

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2017-000180

**RECEIVED**  
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SC Court of Appeals

U.S. Bank National Association, as Trustee, as Successor-in-Interest to Bank of America, N.A., as Successor by Merger to Lasalle Bank National Association, as Trustee for the Registered Holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26,	Respondents,
AW-MAGPIG, LLC; HW-MAGPIG, LLC; and MW-MAGPIG, LLC,	v. Appellants
Wells Fargo Bank, N.A., and Meridian Capital Group, LLC,	v. Third-Party Defendants.

SUPPLEMENTAL RECORD ON APPEAL

Robert D. Dodson, Esquire  
Law Offices of Robert Dodson, P.A.  
1722 Main Street, Suite 200  
Columbia, SC 29201  
(803) 252-2600  
**Attorney for Appellant**

James Heath Pulliam, Esquire  
David Hughes Simpkins, Esquire  
Kilpatrick Townsend & Stockton, LLP  
214 North Tryon Street, Suite 2400  
Charlotte, NC 28202-2381  
(704) 338-5288 (James)  
(704) 338-5287 (David)  
**Attorneys for Respondent**

THE STATE OF SOUTH CAROLINA  
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**Attorneys for Respondent**

## INDEX

### I. OTHER MATERIALS OR DOCUMENTS

Affidavit of S. Michael Dickerson filed October 21, 2016 ----- 787-838

Email from The Honorable Robert E. Hood to David Simpkins dated  
November 9, 2016 ----- 839

Letter from David H. Simpkins to The Honorable Robert E. Hood dated  
November 16, 2016----- 840-841

**CERTIFICATE OF COUNSEL** ----- 842

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

IN THE COURT OF COMMON PLEAS  
FOR THE FIFTH JUDICIAL CIRCUIT

Case No. 2016-CP-40-02470

U.S. BANK NATIONAL ASSOCIATION, )  
AS TRUSTEE, AS SUCCESSOR-IN- )  
INTEREST TO BANK OF AMERICA, )  
N.A., AS SUCCESSOR BY MERGER TO )  
LASALLE BANK NATIONAL )  
ASSOCIATION, AS TRUSTEE FOR THE )  
REGISTERED HOLDERS OF BEAR )  
STEARNS COMMERCIAL MORTGAGE )  
SECURITIES, INC., COMMERCIAL )  
MORTGAGE PASS-THROUGH )  
CERTIFICATES, SERIES 2007-TOP26, )

**AFFIDAVIT OF  
S. MICHAEL DICKERSON**

Plaintiff,

vs.

AW-MAGPIG, LLC; HW-MAGPIG, LLC;  
and MW-MAGPIG, LLC,

Defendants.

2016 OCT 21 AM 10:11  
JEANNETTE W. McBRIDE  
C.C.P. & G.S.  
RICHLAND COUNTY  
FILED

Before the undersigned Notary Public personally appeared S. Michael Dickerson, who after being duly sworn stated under oath as follows:

1. My name is S. Michael Dickerson. I am a Servicing Officer for C-III Asset Management LLC, the Special Servicer of the Loan for Plaintiff. I am over 21 years of age and am competent to give testimony. I previously executed the verification of Plaintiff's Complaint as filed in this action.

2. This affidavit is submitted in support of Plaintiff's Motion for Order Requiring Turnover of Collateral and Sequestering Rents. The facts stated herein are based upon my personal knowledge of the Loan, and the books and records kept and maintained in the ordinary course of Plaintiff's business activity.

3. To the best of my knowledge, the defendants AW-MAGPIG, LLC, HW-

MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability company (collectively, "Borrowers") own the property that is the subject of this foreclosure proceeding, being a retail shopping center known as Magnolia Pointe (herein, the "Property"). The Property was formerly anchored by a Piggly Wiggly grocery store.

**The Loan and Loan Documents held by Plaintiff.**

4. On March 1, 2007, Borrowers obtained a loan from Bear Stearns Commercial Mortgage, Inc. ("Original Lender") in the original principal amount of \$4,500,000.00 (the "Loan"). To evidence the Loan, Borrowers executed a Promissory Note, a copy of which is attached to the Complaint as Exhibit A.

5. The Loan is further evidenced and/or secured by, without limitation:

(a) Mortgage, Fixture Filing and Security Agreement dated March 1, 2007, executed by Borrowers for the benefit of Original Lender and recorded in the Richland County Register of Deeds (the "Register") on March 6, 2007 in Book 1288 at Page 3842 (the "Mortgage");

(b) Assignment of Leases and Rents dated March 1, 2007, and recorded in the Register on March 6, 2007, in Book 1288 at Page 3902 (the "ALR");

(c) Cash Management Agreement dated March 1, 2007, between Borrowers, Original Lender and The Bank of New York Trust Company, N.A. (the "Cash Management Agreement"); and

(d) Replacement Reserve and Security Agreement dated as of March 1, 2007, between Borrowers and Original Lender (the "Reserve Agreement").<sup>1</sup>

6. The Loan and the Note, Mortgage, ALR, Cash Management Agreement, Reserve Agreement, Management Agreement Assignment (defined below) and all other documents executed and/or delivered in connection therewith (collectively, the "Loan Documents") were assigned to Plaintiff as evidenced by an Assignment of Mortgage, Fixture Filing and Security

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<sup>1</sup> True and accurate copies of the Mortgage, ALR, Cash Management Agreement and Reserve Agreement are attached to the Complaint as Exhibits B, D, E and G, respectively.

Agreement and an Assignment of Assignment of Leases and Rents recorded in the Register in Book 2121 at Pages 43 and 47, respectively, copies of which are attached hereto as Exhibit 1.

7. Therefore, Plaintiff is the current owner and holder of the Loan and the Loan Documents.

**Plaintiff's primary or sole source of recovery is the Property and its rents.**

8. Subject to certain limited exceptions, the Loan is generally nonrecourse, meaning Plaintiff's primary, if not sole, means of recovery is from the Property and the rents therefrom.

**Cash Management Agreement provisions.**

9. A Cash Management Event<sup>2</sup> includes, among other events, an Event of Default or "the date Piggly Wiggly ceases operations at the Property, vacates the Property or otherwise 'goes dark,' or terminates its lease." A Cash Management Event triggers certain obligations of Borrowers under the Cash Management Agreement, including the obligations to establish a Cash Management Account and cause all required amounts to be deposited therein.

10. Funds transferred to the Cash Management Account are to be applied monthly first to amounts owed under the Loan Documents, amounts for operating expenses are then disbursed to Borrowers, and the remaining Excess Cash Flow is to be disbursed to Plaintiff, held as additional collateral in a separate reserve account and applied in any manner Plaintiff determines.

**Piggly Wiggly vacates; Borrowers fail to implement cash management.**

11. In the spring or summer of 2014, Piggly Wiggly vacated the Property or otherwise went "dark" when it closed its store at the Property. On August 1, 2014, Plaintiff notified

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<sup>2</sup> Capitalized terms used but not defined herein shall have the meanings ascribed in the Cash Management Agreement.

Borrowers that a Cash Management Event had thus occurred and demanded that Borrowers comply with their obligations under the Cash Management Agreement. Please see the letter attached to the Complaint as Exhibit H.

12. Borrowers failed to comply with said obligations. On December 18, 2014, Plaintiff, through counsel, notified Borrowers that one or more defaults had thus occurred. Please see the letter attached to the Complaint as Exhibit I. Said defaults have not been cured and are continuing.

**Borrowers fail to pay monthly reserve deposits.**

13. On December 19, 2014, Plaintiff, through counsel, reminded Borrowers of the above-referenced defaults and notified Borrowers that monthly replacement reserve deposits would be required on January 1, 2015 and the 1<sup>st</sup> day of each month thereafter. Please see letter attached hereto as Exhibit 2. However, Borrowers have failed to remit any such monthly reserve deposits to Plaintiff as required under Section 1(b) of the Reserve Agreement, resulting in additional defaults.

**Borrowers withheld required financials after Piggly Wiggly closed and cash management was required.**

14. Under Section 3.11 of the Mortgage, Borrowers are obligated to deliver to Plaintiff (a) monthly rent rolls, operating statements and annual balance sheets and profit and loss statements, and (b) upon Plaintiff's request, a property management report, an accounting of tenant security deposits and an annual budget.

15. However, Borrowers have failed to deliver required documentation since October 2014 - shortly after Piggly Wiggly closed its store, effectively preventing Plaintiff from obtaining an accurate financial picture of the Property - *particularly the amount of Excess Cash Flow that should have been distributed to Plaintiff.*

16. By letters to Borrowers dated February 24, 2016, July 27, 2016 and October 11, 2016 (the "Oct. 11 Letter"), Plaintiff requested that Borrowers provide documentation described in Section 3.11 of the Mortgage. Borrowers have failed to do so, resulting in additional defaults under the Mortgage. Copies of said letters are attached hereto as Exhibit 3.

**The Property has likely generated significant positive cash flow, which should have been disbursed to Plaintiff.**

17. The most recent rent roll in Plaintiff's possession was for September 2014, which Borrowers provided along with a profit and loss statement for the 3<sup>rd</sup> quarter of 2014. Copies of said documents are attached hereto as Exhibit 4.

18. According to the rent roll, the Property was 92.3% leased in September 2014. Per the profit and loss statement, the Property generated \$391,222.42 in positive cash flow during the 3<sup>rd</sup> quarter of 2014, an average of \$97,805.60 per month.

19. Upon information and belief, the Property has been and continues to be similarly leased and at this time is likely somewhere between 85-90% leased. It is thus certainly probable that the Property generated significant positive cash flow since the 3<sup>rd</sup> quarter of 2014 and is continuing to do so.

20. As referenced above, said positive cash flow should have been distributed to each month to Plaintiff but Borrowers have failed to comply with the Cash Management Agreement. In addition, Borrowers have failed to remit said cash flow directly to Plaintiff.

**Borrowers have failed to direct tenants to pay rents directly to Plaintiff.**

21. In addition to the above-referenced defaults, Borrowers have failed to direct tenants to pay rents directly to Plaintiff as required under Section 2.2 of the ALR. Per the Oct. 11 Letter, Plaintiff, through counsel, demanded that Borrowers comply with said obligation.

**Property Manager has failed to remit rents directly to Plaintiff.**

22. In connection with the Loan, Borrowers, Original Lender and Whatfor, LLC (“Property Manager”) executed a Conditional Assignment of Management Agreement dated as of March 1, 2007 (the “Management Agreement Assignment”), a copy of which is attached hereto as Exhibit 5.

23. Upon information and belief, Property Manager is an affiliate, and controlled by one or more of the same principals, of Borrowers.

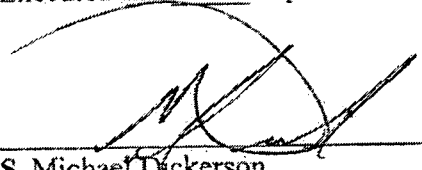
24. In accordance with its rights under the Management Agreement Assignment, on August 19, 2016, Plaintiff notified Property Manager and Borrowers that all rents and other revenue of the Property should be remitted to Plaintiff after payment of the Property’s operating expenses – which specifically are to exclude Property Manager’s management fees. Please see the letter attached hereto as Exhibit 6.

25. To date, Property Manager has failed to remit such amounts directly to Plaintiff.

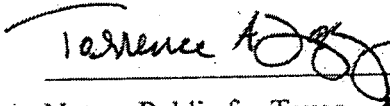
*[remainder of page left blank – signature and notary page to follow]*

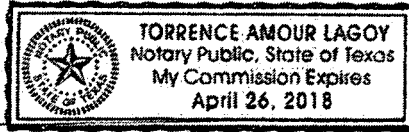
FURTHER AFFIANT SAYETH NOT.

Executed this 19<sup>th</sup> day of October, 2016.

  
S. Michael Dickerson  
Servicing Officer, C-III Asset Management, LLC

Sworn to and subscribed before me  
this 19 day of October, 2016.





Notary Public for Texas #128 25050-5

Print Name: ~~Torrence~~ TORRENCE AMOUR LAGOY  
My Commission Expires: 4-26-2018

**EXHIBIT 1**

**Assignments of Mortgage and ALR**

[attached hereto]



Commercial Mortgage, Inc., a New York corporation, together with its successors and assigns, and recorded with the Office of the Register of Deeds for Richland County, South Carolina on March 6, 2007, in Book 1288 at Page 3842.

**TOGETHER WITH** the subject promissory note(s), loan documents, obligations and collateral described in said Mortgage, and the moneys due and to grow due thereon with the interest and other amounts accruing thereon, and any and all other related security instruments which secure the indebtedness and/or obligations secured by said Mortgage.

~~TO HAVE AND TO HOLD the same unto Assignee, its successors and assigns, forever.~~

*[the remainder of this page is intentionally left blank]*

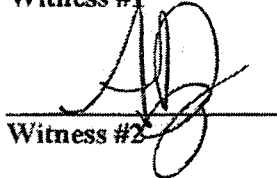
IN WITNESS WHEREOF, Assignor has caused these presents to be duly executed as of \_\_\_\_\_, 2016.

**ASSIGNOR:**

**MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC.,** a  
Delaware stock corporation

  
\_\_\_\_\_

Witness #1

  
\_\_\_\_\_

Witness #2

By:   
\_\_\_\_\_

Name: Wayne Ventus, Jr. \_\_\_\_\_

Title: Vice President \_\_\_\_\_

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )

COUNTY OF \_\_\_\_\_ )

On April \_\_\_\_\_, 2016, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who signed the above-referenced instrument in my presence and who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her respective authorized capacity, and that by his/her signature on the instrument that person, to the entity upon behalf of which that person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

(Notary Seal)

\_\_\_\_\_  
Signature of Notary

**CALIFORNIA ACKNOWLEDGMENT**

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

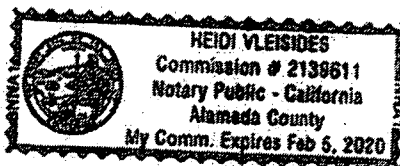
State of California }  
County of Alameda }

On June 8, 2016, before me Heidi Vleisides, Notary Public, personally appeared Wayne Ventus, Jr., who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature *Heidi Vleisides*  
Signature of Notary Public



Book 2121-47

2016043568 06/14/2010 10:07:26.580

Asgmt Lease Rent Profit

Fee: \$10.00

County Tax: \$0.00

State Tax: \$0.00



2018043568

John T. Hopkins II

Richland County R.O.D.

[above space for recording information only]

After recording, please return to:  
Kilpatrick Townsend & Stockton LLP  
214 N. Tryon Street, Suite 2500  
Charlotte, NC 28202  
Attn: Capital Markets (DS)

MERS MIN: 8000101-0000004106-0

STATE OF SOUTH CAROLINA )  
 )  
COUNTY OF RICHLAND )

**ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS**

THIS ASSIGNMENT OF ASSIGNMENT OF LEASES AND RENTS is made by MORTGAGE ELECTRONIC REGISTRATION SYSTEMS, INC., a Delaware stock corporation, having a mailing address at MERS Commercial, P.O. Box 2300, Flint, Michigan 45801-2300 ("Assignor") to U.S. BANK NATIONAL ASSOCIATION, AS TRUSTEE, AS SUCCESSOR-IN-INTEREST TO BANK OF AMERICA, N.A., AS TRUSTEE, SUCCESSOR BY MERGER TO LASALLE BANK NATIONAL ASSOCIATION, AS TRUSTEE, FOR BEAR STEARNS COMMERCIAL MORTGAGE SECURITIES INC., COMMERCIAL MORTGAGE PASS-THROUGH CERTIFICATES, SERIES 2007-TOP26, having a mailing address of 190 South LaSalle Street, 7<sup>th</sup> Floor, Chicago, Illinois 60603 ("Assignee");

KNOW ALL MEN BY THESE PRESENTS, that in consideration of the sum of TEN DOLLARS (\$10.00) lawful money of the United States and other good and valuable consideration, to it in hand paid at or before the sealing and delivery of these presents, the receipt whereof is hereby acknowledged, Assignor has granted, bargained, sold, assigned, transferred and set over, and by these presents does grant, bargain, sell, assign, transfer and set over unto Assignee all right, title and interest, of any kind whatsoever, in and to of Assignor in and to the following:

**ASSIGNMENT OF LEASES AND RENTS** made as of March 1, 2007 (as the same may have been amended, restated, extended, supplemented or otherwise modified form time to time, herein the "ALR"), by AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability

11343227v.1 050902/0944530

company, to Assignor, as nominee for Bear Stearns Commercial Mortgage, Inc., a New York corporation, together with its successors and assigns, recorded with the Office of the Register of Deeds for Richland County, South Carolina on March 6, 2007 in Book 1288 at Page 3902.

**TOGETHER WITH** the subject promissory note(s), loan documents and obligations described in said ALR, and the moneys due and to grow due thereon with the interest, and any and all other related security instruments which secure the indebtedness and/or obligations secured by said ALR.

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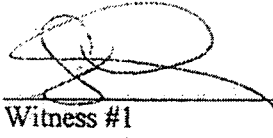
**TO HAVE AND TO HOLD** the same unto Assignee, its successors and assigns, forever.

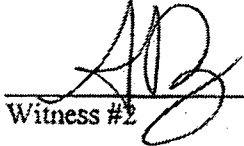
*[the remainder of this page is intentionally left blank]*

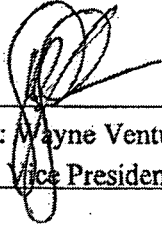
IN WITNESS WHEREOF, Assignor has caused these presents to be duly executed as of \_\_\_\_\_, 2016.

**ASSIGNOR:**

**MORTGAGE ELECTRONIC  
REGISTRATION SYSTEMS, INC., a  
Delaware stock corporation**

  
\_\_\_\_\_  
Witness #1

  
\_\_\_\_\_  
Witness #2

By:   
\_\_\_\_\_  
Name: Wayne Ventus, Jr.  
Title: Vice President

A notary public or other officer completing this certificate verifies only the identity of the individual who signed the document to which this certificate is attached, and not the truthfulness, accuracy, or validity of that document.

STATE OF CALIFORNIA )  
COUNTY OF Alameda )

On April \_\_\_\_\_, 2016, before me, \_\_\_\_\_, personally appeared \_\_\_\_\_, who signed the above-referenced instrument in my presence and who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he/she executed the same in his/her respective authorized capacity, and that by his/her signature on the instrument that person, to the entity upon behalf of which that person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

\_\_\_\_\_  
Signature of Notary

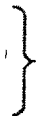
(Notary Seal)

**CALIFORNIA ACKNOWLEDGMENT**

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State of California

County of Alameda



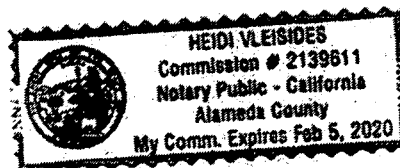
On June 8, 2016, before me Heidi Vleisides, Notary Public, personally appeared Wayne Ventus, Jr., who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under PENALTY OF PERJURY under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

Signature

Signature of Notary Public



**EXHIBIT 2**

**Letter dated December 19, 2014**

[attached hereto]



KILPATRICK TOWNSEND & STOCKTON LLP  
www.kilpatricktownsend.com

Suite 2400, 214 North Tryon Street  
Charlotte, NC 28202-2381  
t 704 338 5000 f 704 338 5125

direct dial 704 338 5008  
direct fax 704 371 8270  
STarnower@kilpatricktownsend.com

December 19, 2014

Via Overnight Delivery and Electronic Mail

AW-MAGPIG, LLC, HW-MAGPIG, ("**Borrower**")  
And MW-MAGPIG, LLC  
11 East Hawthorne Avenue  
Valley Stream, New York 11580  
Attn: Mike Wasserman

*Re: That certain mortgage loan (the "Loan") evidenced by the Promissory Note (the "Note") dated March 1, 2007 in the original principal amount of \$4,500,000.00 executed and delivered by Borrower, in favor of Bear Stearns Commercial Mortgage, Inc. ("Original Lender"); Loan Number 8505000543*

Ladies and Gentlemen:

Wells Fargo Bank, National Association, a national banking association is sending this notice in its capacity as the master servicer of the Loan on behalf of U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26 ("**Lender**"), the current holder of the Loan. The Loan is secured by, among other things, the collateral described in that certain Mortgage, Fixture Filing and Security Agreement dated as of March 1, 2007 (the "**Mortgage**") made by Borrower to Mortgage Electronic Registration Systems, Inc., as Mortgagee. Lender is currently holder of the Mortgage. Original Lender and Borrower also entered into that certain Replacement Reserve and Security Agreement of even date therewith (the "**Replacement Reserve Agreement**"). The Note, the Mortgage, the Replacement Reserve Agreement and all other documents executed in connection with the Loan are referred to herein as the "**Loan Documents**." Capitalized terms not defined herein shall have their respective meanings as defined in the Loan Documents.

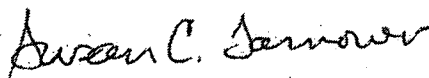
We have previously notified you of an on-going Event of Default in that letter dated December 18, 2014. This letter constitutes notice to Borrower under Section 1(b) of the Replacement Reserve Agreement that Borrower is now required to make the current Monthly Deposit of \$776.60 ( the "**Monthly Deposit**") into the Replacement Reserve beginning on the Monthly Payment Date immediately following this notice, January 1, 2015.

Please note that under Section 1(b) of the Replacement Reserve Agreement, Lender may increase the Monthly Deposit, in Lender's reasonable discretion, pursuant to the terms of the Replacement Reserve Agreement.

Neither this letter, nor any negotiations or communications which may ensue shall constitute a waiver of, or any agreement to forbear from exercising, Lender's rights to exercise any and all remedies which may be available pursuant to the Loan Documents or otherwise at law or in equity. No delay by Lender in exercising any rights or remedies shall operate as a waiver of any rights or remedies of Lender. Any such waiver shall not be effective unless set forth in writing, duly executed by an authorized representative of Lender. You shall not be entitled to rely upon any oral statements made or purported to be made by or on behalf of Lender in connection with any alleged agreement by or on behalf of Lender to refrain from exercising any of its rights under the Loan Documents or otherwise pursuant to applicable law. Any and all rights and remedies available to Lender shall be cumulative and may be exercised separately, successively or concurrently at the sole discretion of Lender. Lender expressly reserves all of its rights and remedies under the Loan Documents, at law and in equity.

This matter requires your immediate attention. Please contact me at 704-338-5008 with any questions.

Very truly yours,



Susan C. Tarnower

cc: Ellis, Lawhorne & Sims, P.A. (via overnight delivery)  
1501 Main St., 5<sup>th</sup> Floor  
PO Box 2285 (29202)  
Columbia, SC 29201  
Attn: William P. McElveen, Jr., Esq.

Michael S. Wasserman ("*Guarantor*")  
11 East Hawthorne Ave.  
Valley Stream, NY 11580

Alan B. Wasserman ("*Guarantor*")  
11 East Hawthorne Ave.  
Valley Stream, NY 11580

Harold Wasserman ("*Guarantor*")  
11 East Hawthorne Ave.  
Valley Stream, NY 11580

**EXHIBIT 3**

**Letters dated February 24, 2016, July 27, 2016 and October 11, 2016**

[attached hereto]

Suite 2400, 214 North Tryon St.  
Charlotte NC 28202-2381

James H. Pulliam  
direct dial 704 338 5288  
jpulliam@kilpatricktownsend.com

February 24, 2016

**VIA U.P.S. OVERNIGHT DELIVERY**  
AW-MAGPIG, LLC, HW-MAGPIG, LLC  
and MW-MAGPIG, LLC  
11 East Hawthorne Avenue  
Valley Stream, New York 11580  
Attn: Mike Wasserman

**RE:** That certain loan (the "Loan") in the original principal amount of \$4,500,000.00 made to AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability company (individually or collectively, "Borrower"), by Bear Stearns Commercial Mortgage, Inc., a New York corporation ("Original Lender"), as evidenced by, among other documents, that certain Promissory Note dated March 1, 2007, executed by Borrower and payable to the order of Original Lender in the original principal amount of \$4,500,000.00 (the "Note"); that certain Mortgage, Fixture Filing and Security Agreement March 1, 2007 (the "Mortgage"), given by Borrower for the benefit of Original Lender and recorded in the Richland County Register of Deeds (the "Register"); that certain Assignment of Leases, Rents, Income and Profits made as of March 1, 2007 by Borrower for the benefit of Original Lender and recorded in the Register (the "ALR"). The Note, the Mortgage, the ALR and all other documents executed or delivered in connection with the Loan are collectively referred to herein as the "Loan Documents."

Dear Borrower:

As you know from prior correspondence our firm is legal counsel to U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26 ("Noteholder"), assignee of and successor to Original Lender, and the present owner and holder of the Note and all other Loan Documents. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed or referenced in the Mortgage.

As you were notified by prior correspondence, certain Events of Default occurred due to your failure to abide by the terms of the Clearing Account Agreement and the Cash Management Agreement upon and after the occurrence of a Cash Management Event. Additional Events of Default may have occurred, including without limitation the Borrowers' failure to pay

Noteholder amounts due under the Note and Loan Documents as required during the occurrence of a Cash Management Event. We hereby confirm that all of the foregoing Events of Default continue and have not been waived by the Noteholder.

Pursuant to the terms of the Mortgage, upon the occurrence of an Event of Default, Noteholder may, at its option, declare all amounts outstanding to be immediately due and payable. The obligations include, without limitation, the entire outstanding principal amount of the Note, together with all accrued and unpaid interest (including default interest), late charges, prepayment fees and all other amounts owed or chargeable under the Loan Documents. The Noteholder has exercised this option to accelerate the Loan and declare all outstanding amounts to be immediately due and payable. Demand is hereby made for immediate payment in full of all Secured Obligations. You may contact Mike Dickerson at 972-868-5304 or mdickerson@c3cp.com to obtain the total amount of the indebtedness.

Noteholder has received periodic payments from Borrower. Notwithstanding the Received Funds, Noteholder has waived no rights or remedies in regards to existing defaults or otherwise and all amounts due under the Loan Documents, including, without limitation, all accrued late charges and default interest, remains due and owing. Any payments received have been and will be applied in accordance with the Loan Documents. The receipt and application of any future payments by the Borrower should not be construed as a waiver nor an accord and satisfaction or as Noteholder's agreement to accept a lesser amounts than are due under the Loan Documents nor waive any existing defaults. Noteholder's acceptance of any endorsement or statement on any check evidencing a payment or letter accompanying a payment is not and shall not be construed as an accord and satisfaction and is not and shall not be deemed to be binding upon Noteholder. Noteholder may accept any such payment or check without waiver of any rights or remedies and without prejudice to its rights to receive all amounts due under the Loan Documents or to pursue its remedies.

You are further advised that neither this letter, nor any negotiations or communications which may ensue shall constitute a waiver of the Noteholder's rights to exercise any and all remedies which may be available to it pursuant to the Loan Documents or otherwise at law. No delay by the Noteholder in exercising any rights or remedies shall operate as a waiver of any rights or remedies the Noteholder may have. Any such waiver shall not be effective unless set forth in writing, duly executed by an authorized representative of the Noteholder. You shall not be entitled to rely upon any oral statements made or purported to be made by or on behalf of Noteholder in connection with any alleged agreement by or on behalf of Noteholder to refrain from exercising any of its rights under the Loan Documents or otherwise pursuant to applicable law. Any and all right and remedies available to the Noteholder shall be cumulative and may be exercised separately, successively or concurrently at the sole discretion of the Noteholder.

Pursuant to Section 3.11 of the Mortgage and on behalf of the Noteholder, we request the following documents be provided in connection with the Property:

- (1) A current rent roll/current leases and any amendments. The rent roll should be signed, dated and certified by the Borrower;
- (2) 2014 and 2015 Year-End Financial Statements (Annual Balance Sheet and Profit and Loss Statement of Borrower). In the event the 2015 Financial Statement is not available, then all Quarterly Financial Statements since September 30, 2014;
- (3) January 2016 Monthly Operating Statement;
- (4) A property management report, showing the rental inquiries and/or rental applications received from tenants or prospective tenants;
- (5) A report detailing all security deposits held in connection with any Lease of any part of the Property, including the name and identification number of the accounts in which such security deposits are held, the name and address of the financial institution;
- (6) The 2015 and 2016 Annual Operating Budgets; and
- (7) Any property inspection reports prepared within the last three years.

You are hereby notified that Noteholder shall strictly enforce the Loan Documents in accordance with their respective terms. If you have any questions, contact me directly or have your counsel contact me.

Sincerely,

Kilpatrick Townsend & Stockton LLP



James H. Pulliam

cc: Michael S. Wasserman  
11 East Hawthorne Avenue,  
Valley Stream, New York 11580  
(via U.S. Mail)

Alan B. Wasserman  
11 East Hawthorne Avenue,  
Valley Stream, New York 11580  
(via U.S. Mail)

AW-MAGPIG, LLC, HW-MAGPIG  
and MW-MAGPIG, LLC  
February 24, 2016  
Page 4 of 4

Harold Wasserman  
11 East Hawthorne Avenue,  
Valley Stream, New York 11580  
(via U.S. Mail)

Robert D. Dodson, Esq.  
Law Offices of Robert Dodson, P.A.  
1722 Main Street, Suite 200  
Columbia, SC 29201  
(via U.S. Mail)

S. Michael Dickerson (via e-mail)

Suite 2400, 214 North Tryon St.  
Charlotte NC 28202-2381  
t 704 338 5000 f 704 338 5125

direct dial 704 338 5288  
direct fax 704 371 8311  
jpulliam@kilpatricktownsend.com

July 27, 2016

Via Email and U.S. First Class Mail

Robert Dodson, Esquire  
[Rdodson@rdodsonlaw.com](mailto:Rdodson@rdodsonlaw.com)  
Law Offices of Robert Dodson, P.A.  
1722 Main Street, Suite 200  
Columbia, SC 29201

RE: U.S. Bank National Association, et al. v. AW-MAGPIG, LLC, HW-MAGPIG, LLC; and  
MW-MAGPIG, LLC; Richland County, SC Case No. 2016-CP-40-2470 ("Civil Action")

Dear Mr. Dodson:

In our communications you question the importance of the cash management requirements imposed by the parties' Loan Documents (as defined in the Complaint)<sup>1</sup>. Do the Borrowers' representatives deny that the Borrowers have failed to comply with the cash management provisions imposed by the Loan Documents? Will the Borrowers now comply? Will the Borrowers provide an accounting for the rents and other income collected by the Property since the occurrence of the Cash Management Event? Do the Borrowers deny the existence of a Cash Management Event? This letter shall renew the Plaintiff's request that the Borrower cooperate and take the necessary action to implement cash management. If I do not receive affirmative response to this cash management inquiry within five (5) business days then our client will assume that the Borrowers remain unwilling to voluntarily implement cash management.

Pursuant to a letter, dated February 24, 2016, we requested that the Borrowers provide certain documentation pursuant to Section 3.11 of the Mortgage. I have attached a copy of that letter for your reference. In addition to the documents requested therein, we request all financial statements for 2016. Will your client provide the documents requested? If I do not receive affirmative response to this renewed request for the documents as set forth in that letter as expanded herein within five (5) business days then our client will assume that the Borrowers remain unwilling to voluntarily produce the documents.

---

<sup>1</sup> Capitalized terms used but not defined herein shall have the meanings ascribed or referenced in the "Mortgage" as defined in paragraph 9 of the Complaint filed in the Civil Action.

Robert Dodson, Esq.  
July 27, 2016  
Page 2

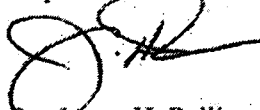
Nothing in this letter constitutes an offer or counteroffer. Plaintiff has and continues to receive periodic payments from Borrower (the "Borrower Payments"). Notwithstanding the Borrower Payments, Plaintiff has waived no rights or remedies in regards to existing defaults or otherwise and all amounts due under the Loan Documents, including, without limitation, all accrued late charges and default interest, remains due and owing. Any Borrower Payments received have been and will be applied in accordance with the Loan Documents. The receipt and application of any future payments by the Borrower should not be construed as a waiver nor an accord and satisfaction or as Plaintiff's agreement to accept a lesser amounts than are due under the Loan Documents nor waive any existing defaults. Plaintiff's acceptance of any endorsement or statement on any check evidencing a payment or letter accompanying a payment is not and shall not be construed as an accord and satisfaction and is not and shall not be deemed to be binding upon Plaintiff. Plaintiff may accept any such payment or check without waiver of any rights or remedies and without prejudice to its rights to receive all amounts due under the Loan Documents or to pursue its remedies.

You are further advised that neither this letter, nor any negotiations or communications which may ensue shall constitute a waiver of the Plaintiff's rights to exercise any and all remedies which may be available to it pursuant to the Loan Documents or otherwise at law. No delay by the Plaintiff in exercising any rights or remedies shall operate as a waiver of any rights or remedies the Plaintiff may have. Any such waiver shall not be effective unless set forth in writing, duly executed by an authorized representative of the Plaintiff. You shall not be entitled to rely upon any oral statements made or purported to be made by or on behalf of Plaintiff in connection with any alleged agreement by or on behalf of Plaintiff to refrain from exercising any of its rights under the Loan Documents or otherwise pursuant to applicable law. Any and all right and remedies available to the Plaintiff shall be cumulative and may be exercised separately, successively or concurrently at the sole discretion of the Plaintiff.

We look forward to hearing from you. Please advise if you have any questions.

Sincerely,

Kilpatrick Townsend & Stockton LLP



By: James H. Pulliam

cc: Mike Dickerson, via email

Suite 2400, 214 North Tryon St.  
Charlotte NC 28202-2381

James H. Pulliam  
direct dial 704 338 5288  
jpulliam@kilpatricktownsend.com

October 11, 2016

**VIA U.P.S. OVERNIGHT DELIVERY**  
AW-MAGPIG, LLC, HW-MAGPIG, LLC  
and MW-MAGPIG, LLC  
11 East Hawthorne Avenue  
Valley Stream, New York 11580  
Attn: Mike Wasserman

**VIA U.P.S. OVERNIGHT DELIVERY**  
Michael S. Wasserman  
11 East Hawthorne Avenue  
Valley Stream, New York 11580

**VIA U.P.S. OVERNIGHT DELIVERY**  
Alan B. Wasserman  
11 East Hawthorne Avenue  
Valley Stream, New York 11580

**VIA U.P.S. OVERNIGHT DELIVERY**  
Harold Wasserman  
11 East Hawthorne Avenue  
Valley Stream, New York 11580

**RE:** That certain loan in the original principal amount of \$4,500,000.00 (the "Loan") made to AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability company (collectively, "Borrower"), by Bear Stearns Commercial Mortgage, Inc., a New York corporation ("Original Lender"), as evidenced by, among other documents, that certain Promissory Note dated March 1, 2007, executed by Borrower and payable to the order of Original Lender in the original principal amount of the Loan (the "Note"); that certain Mortgage, Fixture Filing and Security Agreement and that certain Assignment of Leases and Rents, each dated as of March 1, 2007 and given by Borrower for the benefit of Original Lender (the "Mortgage" and the "ALR", respectively); that certain Replacement Reserve and Security Agreement dated as of March 1, 2007, between Borrower and Original Lender (the "Reserve Agreement"); that certain Cash Management Agreement dated as of March 1, 2007, between The Bank of New York Trust Company, N.A., Borrower and Original Lender (the "Cash Management Agreement"); that certain Indemnity Agreement dated as of March 1, 2007, executed by Michael S. Wasserman, Alan B. Wasserman and Harold Wasserman (each a "Guarantor" and collectively, "Guarantors") and Borrower (collectively, "Indemnitor") in favor of Original Lender (the "Guaranty"). The Note, the Mortgage, the ALR, the Reserve Agreement, the Cash Management Agreement, the Guaranty and all other documents executed or delivered in connection with the Loan are collectively referenced herein as the "Loan Documents."

**FURTHER NOTICE OF CASH MANAGEMENT EVENTS AND DEFAULTS  
AND DEMANDS FOR PAYMENT AND COMPLIANCE**

Dear Borrower and Guarantors:

As you are aware, our firm is legal counsel to U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26 ("Noteholder"), assignee of and successor to Original Lender, and the present owner and holder of the Note and all other Loan Documents. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed in the Cash Management Agreement.

As Borrower was previously notified, a Cash Management Event occurred when Piggly Wiggly ceased operations at the Property, vacated the Property or otherwise went "dark" (the "PW Event"), and certain Events of Default occurred due to Borrower's failure to abide by the terms of the Cash Management Agreement, including, without limitation, by failing to establish a Cash Management Account, failing to deposit or cause to be deposited therein all sums required under the Cash Management Agreement, and failing to timely submit an annual budget to Noteholder. Thereafter, Noteholder, through counsel, notified Borrower that Borrower was required to begin remitting the Monthly Deposit (as defined in the Reserve Agreement) to Noteholder on each ensuing Monthly Payment Date. Borrower has failed to remit any Monthly Deposit within five (5) days of the date same was due or thereafter, and each such failure constituted an additional Event of Default.

As a result of Borrower's failure to comply with the Cash Management Agreement, all Excess Cash Flow following the PW Event (or any prior Cash Management Event) (collectively, "Subject Excess Cash"), which should have been disbursed to Noteholder for deposit into the Excess Cash Flow Reserve Fund (as defined in the Mortgage), has not been so disbursed, and Borrower has further failed to remit any Subject Excess Cash directly to Noteholder. As a result, additional Events of Default have occurred.

In addition to its failure to comply with the Cash Management Agreement, Borrower has also failed, after each prior notice of an Event of Default, to direct all Tenants and Lease Guarantors (as defined in the ALR) to remit to Noteholder all Rents and all sums due under any Lease Guaranties (as defined in the ALR), as required under Section 2.2 of the ALR. Each such failure constitutes a Default (as defined in the ALR) and an Event of Default.

Pursuant to Section 3.11 of the Mortgage, Borrower is required to deliver certain financial records and other documentation periodically or upon Noteholder's request (collectively, the "Required Documentation"). Borrower has failed to deliver certain Required Documentation required to be periodically delivered to Noteholder. In addition, pursuant to said Section 3.11 and on behalf of Noteholder, the undersigned has made multiple written requests of Borrower to provide certain Required Documentation (collectively, the "Requested

Documentation"). Despite said requests, Borrower has failed to provide any of the Requested Documentation, and said failures have resulted in additional Events of Default (each a "Document Default").

Further, Borrower has conveyed, assigned and/or transferred interests in certain Leases, Rents and/or other portions of the Property to Whatfor, LLC and/or Hardscrabble, LLC, as evidenced by, without limitation, the pleadings and judgments entered in Richland County Case No. 2015-CP-40-1371. Accordingly, Borrower violated or otherwise failed to comply with provisions of Sections 3.7 and 4.3 and Article 8 of the Mortgage, constituting additional Events of Default (each a "Transfer Default"). In addition, due to any Document Default or any Transfer Default, the Debt is fully recourse to Borrower pursuant to the applicable provisions of the Note and the Mortgage.

Borrower has been previously notified and is hereby further notified that Noteholder has exercised its option to declare the entire unpaid Debt (as defined in the Mortgage) to be immediately due and payable. Borrower has failed to pay the entire unpaid Debt, thereby resulting in an additional Event of Default (together with each Document Default, Transfer Default and each other Event of Default referenced hereinabove, collectively the "Subject Defaults", and each a "Subject Default"). Each Subject Default constituted an additional Cash Management Event (together with the PW Event, collectively the "Subject CM Events"). We hereby confirm on behalf of Noteholder that the Subject Defaults and the Subject CM Events are continuing and have not been waived by Noteholder or otherwise cured.

Demand is again made for immediate payment in full of the entire unpaid Debt. Borrower may contact the undersigned to obtain the total amount thereof. Further, Noteholder again demands that Borrower immediately comply with its obligations under the Cash Management Agreement, including, without limitation, by establishing a Cash Management Account, depositing or causing to be deposited all required amounts therein, submitting an annual budget to Noteholder for the remaining portion of 2016 and timely submitting annual budgets to Noteholder for each applicable calendar year thereafter.

Demand is further made, pursuant to Section 3.11 of the Mortgage, that Borrower provide to Noteholder the Requested Documentation and other Required Documentation described on Schedule 1 attached hereto and that Borrower also provide all other Required Documentation which Borrower is obligated to provide to Noteholder hereafter.

Pursuant to the terms of the Mortgage and the ALR, Borrower assigned to Noteholder, among other rights and collateral, all of Borrower's right, title and interest in and to any and all "Rents," as respectively defined therein, and Borrower was granted a revocable license to operate and manage the Property and collect, among other amounts, all Rents and other sums received pursuant to any Lease Guaranties (the "License"). Borrower is obligated to hold all such amounts in trust for the benefit of Noteholder for use in paying sums due on the Debt. Upon the first Subject Default, or any prior Event of Default, the License was automatically

revoked and Noteholder became immediately entitled to possession of all Rents and other applicable sums.

Demand is hereby made that all Rents and other applicable sums, whether in or coming into the possession, custody or control of Borrower, Whatfor, LLC, any other property manager, any Guarantor, or any employee, officer, agent, affiliate, member, manager, trustee or any other Person on behalf of any of the foregoing, be immediately remitted to Noteholder after paying the current (and not delinquent) operating costs and expenses incurred in connection with the Property. This demand is continuing and includes all Rents and other applicable sums held on the first Subject Default, or any prior Event of Default, as well as all Rents and other applicable sums which were or are collected thereafter. In furtherance of the foregoing, Noteholder hereby demands that Borrower comply with its obligations under Section 2.2 of the ALR by immediately directing all Tenants and Lease Guarantors to remit directly to Noteholder all Rents and all sums due under any Lease Guaranties. Please contact the undersigned to obtain the applicable payment instructions. This demand is and shall be continuing unless and until a Cash Management Account is established, as applicable, at which time Noteholder demands that Borrower immediately comply with its obligations under the Cash Management Agreement to direct all Tenants to send all Rents due from such Tenants directly to the Clearing Account.

Noteholder has received periodic payments from Borrower (collectively, the "Received Funds"). As Borrower has been previously notified, notwithstanding any Received Funds, Noteholder has waived no rights or remedies in regards to any Subject Default or otherwise and the entire unpaid Debt remains due and owing. Any Received Funds and any payments received hereafter have been and will be applied in accordance with the Loan Documents. The receipt and application of any future payments by Borrower is not and should not be construed as a waiver or an accord and satisfaction or as Noteholder's agreement to accept an amount less than the entire unpaid Debt or waive any of the Subject Defaults. Noteholder's acceptance of any endorsement or statement on any check evidencing a payment or letter accompanying a payment is not and shall not be construed as an accord and satisfaction and is not and shall not be deemed to be binding upon Noteholder. Noteholder may accept any such payment or check without waiver of any rights or remedies and without prejudice to its rights to receive all amounts due under the Loan Documents or to pursue its remedies.

This notice is also being sent to Guarantors to notify them of the Subject Defaults, the Subject CM Events and the foregoing demands. Further, notice is hereby provided that Noteholder has incurred and will likely continue to incur Losses (as defined in the Guaranty) in connection with one or more Subject Defaults and/or related circumstances or events (collectively, the "Subject Losses"), including, without limitation, Borrower's willful misconduct or gross negligence, Borrower's misapplication or conversion of Rents following any Subject Default (or any other Default or Event of Default), and/or Borrower's failure to obtain Noteholder's prior written consent to any assignment, transfer, or conveyance of the Property or any interest therein (including, without limitation, any Leases and/or Rents) as required by the Mortgage. Demand is hereby made upon Indemnitor for immediate payment in full of the Subject Losses, which include, without limitation, Noteholder's attorneys' fees and costs in

connection with the foregoing and all Subject Excess Cash. Indemnitor may contact the undersigned to obtain the total amount of Subject Losses which can currently be calculated.

Neither Borrower nor any Guarantor is or shall be entitled to expect notice in the future of Noteholder's elections or specifications of their respective obligations under any of the Loan Documents by reason of the notices and specifications set forth in this letter.

You are further advised that neither this letter, nor any negotiations or communications which may ensue shall constitute a waiver of the Noteholder's rights to exercise any and all remedies which may be available to it pursuant to the Loan Documents or otherwise at law. No delay by the Noteholder in exercising any rights or remedies shall operate as a waiver of any rights or remedies the Noteholder may have. Any such waiver shall not be effective unless set forth in writing, duly executed by an authorized representative of the Noteholder. You shall not be entitled to rely upon any oral statements made or purported to be made by or on behalf of Noteholder in connection with any alleged agreement by or on behalf of Noteholder to refrain from exercising any of its rights under the Loan Documents or otherwise pursuant to applicable law. Any and all right and remedies available to the Noteholder shall be cumulative and may be exercised separately, successively or concurrently at the sole discretion of the Noteholder.

Neither this letter nor any statement by or on behalf of Noteholder as to the amount due and owing under any of the Loan Documents shall constitute: (i) a waiver of any rights of Noteholder to collect any additional amounts to which Noteholder may be lawfully entitled, whether pursuant to the Loan Documents, at law, in equity or otherwise; or (ii) an offer to settle, waive or release any rights of Noteholder under any of the Loan Documents.

You are hereby notified that Noteholder shall strictly enforce the Loan Documents in accordance with their respective terms. We your compliance with the matters set forth herein. If you have any questions, contact me directly or have your counsel contact me.

Sincerely,

Kilpatrick, Townsend & Stockton LLP

 James H. Puliam by DMS

cc: Robert D. Dodson, Esq.  
Law Offices of Robert Dodson, P.A.  
1722 Main Street, Suite 200  
Columbia, SC 29201  
(via overnight delivery)

AW-MAGPIG, LLC et al.  
October 11, 2016  
Page 6 of 7

Ellis, Lawhorne & Sims, P.A.  
1501 Main Street, 5th Floor  
Columbia, South Carolina 29201  
Attention: William P. McElveen, Jr., Esq.  
(via overnight delivery)

The Bank of New York Trust Company, N.A.  
2 North LaSalle Street, Suite 1020  
Chicago, Illinois 60602  
Attention: CML  
Facsimile No.: (312) 827-8562  
(via facsimile and overnight delivery)

S. Michael Dickerson (via e-mail)

SCHEDULE 1

1. A current rent roll signed, dated and certified by or on behalf of Borrower and otherwise in compliance with the provisions of Section 3.11(a)(i) of the Mortgage.
2. Monthly operating statements for January 2016 and each month thereafter through and including August 2016, certified by or on behalf of Borrower and otherwise in compliance with the provisions of Section 3.11(a)(ii) of the Mortgage.
3. Annual balance sheets and profit and loss statements of Borrower for 2014 and 2015, prepared and certified by Borrower, and any financial statements prepared by an independent certified public accountant within ninety (90) days after the close of each fiscal year of Borrower.
4. A property management report certified by or on behalf of Borrower and otherwise in compliance with the provisions of Section 3.11(b)(i) of the Mortgage.
5. An accounting setting forth all security deposits held in connection with any Lease and which accounting otherwise complies with the provisions of Section 3.11(b)(ii) of the Mortgage.
6. Annual operating budgets for 2015 and 2016 which comply with the provisions of Section 3.11(b)(iii) of the Mortgage.
7. Copies of all current Leases and effective Lease Guaranties and any amendments, extensions, renewals, supplements, assumptions or modifications thereof.
8. All property inspection reports for the Property or any portion thereof prepared within the last three years.

**EXHIBIT 4**

**September 2014 Rent Roll and 3Q 2014 Profit and Loss Statement**

[attached hereto]

MAGNOLIA POINTE CENTRE  
2000 CLEMSON ROAD, COLUMBIA, SC

October 30, 2014

Rent Roll as of:  
September 1, 2014

TENANTS NAME	CURRENT SIZE	SQ FOOT	FOOT PERCENT	START OF EXPIRATION LEASE OF LEASE	NEXT INCREASE DATE	MONTHLY RENT	CAM	TAX	INSURANCE	MGMT	CHARGI	TOTAL INVOICE	ANNUAL RENT
MPC1	1,600	\$ 18.07	2.41%	12/1/1997 11/31/2017	12/1/2014	\$ 2,258.22	\$ 199.84	\$ 248.92	\$ 29.67	\$	\$	\$ 2,732.55	\$ 27,088.64
MPC2	1,500	\$ 17.51	2.41%	5/1/2008 4/30/2019		\$ 2,188.33	\$ 166.25	\$ 248.92	\$ 29.67	\$	\$ 85.67	\$ 2,718.64	\$ 26,259.96
MPC3	1,600	\$ 15.72	2.41%	8/1/2009 8/31/2019	9/1/2016	\$ 1,864.86	\$ 248.75	\$ 308.75	\$	\$	\$	\$ 2,522.36	\$ 23,578.32
MPC8	1,200	\$	1.93%			\$	\$	\$	\$	\$	\$	\$	\$
MPC5	1,200	\$ 16.00	1.93%	8/1/2013 5/31/2018	8/1/2016	\$ 1,600.00	\$ 202.00	\$ 238.00	\$	\$	\$	\$ 2,038.00	\$ 19,200.00
MPC6-1	1,200	\$	1.93%			\$	\$	\$	\$	\$	\$	\$	\$
MPC7	1,200	\$ 15.50	1.93%	12/15/1997 12/31/2017	1/1/2015	\$ 1,550.00	\$ 133.00	\$ 199.14	\$ 23.66	\$	\$ 81.45	\$ 1,987.25	\$ 18,600.00
MPC4	2,005	\$ 14.85	3.23%	6/8/2006 7/31/2015		\$ 2,481.53	\$ 133.00	\$ 199.14	\$ 23.66	\$	\$ 66.70	\$ 2,804.03	\$ 29,778.36
MPC9	2,005	\$ 11.87	3.23%	4/1/2007 8/30/2015	10/1/2014	\$ 1,949.97	\$ 271.94	\$ 332.72	\$ 39.53	\$	\$ 71.31	\$ 2,665.47	\$ 23,399.64
MPC10	1,200	\$ 17.00	1.93%	4/1/2003 4/30/2017		\$ 1,700.00	\$ 132.00	\$ 211.51	\$ 23.66	\$	\$ 71.48	\$ 2,138.65	\$ 20,400.00
MPC11	1,200	\$ 18.10	1.93%	11/1/2001 10/31/2019	11/1/2014	\$ 1,909.83	\$ 133.00	\$ 199.14	\$ 23.66	\$	\$ 71.95	\$ 2,337.38	\$ 22,915.56
MPC12	1,200	\$	1.93%			\$	\$	\$	\$	\$	\$	\$	\$
MPC13-1	1,200	\$ 15.46	1.93%	4/1/2011 3/3/2018		\$ 1,546.90	\$ 180.00	\$ 20.00	\$	\$	\$	\$ 1,746.90	\$ 18,550.80
MPC13	1,200	\$ 15.00	1.93%	12/11/2006 5/30/2015	8/1/2015	\$ 1,500.00	\$ 133.00	\$ 199.14	\$ 23.66	\$	\$ 59.70	\$ 1,919.50	\$ 18,000.00
MPC15	1,200	\$ 16.50	1.93%	2/1/2013 1/31/2018	2/1/2015	\$ 1,650.00	\$ 129.00	\$ 212.34	\$ 23.66	\$	\$ 73.00	\$ 2,085.00	\$ 19,800.00
MPC16	1,200	\$ 15.00	1.93%	10/1/2007 9/30/2014		\$ 1,500.00	\$	\$	\$	\$	\$	\$ 1,500.00	\$ 16,000.00
MPC-17	1,200	\$	1.93%			\$	\$	\$	\$	\$	\$	\$	\$
MPC18-MPC19	6,000	\$ 13.02	9.66%	5/17/2001 5/30/2018		\$ 6,510.00	\$ 686.20	\$ 1,134.00	\$	\$	\$ 279.80	\$ 8,810.00	\$ 78,120.00
MPC20	33,218	\$ 10.00	53.47%	10/1/1997 9/30/2017		\$ 27,681.37	\$ 2,233.27	\$	\$	\$	\$	\$ 29,914.64	\$ 332,176.44
MPC21				9/1/2007 1/31/2018		\$ 1,720.00	\$ 270.00	\$	\$	\$	\$	\$ 1,890.00	\$ 20,640.00
				3/1/2013 2/28/2016		\$ 275.00	\$	\$	\$	\$	\$	\$ 275.00	\$ 3,300.00
TOTAL MONTHLY INCOME	62,128					\$ 59,984.81						\$ 70,063.35	\$ 719,817.72

10/31/2014 10:11AM (GMT-05:00) 821

10/30/2014 THU 23:25 FAX 44 WELLS PARRO

002/004

11:44 AM  
10/27/14  
Accrual Basis

Magnolia Pointe Shopping Center  
Profit & Loss  
January through September 2014

	<u>Jan - Sep 14</u>
<b>Income</b>	
4010 - RENTAL INCOME	536,251.46
4020 - CAM	49,079.25
4030 - TAX AND INSURANCE	124,527.78
4035 - MANAGEMENT CHARGES	7,582.86
4040 - INTEREST INCOME	390.12
4050 - OTHER INCOME	1,531.72
<b>Total Income</b>	<u>719,363.19</u>
<b>Gross Profit</b>	719,363.19
<b>Expense</b>	
6010 - GAS & OIL	238.20
6015 - AUTO REPAIRS	1,872.46
6030 - LICENSES, PERMITS & INSPECTIONS	1,816.11
6035 - TOLL & PARKING	125.00
6045 - WASTE & DISPOSAL EXPENSE	10,176.97
6050 - PLUMBING & HEATING EXPENSE	8,050.00
6060 - PAINTING EXPENSE	6,920.00
6066 - Consulting Fees	5,000.00
6070 - PLASTERING EXPENSE	18,000.00
6075 - CLEANING EXPENSE	750.00
6080 - MAINTENANCE & REPAIRS	6,772.30
6090 - PARKING LOT MAINTENANCE	7,263.00
6095 - LANDSCAPING EXPENSE	10,405.00
6150 - MEALS	412.54
6205 - SEWER & WATER	229.50
6215 - UTILITIES	14,830.81
6235 - LEGAL EXPENSE	33,421.84
6236 - MANAGEMENT FEE	28,327.05
6240 - BANK CHARGES	10.00
6260 - INTEREST EXPENSE	165,360.41
6290 - INSURANCE EXPENSE	977.75
6295 - ACCOUNTING EXPENSE	2,300.00
6351 - TRAVEL EXPENSE	831.53
6400 - Health & Life Insurance	3,300.60
7730 - DELAWARE CORP TAX	750.00
<b>Total Expense</b>	<u>328,140.77</u>
<b>Net Income</b>	<u>391,222.42</u>

**EXHIBIT 5**

**Management Agreement Assignment**

[attached hereto]

**CONDITIONAL ASSIGNMENT OF MANAGEMENT AGREEMENT**

THIS CONDITIONAL ASSIGNMENT OF MANAGEMENT AGREEMENT ("Assignment") is made as of the 1<sup>st</sup> day of March, 2007, by AW-MAGPIG, LLC, HW-MAGPIG, LLC, and MW-MAGPIG, LLC, each a Delaware limited liability company and each having its principal place of business at 11 East Hawthorne Avenue, Valley Stream, New York 11580 ("Borrower"), to BEAR STEARNS COMMERCIAL MORTGAGE, INC., a New York corporation, having an address at 383 Madison Avenue, New York, New York 10179 ("Lender"), and is acknowledged and consented to by WHATFOR, LLC, a New York limited liability company, having its principal place of business at 11 East Hawthorne Avenue, Valley Stream, New York 11580 ("Agent").

**RECITALS:**

A. Borrower by its promissory note of even date herewith given to Lender (the note together with all extensions, renewals, modifications, substitutions and amendments thereof shall collectively be referred to as the "Note") is indebted to Lender in the principal sum of FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$4,500,000.00) in lawful money of the United States of America, with interest from the date thereof at the rates set forth in the Note (the indebtedness evidenced by the Note, together with such interest accrued thereon, shall collectively be referred to as the "Loan"), principal and interest to be payable in accordance with the terms and conditions provided in the Note.

B. The Loan is secured by, among other things, a Mortgage, Fixture Filing and Security Agreement (the "Security Instrument") dated as of the date hereof in the principal sum of FOUR MILLION FIVE HUNDRED THOUSAND AND 00/100 DOLLARS (\$4,500,000.00) given by Borrower to (or for the benefit of) Mortgage Electronic Registration Systems, Inc., a Delaware stock corporation, as Lender's nominee ("MERS"), having an address at 1595 Spring Hill Road, Suite 310, Vienna, Virginia 22182, which grants MERS, as nominee of Lender, a first lien on the property encumbered thereby (the "Property"). All and any of the documents other than the Note, the Security Instrument and this Assignment now or hereafter executed by Borrower and/or others and by or in favor of Lender or MERS, which wholly or partially secure or guarantee payment of the Note are referred to as the "Other Security Documents."

C. Pursuant to a certain Management Agreement dated February 12, 2007 between Borrower and Agent (the "Management Agreement") (a true and correct copy of which Management Agreement is attached hereto as Exhibit A), Borrower employed Agent exclusively to rent, lease, operate and manage the Property.

D. Lender requires as a condition to the making of the Loan that Borrower assign the Management Agreement as set forth below.

**AGREEMENT:**

For good and valuable consideration the parties hereto agree as follows:

1. Assignment of Management Agreement. As additional collateral security for the Loan, Borrower hereby conditionally transfers, sets over and assigns to Lender all of Borrower's right, title and interest in and to the Management Agreement, said transfer and assignment to automatically become a present, unconditional assignment, at Lender's option, in the event of a default by Borrower under the Note, the Security Instrument or any of the Other Security Documents, including but not limited to escrow agreements, and the failure of Borrower to cure such default within any applicable grace period.

2. Termination. At such time as the Loan is paid in full and the Security Instrument is released or assigned of record, this Assignment and all of Lender's right, title and interest hereunder with respect to the Management Agreement shall terminate.

3. Borrower's Covenants. Borrower hereby covenants with Lender that during the term of this Assignment: (a) Borrower shall not transfer the responsibility for the management of the Property from Agent to any other person or entity without prior written notification to Lender and the prior written consent of Lender; (b) Borrower shall not terminate or amend any of the material terms or provisions of the Management Agreement, without the prior written consent of Lender; and (c) Borrower shall, in the manner provided for in this Assignment, give notice to Lender of any notice or information that Borrower receives which indicates that Agent is terminating the Management Agreement or that Agent is otherwise discontinuing its management of the Property.

4. Agreement by Borrower and Agent. Borrower and Agent hereby agree that in the event of a default by Borrower (beyond any applicable grace period) under the Note, the Security Instrument or any of the Other Security Documents during the term of this Assignment, at the option of Lender exercised by written notice to Borrower and Agent: (a) all rents, security deposits, issues, proceeds and profits of the Property collected by Agent, after payment of all costs and expenses of operating the Property (including, without limitation, operating expenses, real estate taxes, insurance premiums, repairs and maintenance and the fees and commissions payable under the Management Agreement), shall be applied in accordance with Lender's written directions to Agent; and (b) Lender may exercise its rights under this Assignment and may immediately terminate the Management Agreement and require Agent to transfer its responsibility for the management of the Property to a management company selected by Lender.

5. Lender's Right to Replace Agent. In addition to the foregoing, in the event that Lender, at any time during the term of this Assignment, determines that the Property is not being managed in accordance with generally accepted management practices for properties similar to the Property, Lender shall deliver written notice thereof to Borrower and Agent, which notice shall specify with particularity the grounds for Lender's determination. If Lender determines that the conditions specified in Lender's notice are not remedied to Lender's reasonable satisfaction by Borrower or Agent within thirty (30) days from receipt of such notice or that Borrower or Agent have failed to diligently undertake correcting such conditions within such thirty (30) day period, Lender may direct Borrower to terminate the Management Agreement and to replace Agent with a management company acceptable to Lender.

6. Subordination of Management Fees. Borrower and Agent hereby agree that Agent shall not be entitled to receive any fee, commission or other amount payable to Agent under the



If to Lender: Bear Stearns Commercial Mortgage, Inc.  
383 Madison Avenue  
New York, New York 10179  
Attention: J. Christopher Hoeffel

If to MERS: MERS Commercial  
P.O. Box 2300  
Flint, Michigan 48501-2300

If to Agent: Whatfor, LLC  
11 East Hawthorne Avenue  
Valley Stream, New York 11580  
Attention: \_\_\_\_\_

or addressed as such party may from time to time designate by written notice to the other parties. For purposes of this Assignment, the term "Business Day" shall mean any day other than Saturday, Sunday or any other day on which banks are required or authorized to close in New York, New York.

Any party by notice to the others may designate additional or different addresses for subsequent notices or communications.

11. No Oral Change. This Assignment, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Borrower or Lender, but only by an agreement in writing signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

12. Liability. If Borrower consists of more than one person, the obligations and liabilities of each such person hereunder shall be joint and several. This Assignment shall be binding upon and inure to the benefit of Borrower and Lender and their respective successors and assigns forever.

13. Inapplicable Provisions. If any term, covenant or condition of this Assignment is held to be invalid, illegal or unenforceable in any respect, this Assignment shall be construed without such provision.

14. Headings, etc. The headings and captions of various paragraphs of this Assignment are for convenience of reference only and are not to be construed as defining or limiting, in any way, the scope or intent of the provisions hereof.

15. Duplicate Originals; Counterparts. This Assignment may be executed in any number of duplicate originals and each duplicate original shall be deemed to be an original. This Assignment may be executed in several counterparts, each of which counterparts shall be deemed an original instrument and all of which together shall constitute a single Assignment. The failure of any party hereto to execute this Assignment, or any counterpart hereof, shall not relieve the other signatories from their obligations hereunder.

16. Number and Gender. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa.

17. Secondary Market/Servicing. Lender may sell, transfer and deliver the Note and assign the Security Instrument, this Assignment and the other documents executed in connection therewith to one or more Investors (as defined in the Security Instrument) in the secondary mortgage market or otherwise. Lender may also retain or assign responsibility for servicing the loan evidenced by the Note, or may delegate some or all of such responsibility and/or obligations to a servicer including, but not limited to, any subservicer or master servicer, on behalf of the Investors. All references to Lender herein shall refer to and include any such servicer to the extent applicable. Lender may disclose the terms of this Assignment, the identity of Agent or any principal of Agent, or any financial information regarding Agent or any principal of Agent, to any Investor or potential Investor.

18. Miscellaneous.

Wherever pursuant to this Assignment (i) Lender exercises any right given to it to approve or disapprove, (ii) any arrangement or term is to be satisfactory to Lender, or (iii) any other decision or determination is to be made by Lender, the decision of Lender to approve or disapprove, all decisions that arrangements or terms are satisfactory or not satisfactory and all other decisions and determinations made by Lender, shall be in the sole and absolute discretion of Lender and shall be final and conclusive, except as may be otherwise expressly and specifically provided herein.

(a) Wherever pursuant to this Assignment it is provided that Borrower pay any costs and expenses, such costs and expenses shall include, but not be limited to, reasonable and actual legal fees and disbursements of Lender, whether retained firms, the reimbursement of expenses of in house staff or otherwise.

(b) Borrower's obligations under this Assignment are subject to the provisions of Article 15 of the Security Instrument, and such provisions are incorporated herein by reference.

[remainder of page intentionally left blank; signature page follows]

[SIGNATURE PAGE TO CONDITIONAL  
ASSIGNMENT OF MANAGEMENT AGREEMENT]

IN WITNESS WHEREOF the undersigned have executed this Assignment as of the date  
and year first written above.

**BORROWER:**

**AW-MAGPIG, LLC**, a Delaware limited liability  
company

By: **AW-MAGPIG OWNER, LLC**, a Delaware  
limited liability company, its sole member

By: 

Name: Alan B. Wasserman  
Title: Member

**HW-MAGPIG, LLC**, a Delaware limited liability  
company

By: **HW-MAGPIG OWNER, LLC**, a Delaware  
limited liability company, its sole member

By: 

Name: Harold Wasserman  
Title: Member

**MW-MAGPIG, LLC**, a Delaware limited liability  
company

By: **MW-MAGPIG OWNER, LLC**, a Delaware  
limited liability company, its sole member

By: 

Name: Michael S. Wasserman  
Title: Member

[SIGNATURE PAGE TO CONDITIONAL  
ASSIGNMENT OF MANAGEMENT AGREEMENT]

IN WITNESS WHEREOF the undersigned have executed this Assignment as of the date  
and year first written above.

**LENDER:**

**BEAR STEARNS COMMERCIAL  
MORTGAGE, INC., a New York corporation**

By: \_\_\_\_\_

Michael A. Forastiere  
Managing Director

**AGENT:**

**WHATFOR, LLC, a New York limited liability  
company**

By: \_\_\_\_\_

Name:  
Title:

[SIGNATURE PAGE TO CONDITIONAL  
ASSIGNMENT OF MANAGEMENT AGREEMENT]

IN WITNESS WHEREOF the undersigned have executed this Assignment as of the date  
and year first written above.

**LENDER:**

**BEAR STEARNS COMMERCIAL  
MORTGAGE, INC.**, a New York corporation

By: *Michael A. Forastiere*  
Michael A. Forastiere  
Managing Director

**AGENT:**

**WHATFOR, LLC**, a New York limited liability  
company

By: \_\_\_\_\_  
Name:  
Title:

[SIGNATURE PAGE TO CONDITIONAL  
ASSIGNMENT OF MANAGEMENT AGREEMENT]

IN WITNESS WHEREOF the undersigned have executed this Assignment as of the date  
and year first written above.

**LENDER:**

**BEAR STEARNS COMMERCIAL  
MORTGAGE, INC., a New York corporation**

By: \_\_\_\_\_

Michael A. Forastiere  
Managing Director

**AGENT:**

**WHATFOR, LLC, a New York limited liability  
company**

By: \_\_\_\_\_

Name:  
Title:

**EXHIBIT A**  
**MANAGEMENT AGREEMENT**

**Whatfor, llc.**

516-568-6000

P.O. Box 130  
Valley Stream  
New York, 11580

**Management Agreement**

This agreement dated February 12, 2007 between Whatfor, LLC and Harold Wasserman, Alan Wasserman and Michael Wasserman is a perpetual agreement for the management of the property known as "Magnolia Pointe", located at 2000 Hardscrabble Road, Columbia, South Carolina.

Whatfor, LLC shall handle the day-to-day operations of the center, including but not limited to the bookkeeping, clerical, accounting, hiring of maintenance personnel, contract negotiation, billing, etc. Whatfor, LLC. Shall provide the Wassermans' with an annual report of all expenses incurred for its services.

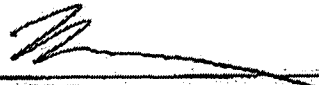
The Wassermans' shall pay Whatfor, LLC. an amount equal to three and one half (3.5) percent of its monthly gross billings to tenants. These payments shall be done on a monthly basis and shall be paid no later than the 10<sup>th</sup> of any given month. Whatfor, LLC. shall invoice the Wassermans' on the first of each month for this payment of services. The gross monthly billings shall include the minimum monthly rent, any cam charges due and owing by tenants in that month, as well as, any extraordinary expenses incurred by Whatfor, LLC. in maintaining the property.

Whatfor, LLC. shall also be reimbursed for any out of pocket costs relating to rental commissions, tenant improvements or other expenses not included in the CAM charges.

This agreement is cancelable between the signing parties upon 30 days written notice.



The Wassermans



Whatfor, LLC.

**EXHIBIT 6**

**Letter dated August 19, 2016**

[attached hereto]

Suite 2400, 214 North Tryon St.  
Charlotte NC 28202-2381

David H. Simpkins  
direct dial 704 338 5287  
dsimpkins@kilpatricktownsend.com

August 19, 2016

**VIA U.P.S. OVERNIGHT DELIVERY**

Whatfor, LLC

11 East Hawthorne Avenue

Valley Stream, New York 11580

RE: That certain Conditional Assignment of Management Agreement dated as of March 1, 2007 ("Assignment"), by and between Whatfor, LLC, a New York limited liability company ("Agent"), Bear Stearns Commercial Mortgage, Inc., a New York corporation ("Original Lender"), and AW-MAGPIG, LLC, HW-MAGPIG, LLC and MW-MAGPIG, LLC, each a Delaware limited liability company (individually or collectively, "Borrower"), as executed in connection with the loan made by Original Lender to Borrower in the original principal amount of \$4,500,000.00 (the "Loan"), as evidenced by, among other documents, that certain Promissory Note dated May 1, 2007, executed by Borrower and payable to the order of Original Lender in the original principal amount of the Loan (the "Note", together with all other documents executed or delivered in connection with the Loan, collectively, the "Loan Documents").

Dear Agent:

This firm is legal counsel to U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as Trustee, successor by merger to LaSalle Bank National Association, as Trustee, for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26 ("Lender"), assignee of and successor to Original Lender, and the present owner and holder of the Loan and the Loan Documents. Capitalized terms used but not otherwise defined herein shall have the meanings ascribed or referenced in the Assignment.

Notice is hereby provided that defaults by Borrower under the Note, the Security Instrument and certain other Loan Documents have occurred (the "Defaults"), and Lender has declared all unpaid principal, accrued and unpaid interest, and all other amounts due under the Loan Documents (collectively, the "Debt") to be immediately due and payable. The Defaults are continuing and the Debt has not been paid.

Pursuant to Section 6 of the Assignment, Agent agreed that it is not entitled to receive any fee, commission or other amount payable to Agent under the Management Agreement (collectively, "**Management Fees**") for and during any period of time that any amount due and owing Lender under the Note and the Security Instrument is not paid when due. Accordingly, because the Debt has been accelerated and is outstanding, Agent is not entitled to receive any Management Fees unless and until the entire unpaid Debt is paid in full.

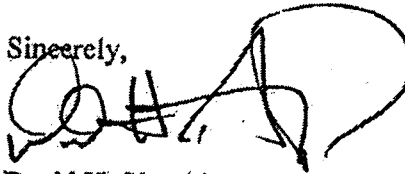
Notice is hereby provided that Lender exercises its option under Section 4 of the Assignment to require that Agent remit to Lender all rents, issues, proceeds and profits of the Property collected by or on behalf of Agent, after payment of all costs and expenses of operating the Property - which costs and expenses shall not include any Management Fees as set forth above. Therefore, unless and until further notice from Lender, please cause all such remaining rents, issues, proceeds and profits (collectively, "**Net Income**") to be remitted to Lender. Please contact, or have your counsel contact, the undersigned for payment instructions. Agent is reminded of its agreement in the Assignment not to contest or impede Lender's exercise of its rights thereunder.

Notwithstanding the receipt by Lender of any Net Income, Lender has not waived and is not waiving any of its rights or remedies under the Assignment or any other Loan Documents, at law, in equity or otherwise. Any payments of Net Income will be applied in accordance with the Loan Documents. The receipt and application of any payments of Net Income are not and shall not be construed as a waiver of any Defaults or as a waiver, release, accord and satisfaction or as Lender's agreement to accept less than the entire unpaid Debt. Lender's acceptance of any endorsement or statement on any check evidencing a payment or letter accompanying a payment is not and shall not be construed as an accord and satisfaction and is not and shall not be deemed to be binding upon Lender in any manner. Lender may accept any such payment or check without waiver or release of any rights or remedies and without prejudice to its rights to receive the entire unpaid Debt or to pursue its remedies.

You are further advised that neither this letter, nor any negotiations or communications which may ensue shall constitute a waiver of Lender's rights to exercise any and all rights and remedies under the Assignment and any other Loan Documents, at law, in equity or otherwise. No delay by Lender in exercising any rights or remedies shall operate as a waiver of any rights or remedies the Lender may have. Any such waiver shall not be effective unless set forth in writing, duly executed by an authorized representative of the Lender. You shall not be entitled to rely upon any oral statements made or purported to be made by or on behalf of Lender in connection with any alleged agreement by or on behalf of Lender to refrain from exercising any of its rights or remedies. Any and all right and remedies available to the Lender shall be cumulative and may be exercised separately, successively or concurrently at the sole discretion of the Lender.

If you have any questions, contact me directly or have your counsel contact me.

Sincerely,



David H. Simpkins

cc: AW-MAGPIG, LLC, HW-MAGPIG, LLC  
and MW-MAGPIG, LLC  
11 East Hawthorne Avenue  
Valley Stream, New York 11580  
Attn: Mike Wasserman  
(via overnight delivery)

Michael S. Wasserman  
11 East Hawthorne Avenue,  
Valley Stream, New York 11580  
(via overnight delivery)

Alan B. Wasserman  
11 East Hawthorne Avenue,  
Valley Stream, New York 11580  
(via overnight delivery)

Harold Wasserman  
11 East Hawthorne Avenue,  
Valley Stream, New York 11580  
(via overnight delivery)

Robert D. Dodson, Esq.  
Law Offices of Robert Dodson, P.A.  
1722 Main Street, Suite 200  
Columbia, SC 29201  
(via overnight delivery)

S. Michael Dickerson (via e-mail)

**From:** Hood, Robert E. Law Clerk (Alexa Kluska) <rhoodlc@sccourts.org>  
**Sent:** Wednesday, November 9, 2016 4:17 PM  
**To:** Simpkins, David  
**Cc:** Robert Dodson  
**Subject:** US Bank v. AW MAGPIG LLC 2016CP4002470

Good afternoon,

The Defendant's Motion to Dismiss or in the Alternative to Add a Necessary and Indispensable Party is denied. Judge Hood requests a proposed order from the Plaintiff granting the Motion for Order Requiring Turnover of Collateral and Sequestering Rents. He would like to read a proposed order before making a ruling on that particular motion.

Please let me know if you have any questions or concerns. Mr. Simpkins, please let me know how long you need to complete the order.

Thank you so much,

Alexa Kluska  
Law Clerk to The Honorable Robert E. Hood  
Fifth Judicial Circuit  
P.O. Box 192  
1701 Main Street, Ste. 222  
Columbia, SC 29202  
OFFICE: (803) 576-1770  
FAX: (803) 576-1772  
[rhoodlc@sccourts.org](mailto:rhoodlc@sccourts.org)

~~~ CONFIDENTIALITY NOTICE ~~~ This message is intended only for the addressee and may contain information that is confidential. If you are not the intended recipient, do not read, copy, retain, or disseminate this message or any attachment. If you have received this message in error, please contact the sender immediately and delete all copies of the message and any attachments.

Suite 2400, 214 North Tryon Street  
Charlotte, NC 28202-2381  
t 704 338 5000 f 704 338 5125

direct dial 704 338 5287  
direct fax 704 371 6416  
dsimpkins@kilpatricktownsend.com

November 16, 2016

**VIA OVERNIGHT DELIVERY AND EMAIL**

The Honorable Robert E. Hood  
Richland County Judicial Center  
1701 Main Street, Ste. 222  
Columbia, South Carolina 29202  
rhoodj@sccourts.org  
rhoodlc@sccourts.org

**RE: U.S. Bank National Association, as Trustee, successor-in-interest to Bank of America, N.A., as successor by merger to LaSalle Bank National Association, as Trustee for the registered holders of Bear Stearns Commercial Mortgage Securities, Inc., Commercial Mortgage Pass-Through Certificates, Series 2007-TOP26 vs. AW-MAGPIG, LLC, et al.  
Case No. 2016-CP-40-02470**

Dear Judge Hood:

This firm represents the Plaintiff in the above-referenced action. Today, defendants' counsel submitted a supplemental memorandum in opposition to Plaintiff's Motion for Order Requiring Turnover of Collateral and Sequestering Rents. Notwithstanding its flawed arguments, the memorandum is untimely. Memoranda were submitted prior to the hearing in accordance with local rules. Your Honor has already ruled on the motion and a proposed Order was submitted yesterday.

Aside from its untimeliness, I want to briefly address two issues noted in the memorandum. First, the language quoted from the Mortgage on page 2 of the memorandum noticeably omits the following: "PROVIDED HOWEVER, THAT WITH RESPECT TO THE CREATION, PERFECTION, PRIORITY AND ENFORCEMENT OF THE LIEN OF THIS SECURITY INSTRUMENT...THE LAWS OF THE STATE WHERE THE PROPERTY IS LOCATED SHALL APPLY." Mortgage § 18.1 at p. 49. The Assignment of Leases and Rents ("ALR") contains similar provisions - see ALR § 6.7 at p. 8. Both the Mortgage and the ALR grant the Plaintiff liens upon and assign interests in the Rents (and the other portions of the Property), and South Carolina law thus applies.

Second, although citing only one loan document (the Clearing Account Agreement), the memorandum disingenuously asserts that "the *loan documents* relied upon by Plaintiff contain both choice of law provisions and venue/forum selection clauses which provide that the parties 'hereby submit to the exclusive jurisdiction of the state courts of the State of New York...'"

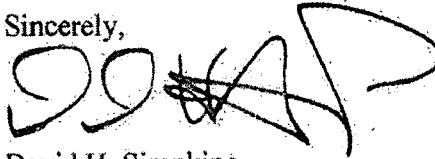
Hon. Robert E. Hood  
November 16, 2016  
Page 2

(emphasis added). However, none of the Note, Mortgage, ALR or Cash Management Agreement contains exclusive jurisdiction provisions and, in any event, a foreclosure action is properly brought only in the State where the mortgaged property is located.

If you prefer that the Plaintiff provide a more complete response to the memorandum, we will be glad to do so. Ultimately, the memorandum appears to simply be another delay tactic employed by the defendants, perhaps in an effort to collect and disburse the December Rents from the Property without being governed by a written order, and notwithstanding your decision.

We request entry of the proposed Order as submitted. Please let me know of any questions or concerns. Thank you for your time.

Sincerely,

A handwritten signature in black ink, appearing to read 'DHS', with a large, stylized flourish extending to the right.

David H. Simpkins

cc: Robert D. Dodson, Esq.  
Robert Dodson, P.A.  
1722 Main Street, Suite 200  
Columbia, South Carolina 29201  
rdodson@rdodsonlaw.com

THE STATE OF SOUTH CAROLINA  
In The Court of Appeals

APPEAL FROM RICHLAND COUNTY  
Court of Common Pleas

Robert E. Hood, Circuit Court Judge

Appellate Case No. 2017-000180

**RECEIVED**  
JAN 02 2018  
SC Court of Appeals

U.S. Bank National Association, as Trustee, as Successor-in-  
Interest to Bank of America, N.A., as Successor by Merger to  
Lasalle Bank National Association, as Trustee for the  
Registered Holders of Bear Stearns Commercial Mortgage  
Securities, Inc., Commercial Mortgage Pass-Through  
Certificates, Series 2007-TOP26,

Respondents,

AW-MAGPIG, LLC; HW-MAGPIG, LLC; and MW-  
MAGPIG, LLC,

v.

Appellants

Wells Fargo Bank, N.A., and Meridian Capital Group, LLC,

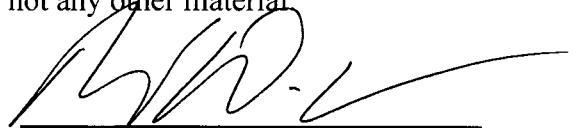
v.

Third-Party  
Defendants.

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Supplemental Record on Appeal contains all  
materials proposed to be included by any of the parties and not any other material

January 2, 2018



Robert D. Dodson  
Law Offices of Robert Dodson, P.A.  
1722 Main Street  
Columbia, South Carolina 29201  
(803) 252-2600  
Attorney for Appellant