

**Motion For Production And Admission Of Evidence  
To Appellate Proceedings**

**DOCUMENTS**

**APRIL 18, 2016**

**Mortgage Of Real Estate - Oct 21, 2013**

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APR 21 2016  
SC Court of Appeals

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MORTGAGE OF REAL PROPERTY

SC Court of Appeals  
24th day of

THIS MORTGAGE (hereinafter referred to as the "Mortgage") is made and entered into as of the 24th day of October, 2013, by Alberto Alvarez (hereinafter referred to as the "Mortgagor"), whose address is 17 Latham Drive, Greenville, SC 29617 and Jean P. Elliott, aka Betty Jean Elliott, and Ervin W. Elliott (hereinafter referred to as the "Mortgagee"), whose address is 22 Louise Ave., Greenville SC 29617.

ARTICLE ONE  
GRANT OF MORTGAGE

1.1 GRANT. In order to secure and enforce the payment, performance and observance of the Obligations set forth hereinafter, and for and in consideration thereof and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the Mortgagor does hereby execute and deliver this Mortgage to the Mortgagee and does hereby grant, bargain, mortgage, sell, transfer, convey, assign, warrant and confirm unto the Mortgagee, its successors and assigns, all of the Mortgagor's right, title and interest in and to the Property identified hereinafter, together with and including a first security interest in that portion of the Property comprising the Collateral (as defined hereinafter), to HAVE. AND TO HOLD the Property, all parts thereof, and all and singular the rights, hereditaments and appurtenances appertaining or belonging thereto, unto the Mortgagee, its successors and assigns, to its own use and benefit forever, subject, however, to the terms and conditions herein.

1.2 OBLIGATION SECURED. The Obligations secured by this Mortgage consist of the following (hereinafter collectively referred to as the "Obligations"): The payment and performance of all sums now or hereafter due under or pursuant to that promissory note executed and delivered by Mortgagor to Mortgagee in the original principal amount of Fifty-Three Thousand Five Hundred and no/100 Dollars (\$53,500) dated July 1, 2013.

1.3 THE PROPERTY. The Property mortgaged and conveyed to the Mortgagee hereunder consists of the following (herein collectively referred to as the "Property"): All that certain piece, parcel or lot of land with improvements thereon, situate, lying and being in the County of Greenville, State of South Carolina, the same being shown and designated as Lot 33 and part of Lot 32 on a plat of property of Ervin W. Elliott and Jean P Elliott dated July 3, 2013, and recorded September 5, 2013, in the Office of the Register of Deeds for Greenville County in Plat Book PLL 1162 at page 33-33, reference to which is hereby made for a more complete and accurate description.

THIS being the same property conveyed to Mortgagor by deed of Mortgagee of even date herewith and recorded in the office of the Register of Deeds of Greenville County, State of South Carolina, in Deed Book 2433 at page 2603

TMS: 0126000301300  
Address: 14 Henderson Street, Greenville, South Carolina

b. The Improvements. All buildings, structures and improvements of every nature and kind now or hereafter erected or situate on the Land (hereinafter referred to as the "Improvements").

c. The Accessories. All fixtures, materials, machinery, equipment, appliances, systems, goods, furniture, furnishings, building materials, inventory and personal property now or hereafter attached to, located at, stored upon, or used or intended to be used in connections with, or with the operation of, the Land and/or Improvements, or the construction thereof, in which the Mortgagor now has, or at any time hereafter acquires an ownership interest, including without limitation all heating, air conditioning, lighting, refrigeration, plumbing,

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ventilation incinerating, water-heating, radio, communications, electrical, and air conditioning equipment, and all appliances, furniture, engines, machinery, elevators, pumps, motors, compressors, boilers, condensing units, doors, windows, window screens, tables, chairs, drapes, rods, beds, springs, mattresses, lamps, bookcases, cabinets, sprinklers, hoses, tools, lawn equipment, sofas, dressers, mirrors, televisions, radios, speakers, electrical wiring, pipe, and floor coverings, together with all contract rights to acquire any of the foregoing and all deposits and payments made under contract for the acquisition of the same, and all renewals, replacements and substitutions thereof and additions thereto; all of which shall be deemed a part of and affixed to the Land (hereinafter referring to collectively as the "Accessories").

d. Easements and Other Interests. All rights, title and interest of the Mortgagor in and to all easements, rights of way, covenants, rights and appurtenances now or subsequently pertaining to and in favor of the Property, and all rights of enforcement thereof, and all rights of the Mortgagor in and to all streets, alleys, passages, ways, waters and water courses adjoining the Land, whether any of the foregoing be now owned or hereafter acquired by the Mortgagor, and the reversion, remainder, rents, issues and profits thereof, and all of the estate, right, title, interests, property, possession, claim and demand whatsoever, at law as well as in equity, of the Mortgagor thereto.

e. Other Rights. All replacements, renewals, substitutions, accessions, additions, proceeds, profits or products of any of the foregoing; all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims; and all estates, interests, rights, titles, powers and privileges appurtenant or incident to any of the foregoing.

## ARTICLE TWO COVENANTS OF THE MORTGAGOR

2.1 COMPLIANCE WITH LAWS AND COVENANTS. The Mortgagor covenants and warrants that the Property presently complies with and will continue to comply in all material respects with all applicable private restrictive covenants, easements and conditions of public record applicable to the Property, all applicable zoning and subdivision ordinances and building codes, all applicable ordinances and regulations affecting the use, construction and occupancy of the Improvements and all other applicable federal, state and local laws, rules, regulations, ordinances, codes, permits, licenses, interpretations and orders of any, nature whatsoever with respect to the Property, including without limitation, the provisions of the Federal Occupational and safety Health Act, and the Federal Comprehensive Environmental Response Compensation and Liability Act. The Mortgagor shall, promptly upon receipt, forward to the Mortgagee any notice received from any federal, state or other governmental body claiming that the Mortgagor or the Property is not in compliance with any such law, rule, regulation, covenant, or ordinance, and the Mortgagor shall take all reasonable steps to cure any such non-compliance.

### 2.2 TAXES, ASSESSMENTS AND LIENS.

a. Taxes and Assessments. The Mortgagor shall promptly pay or bond off, when and as due, all assessments (excluding regular property taxes, which taxes are the responsibility of Mortgagee), and other charges, rates, dues, fees, levies, fines, impositions, liabilities, obligations, judgments, rents and encumbrances of every nature and kind whatsoever now or subsequently levied or assessed upon or applicable to the Property or any operations thereon, or upon or against the interest of the Mortgagee therein, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county or other governmental taxing authority upon or against the Mortgagor or in respect to the Property or any part thereof. The Mortgagor shall deliver satisfactory official certificates evidencing the discharge or payment of the same not less than ten (10) days prior to the date that same shall become delinquent. Notwithstanding the foregoing, however, the Mortgagor shall be entitled by appropriate proceedings to contest the validity of any such tax, assessment or charge so long as collection of the same by foreclosure of the lien thereof or otherwise upon the Property is stayed during the pendency of such proceedings and the Mortgagor deposits and the authority to which such tax, assessment or charge is payable, or in some other escrow arrangement satisfactory to the

Mortgagee, funds or other appropriate security satisfactory to the Mortgagee for payment of or security for payment of the same, together with any applicable interests and penalties, should the same be determined to be due and owing.

b. Mechanic's and Other Liens. In the event of filing of any mechanic's, materialmen's or laborers' lien upon the Property, or any portion thereof, arising from a contractor or other third party engaged by Mortgagor, the Mortgagor shall give written notice thereof to the Mortgagee within ten (10) days following service of written notice of such lien upon the Mortgagor and the Mortgagor shall obtain the discharge of such lien by payment, bonding or other means allowable at law within thirty (30) days following service of notice of such lien or claim of lien upon the Mortgagor.

### 2.3 PERFORMANCE AND EXPENDITURES BY MORTGAGEE.

a. The Mortgagee may, at its sole discretion, take any action and make any disbursements necessary to protect its interest hereunder, including without limitation, actions or disbursements with respect to threatened, pending or contemplated actions, proceedings or disputes in which Mortgagee is or might be made a party or is a party plaintiff or party defendant, or which affects or might affect this Mortgage, or any of the interest of the Mortgagee or the Mortgagor therein, including without limitation, foreclosure of this Mortgage. The Mortgagor will pay or reimburse the Mortgagee immediately without demand for all costs, fees, charges, expenses and attorneys' fees incurred or paid by the Mortgagee in any foregoing matter.

b. Performance of Defaults. If the Mortgagor shall not pay when due any payment to be made by Mortgagor under this Mortgage or timely perform or observe any other covenant, condition, term, representation or warranty in this Mortgage, then the Mortgagee, at its sole discretion, may perform or observe the same, or authorize itself or others to enter the Property or any part thereof for such purposes without thereby becoming liable to the Mortgagor or any person in possession, with all payments so made or costs or expenses so incurred to be added to the Obligations secured hereby and to be repaid immediately by the Mortgagor upon demand.

c. Nature of Expenditures. All sums paid or incurred by the Mortgagee pursuant to this provision shall bear interest at the rate of eight percent (8%) per annum until the date of payment.

2.4 FURTHER ASSURANCES. At any time, and from time to time, upon the Mortgagee's request, the Mortgagor shall make, execute and deliver, and cause to be made, executed and delivered to the Mortgagee and, where appropriate, shall cause to be recorded, filed, re-recorded or re-filed and in such offices and places as shall be deemed desirable by the Mortgagee any and all such further mortgages, instruments of further assurance, certificates and other documents as the Mortgagee may consider necessary or desirable in order to effectuate, complete, perfect, continue and preserve the Obligations, this Mortgage, and the lien of this Mortgage as a first and prior lien upon all of the Property, whether now or hereafter acquired by the Mortgagor. Upon any failure by the Mortgagor to do so, the Mortgagee may make, execute, procure, record, file, re-record or refile any and all such mortgages, instruments, financing statements, certificates and documents for and in the name of the Mortgagor, and the Mortgagor hereby irrevocably appoints the Mortgagee as the agent and attorney-in-fact of the Mortgagor to do so.

2.5 AFTER ACQUIRED PROPERTY. The lien of this Mortgage will automatically attach, without further act, to all after acquired property located in or on or attached to, or used or intended to be used in connection with, or with the operation of the Property or any part thereof.

2.6 INDEMNIFICATION. The Mortgagor shall appear in and defend any suit, action or proceeding that might in any way, in the Mortgagee's sole judgment, affect the value of the Property, the Mortgagor's title thereto, or the rights, powers or interests of the Mortgagee hereunder. The Mortgagor shall at all times indemnify, hold harmless and reimburse the Mortgagee within ten (10) days following written demand therefor for any and all loss, damage, expense or

costs, including without limitations, attorneys' fees arising out of or incurred in connection with any such suit, action or proceeding.

2.7 TRANSFER OF PROPERTY OR INTEREST IN MORTGAGOR. The Mortgagor shall not, whether voluntarily, involuntarily or by process of law, sell, convey, transfer, or lease or in any other manner change the ownership of or title to all or any portion of the Property.

2.8 ENVIRONMENTAL COMPLIANCE. Neither the Mortgagor, nor the Mortgagor's agents, employees, or contractors shall generate, manufacture, refine, transport, treat, store, handle, dispose of, release, discharge, produce, or process any materials as defined as hazardous waste or substances under the Comprehensive Environmental Response Compensation and Liability Act (42 U.S. C. Section 9601, et seq.), the Resource Conservation and Recovery Act (42 U.S.C. Section 6903, et seq.), the Hazardous Materials Transportation Act (42 U.S.C. Section 1801, et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601, et seq.), the Toxic Substances Control Act (15 U.S.C. Section 2601, et seq.), the Clean Air Act (42 U.S.C. Section 7401, et seq.), the Clean Water Act (33 U.S.C. Section 1251, et seq.), the South Carolina Hazardous Substances Act (S. C. Code Section 23-39-10, et seq.), and the South Carolina Underground Petroleum Environmental Response Bank Act (S. C. Code Section 44-2-10, et seq.), all as now existing or hereafter amended, or any other environmental protection laws or regulations presently or hereafter enacted unless such actions shall be in total and complete compliance with all applicable environmental laws, rules and regulations. No hazardous materials will be introduced or maintained by Mortgagor or its agents, employees, or contractors on the premises in any manner unless done in strict compliance with applicable environmental laws, rules and regulations. The Mortgagor, and its agents, employees, and contractors shall comply with all governmental regulations regarding environmental protection, shall keep the Property free and clear of any liens imposed pursuant to any Property free and clear of any liens imposed pursuant to any applicable governmental requirements respecting environmental protection, and shall conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove any such hazardous materials on, from or affecting the Property pursuant to any such applicable governmental requirements. The Mortgagor shall indemnify, defend and hold harmless the Mortgagee from and against all liens, claims, damages, actions, causes of action, losses, damages, liabilities, costs and expenses whatsoever, including without limitation, penalties and reasonable attorneys' fees, incurred or suffered by or asserted against the Mortgagee, for, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release upon or from the Property of any such hazardous materials, regardless of whether the same may be caused by or within the control of the Mortgagor, whether intentional or unintentional, or due to the violation of any applicable governmental requirements regarding environmental protection or any covenant or representation contained in this Mortgage with respect thereto by the Mortgagor. Provided, however, the foregoing indemnification by Mortgagor shall not apply to any of the aforesaid liens, claims, damages, actions, causes of action, losses, damages, liabilities, costs and expenses to the extent the same are caused by the actions or inactions of Mortgagee. The foregoing covenants, provisions and indemnities shall survive any foreclosure or other realization by the Mortgagee on this Mortgage which may result in acquisition by the Mortgagee or conveyance by the Mortgagee of fee title of any other lesser right, title or interest, in or to the Property.

### ARTICLE THREE DEFAULT AND REMEDIES

3.1 DEFAULT. The term "Default", wherever used in this Mortgage, shall mean the occurrence of any one or more of the following events:

- a. Failure by the Mortgagor to pay when due any of the Obligations when due; or
- b. Failure by the Mortgagor to pay any other sums secured by this Mortgage within twenty (20) days following notice to the Mortgagor from the Mortgagee requiring payment thereof; or
- c. Failure by the Mortgagor to perform, keep or observe any other covenant, condition, warranty, representation, obligation or agreement set forth in this Mortgage.

3.2 REMEDIES UPON DEFAULT. Upon occurrence of any Default, the Mortgagee shall have the right to immediately exercise any and all of the following rights and remedies without further notice to the Mortgagor:

a. Right to Perform for Mortgagor. The Mortgagee may, but shall not be obligated to, perform any covenant, duty or obligation of the Mortgagor whatsoever, the expense or payment of which shall be added to and become a part of the Obligations which the Mortgagor hereby covenants and agrees to pay to the Mortgagee immediately upon demand, with interest at the annual rate of eight percent (8 %).

b. Right to Foreclose. The Mortgagee shall have the right to foreclose this Mortgage and to have a judicial sale of the Property, as an entirety or in separate lots or parcels, under the judgment or decree of a Court of competent jurisdiction. The Mortgagee shall retain the right at all times to bid upon and purchase the Property, or any portion thereof, at such sale, and upon compliance with such bid, to hold, retain, possess and dispose of the Property or the portion thereof so acquired in its own absolute right without further accountability of any nature to the Mortgagor or any other persons whomsoever. The Mortgagee shall further, at its option, be authorized to foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to name any such tenants as parties Defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by the Mortgagor or any other persons to be, a defense to any proceedings instituted by the Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Property. The Mortgagee shall have the right to credit the amount of its bid, should it be the successful bidder on the Property or any portion thereof, upon the unpaid outstanding amount of the Obligations in lieu of a cash payment thereof.

c. Right to Sue for Enforcement of Obligations. In addition to all rights of foreclosure set forth hereinabove and with or without entry into or taking possession of the Property as hereinafter provided, the Mortgagee shall have the right to enforce payment, performance and/or observance of any of the Obligations by instituting any other proceedings at law or in equity (including specific performance) for payment, observance or performance of the Obligations or of any other terms or conditions set forth in this Mortgage, including without limitation, the right to seek judgment for the recovery of all outstanding Obligations either before, after or during the pendency of or as a part of any actions for foreclosure or enforcement of this Mortgage, without any impairment of the lien of this Mortgage or the rights, powers and remedies conferred upon the Mortgagee, or the foreclosure of the lien hereof.

d. Right to Appointment of Receiver. The Mortgagee, upon application to a court of competent jurisdiction, shall have the absolute right to the appointment of a receiver of the Property and of the income, rents, issues and profits thereof, without regard to the value or occupancy of the Property and without any showing of any insolvency, fraud, or mismanagement on the part of the Mortgagor, and without the necessity of filing any judicial or other proceeding other than the proceeding for the appointment for such receiver. Such receiver shall have all powers granted to the Mortgagee herein to enter upon and operate the Property, together with any other powers available to receivers by law and as may be conferred by the Court which appoints such receiver. All expenditures of any nature incurred in connection with such receivership shall be deemed to be a part of the Obligations and shall be secured by this Mortgage.

e. Rights to Collect Rents and Other Income. The Mortgagee shall have the right to collect and receive all income, revenues, rents, issues and profits of or attributable to the Property, any operations thereon, and any leases thereof, with or without entry upon or taking possession of the Property as provided hereinafter.

f. Right to Enter, Take Possession Of, and Operate the Property. The Mortgagor shall, immediately upon demand from the Mortgagee, forthwith surrender to the Mortgagee actual possession of the Property. To the extent permitted by law, the Mortgagee, itself or through its agents or representatives, may enter upon, take and maintain exclusive possession of the Property, or any part thereof, including without limitation, all cash, escrows, insurance proceeds, condemnation proceeds, income, rents, issues, profits, documents, instruments, books,

records, papers and accounts of the Mortgagor in connection herewith or attributable to the Property, with all costs and expenses thereof (including without limitation, all costs, expenses and attorneys' fees incurred in connection with any suit or proceeding which may be brought by the Mortgagee to obtain immediate possession of the Property as aforesaid) to be a part of the Obligations secured by this Mortgage. Upon such entry and taking possession of the Property, the Mortgagee, in its own name or in the name of the Mortgagor, may hold, store, use, conduct the business thereof, make repairs, replacements, alterations, and improvements to the Property and any portion thereof, and enter into agreements with others to exercise any of the foregoing powers, all as the Mortgagee may deem necessary or desirable.

g. Suits to Protect the Property. The Mortgagee shall have the right to institute and maintain any suits and proceedings which it may deem advisable for the purpose of preventing any impairment of the Property by any acts which may be unlawful or in violation of this Mortgage, preserving and protecting its interest in the Property, or restraining the enforcement of or compliance with any legislation or governmental regulations, rules or orders, the enactment or enforcement of which may impair the security hereunder or the Mortgagee's interest herein.

h. Other Rights and Remedies. The Mortgagee shall have the right to exercise any other rights, remedies and powers granted to it under this Mortgage or otherwise existing at law or in equity.

3.3 APPLICATION OF PROCEEDS. Any proceeds of any nature and kind derived from the exercise of any remedy conferred herein following occurrence of a Default shall be applied to the Obligations and such sums as may be payable by Mortgagor to Mortgagee hereunder in such order of priority as the Mortgagee shall determine.

3.4 DISCONTINUANCE OF PROCEEDINGS. The Mortgagee at its sole option for any reason whatsoever, shall have the right to discontinue at any time any proceedings for enforcement of this Mortgage, in which case the Mortgagor and the Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Mortgagee shall continue as if no such proceeding had occurred or had been taken.

3.5 NO WAIVER. No delay or failure by the Mortgagee to exercise any right or remedy conferred hereunder upon occurrence of a Default shall be deemed a waiver by the Mortgagee of any future right to exercise such right or remedy or any other right or remedy provided herein; nor shall any waiver of any Default be deemed to be a waiver of any other Default or of the future occurrence of the same Default.

3.6 NATURE OF REMEDIES. No right, power or remedy conferred upon or reserved to the Mortgagee by this Mortgage is exclusive of any other right, power or remedy. Each right, power and remedy is cumulative and concurrent; shall be in addition to any other right, power and remedy under this Mortgage and now or hereafter existing at law, in equity or by statute; and may be pursued separately, successively or concurrently against the Mortgagor, any guarantors or endorsers of any of the Obligations, and/or the Property, at the sole discretion of the Mortgagee. The Mortgagor hereby ratifies any and all acts which the Mortgagee shall lawfully do by virtue hereof.

#### ARTICLE FOUR MISCELLANEOUS

4.1 SURVIVAL. All representations, warranties and covenants made herein shall survive the execution and delivery hereof and shall remain in full force and effect until complete payment and discharge of the Obligations.

4.2 SEVERABILITY. Unenforceability or invalidity for any reason of any provision of this Mortgage shall not limit or impair the operation, validity or enforceability of any other provisions of this Mortgage.

4.3 NOTICES. All notices, requests and demands to or upon the respective parties made or required to be made pursuant to the terms of this Mortgage shall be in writing and shall be deemed to be given or made when personally delivered or when deposited in (a) the United States mail, registered or certified, postage prepaid, return receipt

requested, or (b) Federal Express or other comparable overnight private courier service, addressed in any such event, to the Mortgagor or the Mortgagee at the address set forth hereinabove or at such other address as may hereafter be designated in writing by the respective parties hereto.

4.4 GOVERNING LAW. This Mortgage shall be governed and construed under and in accordance with the laws of the State of South Carolina. The Mortgagor, by execution of this Mortgage, agrees that any legal actions or proceedings with respect to this Mortgage shall be subject to the jurisdiction of and shall be brought in the courts of the State of South Carolina.

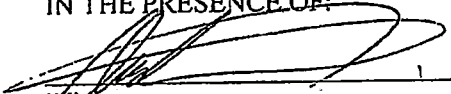
4.5 WAIVER OF JURY TRIAL. The Mortgagor and Mortgagee acknowledge that the right to trial by jury is a Constitutional one, but that it may be waived. Each party, after consulting (or having had this opportunity to consult) with counsel of their choice, knowingly and voluntarily, and for their mutual benefit, waives any right to trial by jury in the event that litigation arises regarding the performance or enforcement of, or in any way related to, this Mortgage or the Obligations.

4.6 HEIRS, SUCCESSORS AND ASSIGNS. This Mortgage shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. It is expressly recognized and agreed by the Mortgagor that the Mortgagee may assign this Mortgage, or interests therein, to other persons, firms or entities and that, in such event, all provisions of this Mortgage shall continue in full force and effect notwithstanding the effects of such assignment.

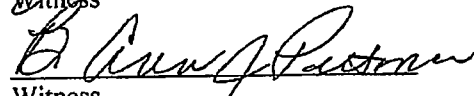
4.7 CAPTIONS. The headings and captions in this Mortgage are included only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Mortgage or the interest of any other provision hereof.

IN WITNESS WHEREOF, this Mortgage has been duly executed by the Mortgagor as of the date first written above.

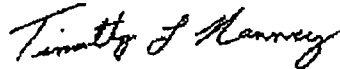
IN THE PRESENCE OF:

  
Witness

  
Alberto Alvarez

  
Witness

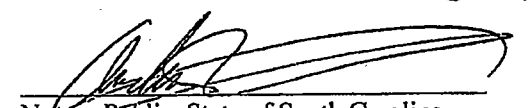
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STATE OF SOUTH CAROLINA )  
COUNTY OF GREENVILLE )

ACKNOWLEDGMENT

The foregoing Mortgage was acknowledged before me this 21st day of October, 2013, by Alberto Alvarez.

  
Notary-Public, State of South Carolina  
My Commission Expires: 6-20-2015