

Presentment, protest, and notice are hereby waived.

This Note is secured by a mortgage of even date conveying property in Beaufort County, South Carolina briefly described as the Mortgage - Housing Parcel.

This Note is subject to the terms of that certain Agreement For Land Housing Parcel & Amenities Parcel of August 19, 2004 which provides that this Note shall be cancelled without any payment hereunder in the event the Borrower shall cause a "School" to be constructed and operated on certain

McNair/Box #13 00124

property acquired by Borrower from Daufuskie Island Properties, LLC simultaneously herewith for a period of Five (5) consecutive years from the date of completion of construction of said School as more particularly described in said Agreement except as otherwise tolled as therein provided.

THIS NOTE IS NOT NEGOTIABLE AND PAYMENT IS SUBJECT TO THE CONTINGENCIES CONTAINED IN THAT CERTAIN AGREEMENT FOR LAND HOUSING PARCEL & AMENTIEIS PARCEL SITE OF AUGUST 19, 2004.

WITNESS the hand and seal of the signer hereof this 2 day of June, 2006.

VDM/T LAND COMPANY, LLC
A South Carolina limited liability company

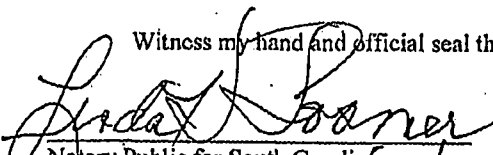
By: 
RAYMOND M. TRAVAGLIONE
Its: Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF BEAUFORT)

ACKNOWLEDGMENT

I, the undersigned Notary, do hereby certify Raymond Travaglione as Manager of VDM/T Land Company, LLC personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

Witness my hand and official seal this 2 day of June, 2006.


Notary Public for South Carolina
My commission Expires: 12/21/14

McNair/Box #13 00125 



Linsay Allio <mla@lwcooper.com>

FW: Promisory Note Incorporated into the Guaranty referenced in Call

1 message

Tara Nauful <Tara.Nauful@arlaw.com>

Tue, Apr 28, 2015 at 12:12 PM

To: Linsay Allio <mla@lwcooper.com>

Cc: Dawn Hardesty <Dawn.Hardesty@arlaw.com>

—Original Message—

From: Tara Nauful

Sent: Friday, September 05, 2014 5:10 PM

To: Heyward Grimball

Cc: mdukes@bcgov.net; Lindsey W. Cooper Jr.

Subject: Re: Promisory Note Incorporated into the Guaranty referenced in Call

Dear Judge Dukes:

I object to the submission of these documents. They are not part of the record, and were not attached to the Answer.

Thank you for your consideration.

Tara Nauful

Sent from my iPhone

> On Sep 5, 2014, at 4:12 PM, "Heyward Grimball" <heyward@lwcooper.com> wrote:

>

> Dear Judge Dukes,

>

> I hope you are well. Attached please find the Contingent Promissory notes Mr. Cooper referenced in the conference call this afternoon. These notes are incorporated in the guaranty "by reference as if more fully set out herein" in the 6th WHEREAS clause because the guaranty was intended to run with the note.

>

> Please feel free to call our office if there is any question we may answer or if your computer cannot open these files.

>

> Best regards,

>

> *****

> Heyward Grimball

> The Law Offices of L.W. Cooper Jr.

> 36 Broad Street

> Charleston, SC 29401

> Telephone: 843.375.6622

> Direct Dial: 843.375.6616

> Facsimile: 843.375.6623

> www.lwcooper.com<http://www.lwcooper.com/>

>

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> IRS CIRCULAR 230 NOTICE: Internal Revenue Service regulations generally provide that, for the purpose of avoiding federal tax penalties, a taxpayer may rely only on formal written advice meeting specific requirements.

1/6

4/28/2015

L.W. Cooper Law Offices Mail - FW: Promisory Note Incorporated into the Guaranty referenced in Call

Any tax advice in this message, or in any attachment to this message, does not meet those requirements. Accordingly, any such tax advice was not intended or written to be used, and it cannot be used, for the purpose of avoiding federal tax penalties that may be imposed on you or for the purpose of promoting, marketing or recommending to another party any tax-related matters.

>

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> <Contingent Prom Note - June 2, 2006- SIGNED.pdf> <Contingent Prom

> Note Housing Parcel - June 2, 2006- SIGNED.pdf>

Baton Rouge | Birmingham | Columbia | Houston | Jackson | Jacksonville | Memphis | Mobile | Nashville | New Orleans | Sarasota | St. Petersburg | Tallahassee | Tampa | Washington, D.C.

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.

April 25, 2015



Lindsey W. Cooper Jr.

Margarete L. Allio

36 Broad Street

Charleston, SC 29401

Telephone: 843.375.6622

Facsimile: 843.375.6623

Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM BEAUFORT COUNTY
Court of Common Pleas

Marvin H. Dukes, Master in Equity

Appellate Case No. 2014-002290

JMT Capital Holdings, LLC, Plaintiff,

v.

VDM/T Land Company, LLC, and Daufuskie Island Properties, LLC,
Defendants,

And

Daufuskie Island Properties, LLC,
and its successor in interest, Ace
Basin Investments, LLC, Appellant,

v.

Raymond Travaglione, Respondent.

PROOF OF SERVICE

I certify that I have served the Record on Appeal upon Raymond
Travaglione by depositing a copy of it in the United States Mail, postage prepaid,

on April 25, 2015, addressed to his attorneys of record, Tara E. Nauful and Dawn M. Hardesty, 211 King Street #330, Charleston, South Carolina 29401.

April 25, 2015



Lindsey W. Cooper Jr. (SC Bar 75712)

Margarete L. Allio (SC Bar 100532)

36 Broad Street

Charleston, SC 29401

Telephone: 843.375.6622

Facsimile: 843.375.6623

Attorneys for Appellant