

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2015-CP-10-3389
Appellate Case No. 2018-000084

RECEIVED
OCT 12 2018
SC Court of Appeals

Peter Miller, Mary Alice Miller, Mary Alice Miller, as Trustee of Mary Alice Miller Living Trust,
Miller Group Properties, LLC, and C-Miller Properties, LLC, ... Plaintiffs,

Of whom C-Miller Properties, LLC is the Appellant,

v.

Marilyn L. Dillon and JLJ, LLC, ... Respondents,

and

Marilyn L. Dillon, Third-Party Plaintiff, ... Respondent,

v.

PMC, LLC, ... Third-Party Defendant.

RECORD ON APPEAL

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Jasmine D. Smith, S.C. Bar No. 100758
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Attorneys for Respondents

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Miller Group Properties, LLC, and C-Miller Properties, LLC, ... Plaintiffs,

Of whom C-Miller Properties, LLC is the Appellant,

v.

Marilyn L. Dillon and JLJ, LLC, ... Respondents,

and

Marilyn L. Dillon, Third-Party Plaintiff, ... Respondent,

v.

PMC, LLC, ... Third-Party Defendant.

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Attorneys for Respondents

INDEX

Orders

Consent Order of Reference, filed December 16, 2015	3
Scheduling Order, filed March 15, 2016	6
Form 4 Order Denying the Appointment of a Receiver, filed July 7, 2016	7
Consent Settlement Order, filed September 12, 2016.....	8
Order Denying Plaintiffs Motion to Enforce Settlement Order, filed September 27, 2017	15
Form 4 Order Denying Plaintiff's Motion to Amend Order, filed December 20, 2017	24

Pleadings

Summons and Complaint, filed June 15, 2015	26
Answer, Counterclaim, Cross-Claim, and Third-Party Complaint, filed September 17, 2015	62
Plaintiffs' Reply to the Counterclaims, filed September 25, 2015	72
Defendants' Expedited Motion for Appointment of a Receiver, filed June 30, 2016.....	79
Plaintiffs' Return to Defendants' Motion for Appointment of a Receiver, filed July 1, 2016.....	84
Defendants' and Third-Party Plaintiff's Notice of Motion and Motion for Summary Judgment (including exhibits), filed July 28, 2016.....	86
Plaintiffs' Motion to Enforce Settlement Order, filed April 28, 2017.....	138
Defendant's Response to Motion to Enforce Settlement Order, filed June 12, 2017	160
Affidavit of Cynthia Miller	185
Plaintiffs' Motion to Alter or Amend Judgment and Memorandum in Support of the Motion, filed October 9, 2017.....	191

Plaintiffs' Amended Motion to Alter or Amend Judgment,
filed October 10, 2017 196

Defendants' Response in Opposition to the Amended Motion
to Alter or Amend Judgment, filed October 20, 2017 209

Transcripts

June 14, 2017 Hearing Transcript..... 214

December 18, 2017 Hearing Transcript..... 243

Certificate of Counsel 264

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Peter Miller, et al

☒ Plaintiff

v.

Marilyn L. Dillon, Et Al

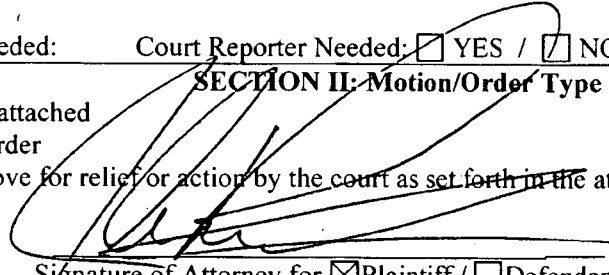
☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2015-CP-10-3389

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: John E. Romanosky, Jr., Bar No. 4903 Address: One Cool Blow Street, Suite 201 Charleston, SC 29403 phone: 843-724-1054 fax: 843-724-1061 e-mail: john@jromanlaw.com other:	Defendant's Attorney: _____, Bar No. _____ Address: _____ phone: _____ fax: _____ e-mail: _____ other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: _____ Estimated Time Needed: _____ Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  _____ Signature of Attorney for ☒ Plaintiff / ☐ Defendant December 10, 2015 Date submitted	
SECTION III: Motion Fee	
☒ PAID - AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	_____ JUDGE CODE: 2060 Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____ ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Peter Miller, Mary Alice Miller, Mary Alice
Miller as Trustee of Mary Alice Miller Living
Trust, Miller Group Properties, LLC and C-
Miller Properties, LLC,

Plaintiffs,

v.

Marilyn L. Dillon and JLJ, LLC,

Defendants;

and

Marilyn L. Dillon,

Third-Party Plaintiff,

v.

PMC, LLC,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A NO.: 2015-CP-10-3389

CONSENT ORDER OF REFERENCE

FILED
2015 DEC 16 AM 9:41
JULIE J. ARISTON
CLERK OF COURT

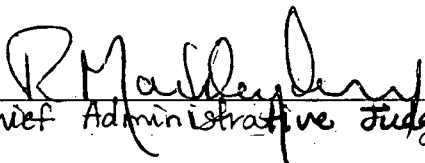
IT NOW APPEARING that pursuant to South Carolina Rule of Civil Procedure 53(b), the issues in this dispute are properly referred to the Master-in-Equity for the above-referenced county with the authority to enter a final judgment in the cause with direct appeal to the Court of Appeals of South Carolina and that Plaintiffs and Defendants consent;

NOW, UPON MOTION of Ian D. McVey, attorney for Defendant/Third-Party Plaintiff Marilyn L. Dillon and Defendant JLJ, LLC and by and with the consent of counsel for the Plaintiffs;

pmc

IT IS ORDERED that this action be, and the same hereby is, referred to the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, for the purposes of taking testimony and making findings of fact and conclusions of law, and with final authority to render a final judgment in the cause, with direct appeal from said final judgment to the Court of Appeals for the State of South Carolina; and

IT IS FURTHER ORDERED that the Honorable Mikell R. Scarborough, Master-in-Equity for Charleston County, shall retain jurisdiction over this matter to hear any and all post trial issues as may arise including but not limited to petitions for writ of assistance and supplemental proceedings.


chief Administrative Judge

December 14, 2015
Charleston, South Carolina

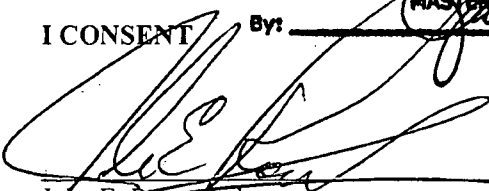
I SO MOVE.

~~TURNER PADGET GRAHAM & LANEY, P.A.~~


Ian D. McVey, SC Bar No. 71196
PO Box 1473
Columbia, South Carolina 29202
Tel. (803)227-4267
Fax (803)400-1564

Attorneys for Plaintiff

I CONSENT

By: 

John E. Romanosky
One Cool Blow Street, Suite 201
Charleston, South Carolina 29403
Tel. (843)724-1054

Attorney for the Plaintiffs

DATE 12/10/15
AMOUNT 125.00
PAID
MIKELL R. SCARBOROUGH
MASTER IN EQUITY

RM007/2

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Miller

-vs-

Dillon

Plaintiff(s),

Defendant(s),

IN THE COURT OF COMMON PLEAS

CASE NO: 2015-CP-10-3389

SCHEDULING ORDER

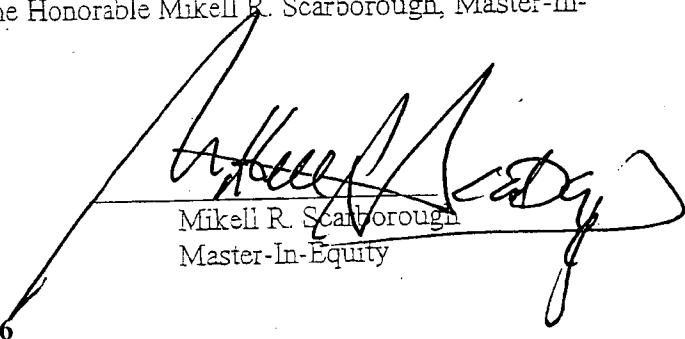
FILED
2016 MAR 15 PM 12:12
JULIE J. ARMSTRONG
CLERK OF COURT

Pursuant to Rule 16 of the South Carolina Rules of Civil Procedure, the following schedule is established in this case based upon an in court and/or telephone conference.

1. All motions to amend the pleadings and to join additional parties shall be filed on or before N/A
2. The plaintiff(s) must identify any experts on or before N/A
3. The defendant(s) must identify any experts on or before N/A
4. Discovery shall be completed on or before July 22, 2016
All discovery requests must be served in time for the response thereto to be served within this deadline.
5. All dispositive motions shall be filed on or before July 29, 2016
a. otherwise the parties agree any untimely motions shall be waived.
6. The parties shall mediate this case with John Masselon on or before Aug 5, 2016
The mediator shall submit his written report to the court within 10 days of mediation.
7. This case is set for pre-trial hearing and motions on Aug 8, 2016 at 10:30 AM
FAILURE TO ATTEND PRE-TRIAL WILL RESULT IN THIS CASE BEING PLACED ON THE GENERAL DOCKET FOR A TERM OF COURT.
8. The party shall come to the pre-trial hearing with a pre-trial brief to be exchanged, a list of witnesses and a good faith estimate of time for trial.
9. Upon completion of all steps noted above, the matter shall be set for a day certain trial. (usually 30-60 days)
10. This order may not be amended except by order of the Honorable Mikell R. Scarborough, Master-In-Equity for Charleston County.

IT IS SO ORDERED.

3/14/16
Charleston, SC


Mikell R. Scarborough
Master-In-Equity

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. ²⁰¹⁵ CP- 10 - 3389MillerDillon

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court:

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

Defendant's Motion for the Appointment of a Receiver is respectfully denied.

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

2062

Judge Code

Date

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-3389

Peter Miller, Mary Alice Miller, Mary
Alice Miller, as Trustee of Mary Alice
Miller Living Trust, Miller Group
Properties, LLC, and C-Miller Properties,
LLC,)

Plaintiff,)

vs.)

Marilyn L. Dillon and JLJ, LLC)

Defendants.)

CONSENT SETTLEMENT ORDER

Marilyn L. Dillon,)

Third-Party Plaintiff,)

vs.)

PMC, LLC)

Third-Party Defendants.)

2016 SEP 12 PM 2:56
JULIE J. ALBRIGHT
CLERK OF COURT

FILED

THIS MATTER COMES BEFORE THE COURT by and with the consent of the parties.
The above-captioned matter was referred to the undersigned by a Consent Order of Reference filed
on December 16, 2015. Pursuant to said Order of Reference, this Court has jurisdiction over this
matter.

PROCEDURAL HISTORY

This matter was commenced by the filing of a Lis Pendens, Summons and Complaint by
the Plaintiffs on June 15, 2015. Plaintiffs' Complaint seeks a declaration of this Court as the
amount due and owing under a Modified Promissory Note ("Modified Note") dated March 23,
2012. Said Modified Note is secured by a mortgage ("Mortgage") dated February 1, 2008 and

recorded on February 7, 2008 in the office of the RMC for Charleston County in Book S 650 at page 257. Said Mortgage is a first priority mortgage on the following real property:

INSERT LEGAL DESCRIPTION

On September 17, 2015, Defendants and Third-Party Plaintiff filed their Answer, Counterclaim, Cross-Claim and Third-Party Complaint in which they generally denied the allegations of the Plaintiffs' Complaint, asserted various affirmative defenses and further south foreclosure of the Mortgage. Plaintiffs' Reply was filed on September 25, 2015. Pursuant to this Court's Scheduling Order filed on March 15, 2016, the parties mediated this matter and were able to resolve the differences between them. The Parties now wish to reduce their settlement to an Order of this Court.

BASED UPON THE AGREEMENT AND CONSENT OF THE PARTIES, I FIND, ORDER AND CONCLUDE AS FOLLOWS:

1. Within one hundred and eighty (180) days of the date of the filing of this Consent Order described below, the Plaintiffs must provide Defendants with one of the following:
 - a. A ratified contract to sell the property identified as TMS #244-00-00-122 (the "Subject Property") for Eight Hundred Fifty Thousand and 00/100s (\$850,000.00) or higher; or
 - b. An unqualified loan commitment letter from a reputable lender licensed by the state or federal government for a loan on commercially reasonable terms in an amount sufficient to pay the debt owned Defendants/Third Party Plaintiff as more fully described in the Answer, Counterclaim, Cross-Claim and Third-Party Complaint filed in this matter, with the caveat that the attorneys' fees due to Defendant/Third-Party Plaintiff Marilyn L. Dillon will be attorney's fees and costs actually incurred by her related to this matter and not the attorneys' fees provided for under the Modified Note, Mortgage and other related loan documents.
2. If Plaintiffs obtain a ratified contract or loan commitment as described in paragraph 1 hereof, any such sale or refinance must be closed within Two Hundred Seventy (270) days of the date of the entry of this consent order.

3. Failure to obtain a ratified contract or a loan commitment within one hundred eighty (180) days of the date of entry of this consent order shall be considered a default hereunder.
4. Likewise, failure to close the sale or refinance contemplated herein within two hundred seventy (270) days of the date of the entry of this consent order shall be a default hereunder.
5. Reid Davis and the firm of Lee & Associates are hereby appointed as the broker to list the Property for sale as indicated by the consent of the parties.
6. Plaintiffs shall continue to manage the Property and pay the regular expenses, taxes, insurance and maintenance on the buildings during until such time as the sale or refinance contemplated herein has been consummated.
7. Plaintiffs will shall use the revenue generated by the property to pay expenses related the Subject Property to the extent available.
8. Plaintiff Petrease Clarkson will advance Nine Thousand and 00/100s (\$9,000.00) dollars to be used for the payment of taxes, insurance and general maintenance of the Subject Property including without limitation for roof repair and matters related to the underground storage tanks.
9. Likewise, Defendants/Third-Party Plaintiff will advance Six Thousand and 00/100s (\$6,000.00) dollars to be used for the payment of taxes, insurance and general maintenance of the Subject Property including without limitation for roof repair and matters related to the underground storage tanks.
10. Any funds advanced by Ms. Clarkson and Defendants/Third-Party Plaintiff will be considered loans and shall be repaid at the same time, in the same manner and in the same percentages as the loans by each. By way of example, if the Subject Property generates Ten Thousand and 00/100s (\$10,000.00) dollars for repayment

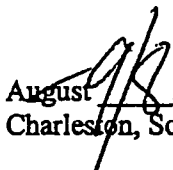
of the loans, then Six Thousand Seven Hundred and 00/100s (\$6,700.00) dollars would be paid to Clarkson and Three Thousand Three Hundred and 00/100s (\$3,300.00) dollars to Defendants/Third-Party Plaintiff.

11. Plaintiffs agree not to enter into any leases in excess of one (1) year during the course of their management of the Subject Property.
12. The parties agree not to convey, mortgage, encumber, or take any action to affect the current status of title to the Subject Property.
13. The parties will execute and deliver a Deed in Lieu of Foreclosure to counsel for Defendants/Third-Party Plaintiff.
14. Said Deed in Lieu of Foreclosure will be held in trust by counsel for Defendants/Third-Party Plaintiff and will not be recorded unless Plaintiffs breach the terms hereof.
15. The parties shall execute such documents as are reasonably requested to effectuate the Deed in Lieu including any corrective deeds and affidavits as may be required by any title insurance carrier.
16. In the event of a sale of the Property which generates more funds than necessary to repay the debt owed Defendants/Third Party Plaintiff as more fully described in the Answer, Counterclaim, Cross-Claim and Third-Party Complaint filed in this matter, the excess proceeds will be divided as follows: Fifty (50%) percent to Cynthia Miller or such person or entity designated by her; Forty (40%) percent to Defendants/Third-Party Plaintiffs or such person or entity designated by them; and Ten (10%) percent to Petrease Clarkson or such person or entity as designated by her.
17. The parties agree to keep the terms of this agreement confidential to the extent permitted by law, and the Court does hereby order the Clerk of Court to seal this

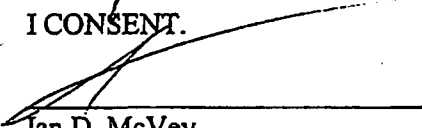
Consent Order pending further order of this Court or another Court of competent jurisdiction.

18. The parties agree that this action will remain pending during compliance with the terms of this agreement. In the event that a change in the status of title makes a deed in lieu of foreclosure impractical, the Plaintiffs agree not to contest the foreclosure.

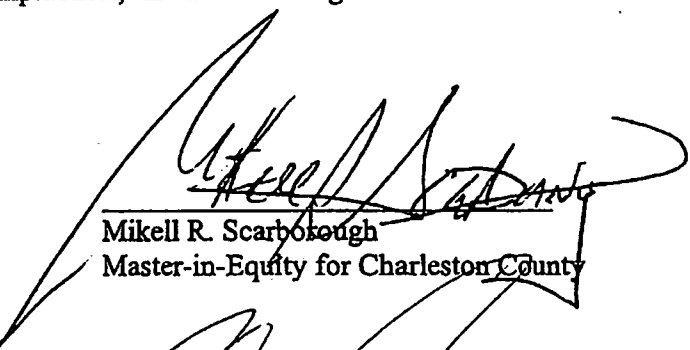
IT IS SO ORDERED.


August 18, 2016
Charleston, South Carolina

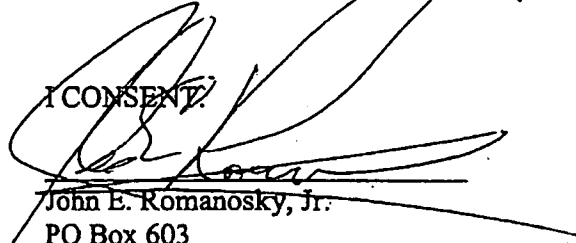
I CONSENT.


Ian D. McVey
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*Attorneys for Marilyn L. Dillon
and JLJ Associates, LLC*


Mikell R. Scarborough
Master-in-Equity for Charleston County

I CONSENT.


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Tel. (843)724-1054
Fax (843)724-1061
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Attorney for Plaintiffs and PMC, LLC

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Peter Miller, Mary Alice Miller, Mary Alice
Miller, as Trustee of Mary Alice Miller Living
Trust, Miller Group Properties, LLC, and C-Miller
Properties, LLC,
☐ Plaintiff

v.

Marilyn L. Dillon and JLJ, LLC,
☒ Defendants.

and

Marilyn L. Dillon

Third-Party Plaintiff

vs.

PMC, LLC

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT

CASE NO. 2015-CP-10-3389

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

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phone: 843-724-1054 fax:

e-mail: john@jromanlaw.com other:

Defendant's Attorney:

Ian D. McVey, Bar No. 71196

Address:

Turner, Padget, Graham & Laney, P.A.
P.O. Box 1473
Columbia, SC 29202

phone: 803-227-4267 fax: 803-400-1564

e-mail: imcvey@turnerpadget.com other:

- ☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information	
Nature of Motion: Estimated Time Needed: Court Reporter Needed: ☐ YES / ☐ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order: Consent Settlement Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☐ Plaintiff / ☒ Defendant	<u>September 2, 2016</u> Date submitted
SECTION III: Motion Fee	
☒ PAID – AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions	
Name of Court Reporter: ☐ Other: _____	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-10-3389

PETER MILLER, MARY ALICE MILLER,)
MARY ALICE MILLER, AS TRUSTEE)
OF MARY ALICE MILLER LIVING)
TRUST, MILLER GROUP PROPERTIES,)
LLC, AND C-MILLER PROPERTIES,)
LLC,)

Plaintiffs,)

vs.)

MARILYN L. DILLON AND JLJ, LLC,)

Defendants)

and)

MARILYN L. DILLON)

Third-Party Plaintiff)

vs.)

PMC, LLC)
_____)

**ORDER DENYING PLAINTIFFS MOTION
TO ENFORCE SETTLEMENT ORDER**

FILED
2017 SEP 27 AM 9:45
JULIE D. CLARK
CLERK OF COURT

This matter comes before the Court on a Motion to Enforce Settlement Order filed by Plaintiffs on April 28, 2017. A hearing was held before the undersigned on June 14, 2017. Based on my review of the file, the submissions of the parties, the arguments of counsel for the parties and the applicable substantive and procedural law, the Court **DENIES** Plaintiffs' Motion to Enforce Settlement Order for the reasons set forth below.

FACTUAL AND PROCEDURAL BACKGROUND

On June 1, 2006, Peter Miller, Mary Alice Miller (collectively, the "Millers"), Mary Alice Miller as Trustee of the Mary Alice Miller Living Trust ("Trust") and Miller Group



Properties, LLC ("Miller Group") made, executed and delivered to Defendant Marilyn J. Dillon ("Dillon") a Promissory Note ("Note") in the original principal sum of Three Hundred Sixty Thousand and 00/100s (\$360,000.00) dollars. Said Note provided for payment of all sums due thereunder to be paid on May 31, 2009. To better secure the sums extended as evidenced by the Note, a Mortgage ("Mortgage") dated February 5, 2008 was executed and recorded on February 7, 2008 in Book S650 at page 250. Said Mortgage is a valid lien on certain real property located in Charleston, South Carolina ("Property").

On March 23, 2012, Miller Group made, executed and delivered to Dillon a Modified Promissory Note ("Modified Note") in the principal sum of Four Hundred Thirty-Four Thousand Fifty-Nine and 00/100s (\$434,059.00) dollars. Said Modified Note provided for interest at a rate of seven percent (7%) per annum and for monthly payments to be in the amount of Two Thousand Five Hundred Thirty-Two and 01/100s (\$2,532.01) dollars. The Modified Note had a term of one (1) year with a balloon of the unpaid balance being due on May 1, 2013. Concurrent with the execution of the Modified Note, a Modification of Mortgage Agreement ("Mortgage Modification") was recorded on July 11, 2012 in Book O263 at page 507. This Mortgage Modification memorialized the terms of the Modified Note and re-affirmed the Mortgage as security for same.

Thereafter, the Loan went unpaid for a long period of time. No payment was made at maturity. Prior to Defendants commencing a foreclosure action, the Plaintiffs instituted this matter by the filing of a Lis Pendens, Summons and Complaint by the Plaintiffs on June 15, 2015. The Complaint alleges *inter alia* a cause of action for Declaratory Judgment. Defendants Dillon and JLJ Associates, LLC ("JLJ") (collectively "Defendants") filed an Answer, Counterclaim, Cross-Claim and Third-Party Complaint ("Answer") on September 17, 2015.



Defendants' Answer generally denies the allegations of the Complaint, asserts various affirmative defenses and further asserts claims against Plaintiffs and PMC for foreclosure of that certain Mortgage held by Dillon.

Mediation was held, resulting in a Consent Settlement Order ("Settlement Order") being entered on September 12, 2016. Under the terms of the Settlement Order, each of the parties had certain obligations, most of which were the responsibility of the Plaintiffs and PMC. Plaintiffs' filed the instant Motion to Enforce Settlement Order on April 28, 2017.

ANALYSIS

Plaintiffs seek to compel performance of the Settlement Order to require Defendants to execute a Real Estate Purchase Agreement submitted by CRM Agency, LLC, a Georgia limited liability company of which Plaintiff Cynthia Miller is the managing member. Defendants argue performance should not be compelled because (1) the Real Estate Purchase Agreement violates the terms of the Settlement Order; and (2) Plaintiffs own breaches of the Settlement Order preclude such enforcement. The Court agrees with Defendants and, for the following reasons, finds that the denial of the Motion to Enforce Settlement Order is merited.

1. The Real Estate Purchase Agreement does not comply with the Settlement Order.

The parties disagree as to whether the Real Estate Purchase Agreement complies with the Settlement Order. Based on a consideration of the language of the Settlement Order, the Court finds the Real Estate Purchase Agreement does not comply with several provisions of the Settlement Order.

First, Plaintiffs did not provide a loan commitment or a ratified contract as stipulated by the Settlement Order.¹ Mutual assent is a longstanding principle of contract law. See Prestwick

¹ Under the terms of the Settlement Order, Plaintiffs were required to present (a) "a ratified contract to sell the property....for Eight Hundred Fifty Thousand and 00/100s (\$850,000.00) dollars or higher..." within One Hundred

Golf Club, Inc. v. Prestwick Limited Partnership, 331 S.C. 385, 503 S.E.2d 184 (Ct. App. 1998) (“In order for a contract to be binding, there must be mutual manifestation of assent between the parties”); see also, Rose Electric, Inc. v. Cooler Erectors of Atlanta, Inc., 418 S.C. 424, 794 S.E.2d 382 (Ct. App. 2016) (“A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct”). The Real Estate Purchase Agreement is signed only by C-Miller Properties, LLC and the proposed Buyer, CRM Agency, LLC. Neither JLJ nor PMC, the other two (2) owners of the Property, signed the Agreement. As such, the Court finds that it is not a ratified contract, and that the Real Estate Purchase Agreement does not comply with the terms of the Settlement Order.

The Court also finds the Real Estate Purchase Agreement is not supported by valuable consideration which is a necessary element of contract formation. See Plantation A.D., LLC v. Gerald Builders of Conway, Inc., 386 S.C. 198, 687 S.E.2d 714 (Ct. App. 2009) (“The necessary elements of a contract are an offer, acceptance and valuable consideration.”). Section 3 thereof provides as follows: “The total purchase price for the Property is \$850,000.00. Buyer will pay no money down, \$0.00 (“Earnest Money”) upon the execution of this Agreement and will pay the entire \$850,000.00 of the purchase price at closing.” As a result, the Real Estate Purchase Agreement lacks consideration and does not comply with the terms of the Settlement Order.

Additionally, the Court finds the Real Estate Purchase Agreement violates the terms of the Settlement Order in that Section 4 thereof provides that “either Party may unilaterally delay closing for any reason, but in no event will closing occur more than 30 day after the Closing date specified herein....” Any extension of the Closing Date pursuant to Section 4 of the Real Estate

Eighty (180) days of the date of the filing of the Settlement Order or (b) an unqualified commitment letter from a reputable lender...in an amount sufficient to pay the debt owed Defendants/Third Party Plaintiffs...

Purchase Agreement would violate the terms of the Settlement Order as it would set closing more than two hundred seventy (270) days from the filing of said Settlement Order.

Therefore, the Real Estate Purchase Agreement does not comply with the terms of the Settlement Order. As a result, the Court find that Plaintiffs have failed to comply with said Settlement Agreement, Defendants were entitled to reject and refuse to sign the Real Estate Purchase Agreement, and Dillon was entitled to record the Deed-in-Lieu of Foreclosure as she has now done.

At the hearing, Cynthia Miller offered an affidavit in response to Defendants' response. In that affidavit, Ms. Miller offered multiple facts that are not before the Court on this Motion. As such, the Court discounts any matter not-relevant to the Motion to Enforce. That said, Ms. Miller's affidavit argues that the deadline to present a ratified contract was March 11, 2017 and, because the 11th was a Saturday, that the deadline was extended to March 13, 2017. The Settlement Agreement does not make a provision for business days versus weekend days. As such, the deadline to obtain a ratified contract was March 11, 2017.

2. Plaintiffs cannot compel Settlement Agreement due to their own non-performance.

While the Motion to Enforce Settlement Order fails on the basis of the Real Estate Purchase Agreement not complying with certain provisions of the Settlement Order, Defendants also argue Plaintiffs cannot seek specific performance under the Settlement Agreement because their own breaches preclude such enforcement.

In South Carolina jurisprudence, settlement agreements are viewed as contracts. Pee Dee Stores, Inc. v. Doyle, et al., 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009). When "a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests." Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 594,

658 S.E.2d 539, 543 (Ct. App. 2008) (quoting Willms Trucking Co. v. JW Constr. Co., 314 S.C. 170, 178, 442 S.E.2d 197, 201 (Ct. App. 1994)). Further, in order to compel specific performance, a court of equity must find that: (1) there is clear evidence of a valid agreement (2) the agreement has been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. Ingram v. Kasey's Associates, 340 S.C. 98, 531 S.E.2d 287 (2000). The doctrine of unclean hands precludes a party from recovering in equity if he or she acted unfairly in a matter that is the subject of the litigation to the prejudice of the other party. Id.

Defendants put forth sufficient evidence illustrating that they have fulfilled their obligations thereunder while the Plaintiffs have consistently failed to honor theirs. First, the Settlement Order provided that the Property would be listed for sale with Reid Davis of Lee & Associates which never happened. As the evidence shows, the Plaintiffs, in particular Cynthia Miller, failed to cooperate with Mr. Davis throughout the process making a listing impracticable. In fact, the only person to cooperate fully with Mr. Davis was Joseph Dillon, the spouse of Dillon. As indicated in Mr. Davis' affidavit, multiple attempts were made by him to contact Cynthia Miller, the person with the most knowledge of the Property, to no avail. Even when a listing agreement was presented, Cynthia Miller, who managed the Property for many years refused to execute it.

Second, the Plaintiffs failed to pay the 2016 property taxes for the Property as required under the Settlement Order. Third, the Plaintiffs did not provide the Deed-in-Lieu documents to Defendants' counsel until after the time to produce a ratified contract or *bona fide* loan commitment had passed. When provided, the documents were altered [by C-Miller] and did not

contain sufficient documentation to make it possible for Dillon to obtain title insurance despite numerous requests. Fourth, Dillon complied with the terms of the Settlement Order by advancing funds pursuant to Section 9 of same.

Therefore, the Court finds that Plaintiffs cannot seek specific performance of the Settlement Order when they themselves have not complied with the Settlement Order. First, they breached the Settlement Order first making them unable to demand performance now. Second, Plaintiffs', in particular C-Miller Properties, LLC and its sole member, failure to cooperate with the listing of the Property as required in the Settlement Order constitutes unclean hands barring specific performance. Third, while Defendants fulfilled their obligations under the Settlement Order, Plaintiffs have failed to honor theirs making specific performance inappropriate.

3. Prejudice to the Parties.

The Court further finds that enforcing the Settlement Order would work a prejudice on Defendants. "Under South Carolina law, the equitable power of a court is not bound by cast-iron rules, but exists to do fairness and is flexible and adaptable to particular exigencies so that relief will be granted when, in view of all the circumstances, to deny it would permit one party to suffer a gross wrong at the hand of another." Hooper v. Ebenezer Sr. Servs. & Rehab. Ctr., 386 S.C. 108, 116–17, 687 S.E.2d 29, 33 (2009). Courts will not hear one who engages in open defiance of orders and then complains that others who have made a good faith effort to comply are guilty of some technical default. Whetstone v. Whetstone, 309 S.C. 227, 420 S.E.2d 877 (Ct. App. 1992). This is especially true when the disobedient party's own conduct has prevented the one acting in good faith from fulfilling his duties. Id.

A motion to compel a settlement agreement is one for specific performance. See Carlson v. S.C. State Plastering, LLC, 404 S.C. 250, 743 S.E.2d 868 (Ct. App. 2013) (filing a motion to

compel to enforce an agreement); King v. Oxford, 282 S.C. 307, 318 S.E.2d 125 (Ct. App. 1984) (requesting specific performance to compel transfer of stock as required by contract). Specific performance is an equitable remedy that requires the Court to weigh the equities of the parties involved. Time Warner Cable v. Condo Services, Inc., 381 S.C. 275, 282, 672 S.E.2d 816, 819 (Ct. App. 2009) (“[A] court granting [specific performance] must...carefully consider all the circumstances of the particular case.”).

In this matter, the equities favor the Defendants. As has been established, the loan which was the subject of this matter matured in May 1, 2013, over four (4) years from the date of this Order. It originated in June of 2006. Therefore, Dillon has been without payment of her funds since at least May 1, 2013 and, according to the arguments at the hearing, long before that time. Dillon bargained for foreclosure of the property if no payment was made. She then agreed to accept a Deed-in-Lieu of Foreclosure after giving the Plaintiffs adequate time to sell the property to a third party under the Settlement Order. No sale materialized despite her efforts and, she is entitled to the remedy provided: the recordation of the Deed-in-Lieu and title to the Property.

Additionally, Dillon has continued to be prejudiced while this motion has been pending. There are various costs associated with the property including the 2016 taxes which were not paid by the Plaintiffs as required under the Settlement Order that continue to accrue penalties along with other costs. Dillon is hesitant to expend further amounts for which it will be unreimbursed if the Court were to order the property sold to CRM Agency, LLC.

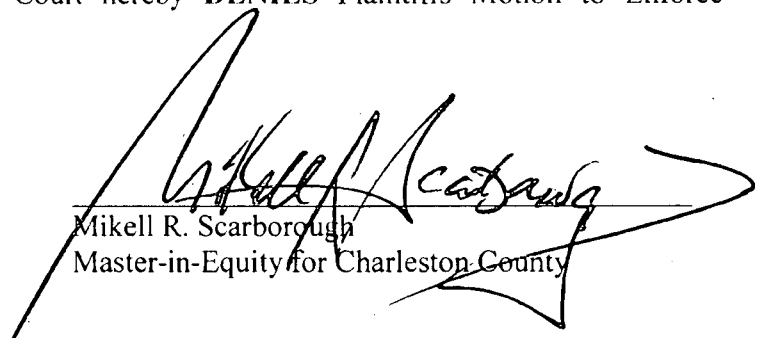
Further, the Deed-in-Lieu of Foreclosure was recorded prior to the Motion to Enforce Settlement along with certain corrective deeds to clear up title issues. Thereafter, Dillon conveyed the property ~~conveyed~~¹²⁸ into an LLC. Any order compelling enforcement of the Settlement Agreement would require this Court to either set aside those transfers or to re-write

the parties Settlement Agreement. Courts are not in the business of re-writing contracts for the parties and this Court cannot do so at this stage. Abel v. S.C. Dept. of Health and Environmental Control, 419 S.C. 434, 441, 798 S.E.2d 445, 448 (Ct. App. 2017) (“Courts are without authority to alter a contract by construction or to make new contracts for the parties.”); York v. Dodgeland of Columbia, Inc., 406 S.C. 67, 90, 749 S.E.2d 139, 151 (Ct. App. 2013) (“South Carolina’s general principle...is that it is not a function of the court to rewrite contracts for the parties.”). Further, the Court is hesitant to set aside valid conveyances in the context of a Motion to Enforce Settlement.

CONCLUSION

Based on the foregoing, the Court hereby **DENIES** Plaintiffs Motion to Enforce Settlement Order.

IT IS SO ORDERED.



Mikell R. Scarborough
Master-in-Equity for Charleston County

Charleston, South Carolina
September 22, 2017

FORM 4

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON
IN THE COURT OF COMMON PLEAS

JUDGMENT IN A CIVIL CASE

CASE NO. ²⁰¹⁵ ~~2016~~ CP-10-6058 **3387**

Peter Miller, et al.

Marilyn L. Dillon and JLU, LLC; and

Marilyn L. Dillon (Third-Party Plaintiff)
PLAINTIFF(S)

PMC, LLC. (Third-Party Defendant).
DEFENDANT(S)

Submitted by: Master in Equity

Attorney for : ☐ Plaintiff ☐ Defendant
or
☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☒ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.
- ☐ **ACTION DISMISSED** (*CHECK REASON*): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ **ACTION STRICKEN** (*CHECK REASON*): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT** (*CHECK APPLICABLE BOX*): ☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

NOTE: ATTORNEYS ARE RESPONSIBLE FOR NOTIFYING LOWER COURT, TRIBUNAL OR ADMINISTRATIVE AGENCY OF THE CIRCUIT COURT RULING IN THIS APPEAL.

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☐ Statement of Judgment by the Court: the Plaintiff's Motion to Amend Order under Rule 52(B) and Motion to Alter or Amend Judgment under Rule 59(E) is respectfully DENIED.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE PUBLIC INDEX

Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
N/A		\$
		\$
		\$

If applicable, describe the property, including tax map information and address, referenced in the order:
N/A

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.

Circuit Court Judge

3062

Judge Code

12/18/17

Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 20____ and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 20____ to attorneys of record or to parties (when appearing pro se) as follows:

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT *Circuit*
CASE NO. 2015-CP-10- 3389

PETER MILLER, MARY ALICE)
MILLER, MARY ALICE MILLER, AS)
TRUSTEE OF MARY ALICE MILER)
LIVING TRUST, MILLER GROUP)
PROPERTIES, LLC, AND C-MILLER)
PROPERTIES, LLC)

Plaintiffs)

vs.)

MARILYN L. DILLON AND JLJ, LLC)

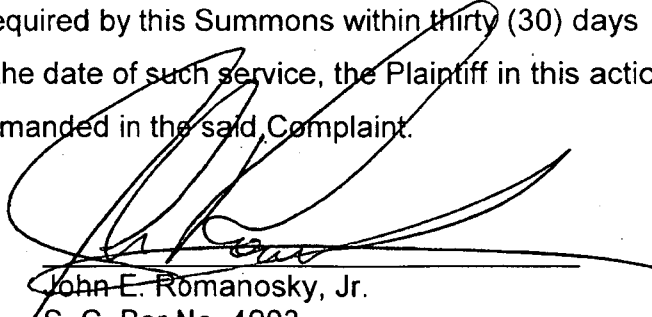
Defendants.)

SUMMONS

FILED
2015 JUN 15 PM 2:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

TO THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in this action, a copy of which is herewith served upon you and to serve a copy of your Answer to the said Complaint on the Subscriber at his office at the address below, within thirty (30) days after service hereof, exclusive of the day of such service; and, if you fail to answer the Complaint as required by this Summons within thirty (30) days after the service hereof, exclusive of the date of such service, the Plaintiff in this action will apply to the Court for the relief demanded in the said Complaint.


John E. Romanosky, Jr.

S. C. Bar No. 4903

One Cool Blow, Suite 201

Charleston, South Carolina 29403

843-724-1054

john@jromanlaw.com

Attorney for Plaintiffs

Charleston, South Carolina
June 12, 2015

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT
CASE NO. 2015-CP-10- 33891

PETER MILLER, MARY ALICE)
MILLER, MARY ALICE MILLER, AS)
TRUSTEE OF MARY ALICE MILER)
LIVING TRUST, MILLER GROUP)
PROPERTIES, LLC, AND C-MILLER)
PROPERTIES, LLC)

Plaintiffs)

vs.)

MARILYN L. DILLON AND JLJ, LLC)

Defendants.)

**COMPLAINT
DECLARATORY JUDGMENT**

(NON-JURY)

FILED
2015 JUN 15 PM 2:43
JULIE J. ARMSTRONG
CLERK OF COURT
BY

NOW COMES the Plaintiffs who respectfully allege and say as follows:

JURISDICTION

1. Plaintiffs Peter Miller and Mary Alice Miller are residents of Charleston County, South Carolina.
2. Plaintiff, Miller Group Properties, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina, doing business in Charleston County.
3. Plaintiff, C-Miller Properties, LLC, is a limited liability company organized and existing under the laws of the State of South Carolina, doing business in Charleston County.
4. Defendant, Marilyn L. Dillon (hereinafter called "Dillon"), is a citizen and resident of Silver Spring, Maryland, but doing business and owning property in Charleston County, South Carolina.

5. Defendant, JLJ, LLC, is, on information and belief, a limited liability company organized under the laws of the State of Maryland and owns property in Charleston County, South Carolina.

6. The real property described in the Lis Pendens in this action is located in Charleston County, South Carolina (hereafter sometimes called the "Property").

7. The Court of Common Pleas for Charleston County has jurisdiction over the parties and the subject matter of this action.

FACTUAL ALLEGATIONS

8. On July 31, 2006, Plaintiffs, Peter Miller, Mary Alice Miller, Mary Alice Miller, as Trustee of the Mary Alice Miller Living Trust and Miller Group Properties, LLC, executed a Promissory Note dated June 1, 2006, in the principal amount of \$360,000.00 in favor of the Defendant, Marilyn L. Dillon, a copy of said Promissory Note being attached hereto and incorporated herein by reference as Exhibit "A."

9. That on February 5, 2008, Plaintiffs, Peter Miller, Mary Alice Miller, Mary Alice Miller, as Trustee of the Mary Alice Miller Living Trust, Miller Group Properties, LLC, and C-Miller Properties, LLC, executed a Mortgage in favor of the Defendant Dillon as security for the payment of the Promissory Note dated June 1, 2006, said Mortgage being recorded in the RMC office for Charleston County in Book S650 at page 250, a copy of said Mortgage being attached hereto and incorporated herein by reference as Exhibit "B".

10. Plaintiff, C-Miller Properties, LLC, joined in the execution of the aforesaid Mortgage and thereby hypothecated its 50% interest in the Property even though C-

Miller Properties, LLC, was not a maker and is not obligated under the Promissory Note of June 1, 2006.

11. That on May 4, 2011, Defendant, Mary Alice Miller, as Trustee of the Mary Alice Miller Living Trust conveyed certain real property to the Defendant Dillon valued at \$102,955.67 in partial satisfaction of the above referenced Promissory Note and Mortgage held by the Defendant Dillon, said deed being recorded in the RMC office for Charleston County on May 25, 2011, in Book 0189 at page 097, RMC office for Charleston County, a copy of said deed being attached hereto and incorporated herein by reference as Exhibit "C."

12. That on March 23, 2012, Plaintiff, Miller Group Properties, LLC, and Defendant Dillon executed a Modified Promissory Note and Modification of Mortgage Agreement modifying the original Promissory Note dated June 1, 2006, said modification agreement being recorded on July 11, 2012, in Book 0263 at page 507, RMC office for Charleston County, a copy of said Modified Promissory Note and Modification of Mortgage being attached hereto and incorporated herein by reference as Exhibit "D."

13. That on May 14, 2012, Plaintiff, Miller Group Properties, LLC, conveyed an undivided 40% interest in the subject Property to JLJ, LLC, a limited liability company wholly owned by the Defendant Dillon, as further partial satisfaction of the Promissory Note dated June 1, 2006, said deed being dated May 14, 2012, and recorded in the RMC office for Charleston County on July 11, 2012, in Book 0263 at page 508, a copy of said deed being attached hereto and incorporated herein by reference as Exhibit "E."

FOR A FIRST CAUSE OF ACTION

(Declaratory Relief Pursuant to S. C. Code §§ 15-53-10, et seq.)

14. Plaintiffs repeats and reallege the allegations of Paragraph 1 through 13 as if fully incorporated herein.

15. Plaintiffs allege that the conveyance to the Defendant Dillon set forth in Paragraph 10 above and the conveyance to the Defendant JLJ, LLC, set forth in Paragraph 12 above were made in partial satisfaction of the Promissory Note dated June 1, 2006, and the subsequent Mortgage recorded in Book S650 at page 250; collectively, these conveyances represented payment of the sum of \$538,955.67 towards the satisfaction of said Promissory Note and Mortgage.

16. On information and belief, Defendant Dillon acknowledges that the conveyance set forth in Paragraph 10 was in partial satisfaction of the Promissory Note and Mortgage, but does not agree that the conveyance from Miller Group Properties, LLC, to JLJ, LLC, constitutes a partial satisfaction or payment of the Promissory Note dated June 1, 2006, and the subsequent Mortgage recorded in Book S650 at page 250.

17. Plaintiffs allege that an actual, justiciable controversy and dispute exists between the Plaintiffs and the Defendants as to the remaining balance due, if any, on the Promissory Note dated June 1, 2006, together with the rights, duties, status, and other legal relationships between the parties.

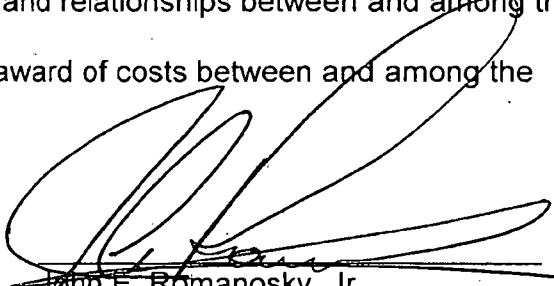
18. As a result of the foregoing, Plaintiffs ask this Court to make the following judicial determinations.

- a. that the property conveyed to the Defendant Dillon as set forth in Paragraph 10 above was so conveyed in partial satisfaction of the

Promissory Note dated June 1, 2006, and that Plaintiffs be credited with a principal payment of \$102,955.67 toward the outstanding balance, if any, on said Promissory Note;

- b. that the property conveyed to the Defendant JLJ, LLC, as set forth in Paragraph 12 above was so conveyed in partial satisfaction of the Promissory Note dated June 1, 2006, and that Plaintiffs be credited with a principal payment of \$436,000.00 toward the outstanding balance, if any, on the Promissory Note;
- c. that the remaining balance on the Promissory Note, if any, be determined by this Court.

WHEREFORE, Plaintiffs pray that this Court assume jurisdiction over the parties and the subject matter of this action and thereafter issue its judgment or decree declaring and establishing the rights, duties, and relationships between and among the parties to this action, and also making such award of costs between and among the parties as may be equitable and just.



John E. Romanosky, Jr.
S. C. Bar No. 4903
One Cool Blow Street, Suite 201
Charleston, South Carolina 29403
843-724-1054
john@jromanlaw.com

Attorney for Plaintiffs

Charleston, South Carolina
June 12, 2015

EXHIBIT "A"

PROMISSORY NOTE**\$360,000.00****Date: June 01, 2006**

For value received, the undersigned Peter Miller, Mary Alice Miller, Mary Alice Miller as Trustee of Mary Alice Miller Living Trust, Miller Group Properties, LLC (the "Borrower"), at 4213 Savannah Highway, Ravenel, South Carolina 29470, promises to pay to the order of Marilyn L. Dillon, (the "Lender"), at 11201 Prelude Court, Silver Spring, Maryland 20901, (or at such other place as the Lender may designate in writing) the sum of \$360,000.00 with interest from June 01, 2006, on the unpaid principal at the rate of 7.00% per annum.

The unpaid principal and accrued interest shall be payable in full on May 31, 2009 (the "Due Date").

All payments on this Note shall be applied first in payment of accrued interest and any remainder in payment of principal.

If any payment obligation under this Note is not paid when due, the remaining unpaid principal balance and any accrued interest shall become due immediately at the option of the Lender.

The Borrower reserves the right to prepay this Note (in whole or in part) prior to the Due Date with no prepayment penalty.

If any payment obligation under this Note is not paid when due, the Borrower promises to pay all costs of collection, including reasonable attorney fees, whether or not a lawsuit is commenced as part of the collection process.

This Note is secured by a Real Estate owned by Mary Alice Miller, as Trustee of the Mary Alice Miller Living Trust which lots and tract of land located on Highway 17 South in Ravenel, near Rantowles, Charleston County and All Buildings and Real Estate located at 4213 Savannah Highway, Ravenel, SC—See exhibit A for description of property at 4213 Savannah Highway, dated June 01, 2006. The Lender is not required to rely on the above security instrument and the assets secured therein for the payment of this Note in the case of default, but may proceed directly against the Borrower.

If any of the following events of default occur, this Note and any other obligations of the Borrower to the Lender, shall become due immediately, without demand or notice:

- 1) the failure of the Borrower to pay the principal and any accrued interest in full on or before the Due Date;

- 2) the death of the Borrower or Lender;
- 3) the filing of bankruptcy proceedings involving the Borrower as a debtor;
- 4) the application for the appointment of a receiver for the Borrower;
- 5) the making of a general assignment for the benefit of the Borrower's creditors;
- 6) the insolvency of the Borrower;
- 7) a misrepresentation by the Borrower to the Lender for the purpose of obtaining or extending credit.

In addition, the Borrower shall be in default if there is a sale, transfer, assignment, or any other disposition of any assets pledged as security for the payment of this Note, or if there is a default in any security agreement which secures this Note.

If any one or more of the provisions of this Note are determined to be unenforceable, in whole or in part, for any reason, the remaining provisions shall remain fully operative.

All payments of principal and interest on this Note shall be paid in the legal currency of the United States. The Borrower waives presentment for payment, protest, and notice of protest and nonpayment of this Note.

No renewal or extension of this Note, delay in enforcing any right of the Lender under this Note, or assignment by Lender of this Note shall affect the liability or the obligations of the Borrower. All rights of the Lender under this Note are cumulative and may be exercised concurrently or consecutively at the Lender's option.

This Note shall be construed in accordance with the laws of the State of South Carolina.

Signed this 31 day of July, 2006 at Miller's Liquors
Raeford, South Carolina

Borrower:

Peter Miller, Mary Alice Miller, Mary Alice Miller as Trustee of Mary Alice Miller Living Trust,
Miller Group Properties, LLC

By: Peter Miller Mary Alice Miller
Peter Miller, Mary Alice Miller, Mary Alice Miller as Trustee of Mary Alice Miller Living
Trust, Miller Group Properties, LLC

EXHIBIT "B"

After Recording Return To:
G. Thomas Hill, Esquire
PO Box 369
Ravenel, SC 29470

BK S650PG250

MORTGAGE

(title not examined)

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined herein.

(A) "Security Instrument" means this document, which is dated January, 2008.

(B) "Borrowers" are delineated on the below referenced Promissory Note:

(C) "Mortgagors" are Miller Group Properties, LLC, and C-Miller Properties, LLC. (Note C-Miller Properties, LLC hypothecates its' interest in said collateral by signing below).

Borrower is the mortgagor under this Security Instrument.

(D) "Lender" is Marilyn L. Dillon.

Lender is a Lender organized and existing under the laws of South Carolina.

Lender's address is 11201 Prelude Court, Silver Spring, MD 20901.

Lender is the mortgagee under this Security Instrument.

(E) "Note" means the promissory note signed by Borrower and dated June 1, 2006 and signed on July 31, 2006. The Note states that Borrower owes Lender THREE HUNDRED SIXTY THOUSAND AND 00/100THS Dollars (U.S.\$360,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than May 31, 2009.

(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."

(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.

(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.

(I) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

See: Exhibit A -for legal description of 1.06 acres, more or less

TMS:244-00-00-122

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the CHARLESTON COUNTY RMC OFFICE FOR CHARLESTON COUNTY:

[Type of Recording Jurisdiction]

[Name of Recording Jurisdiction]

which currently has the address of 4213 Savannah Hwy
[Street]

Ravenel, South Carolina 29470 ("Property Address"):
[City] [Zip Code]

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property".

MORTGAGOR COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. Payment of Principal, Interest, Prepayment Charges, and Late Charges. Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or Partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have not or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. Property Insurance. Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender, shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically

feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

3. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspection of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such and interior inspection specifying such reasonable cause.

4. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right to remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

5. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender.

6. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

7. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any on Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required

by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

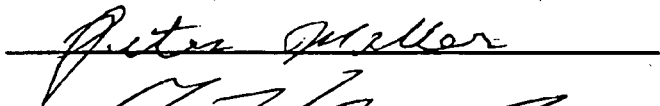
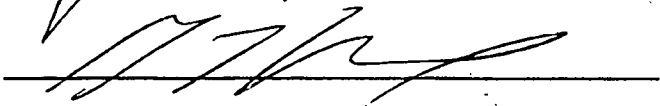
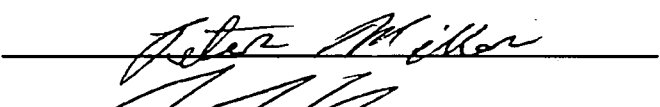
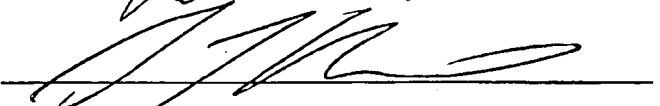
8. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

9. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

10. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply too the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid any may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in § 12-37-250 of the South Carolina Code of Laws.

BY SIGNING BELOW, Mortgagors accept and agree to the terms and covenants contained in this Security Instrument.
Signed, Sealed and delivered in the presence of:

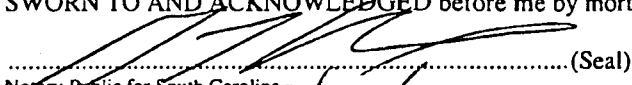
	Miller Group Properties, LLC.,
	By: <u>Mary Alice Miller</u> (Seal)
	Mary Alice Miller, Member
	By: <u>Cynthia Miller</u> (Seal)
	Cynthia Miller, Member
	C-Miller Properties, LLC
	By: <u>Cynthia Miller</u> (Seal)
	Cynthia Miller, Member

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

ACKNOWLEDGMENT

SWORN TO AND ACKNOWLEDGED before me by mortgagor herein this 5th day of February 2008.

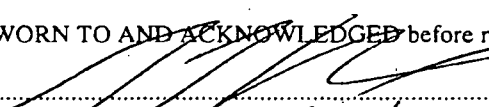
 (Seal)
Notary Public for South Carolina
My Commission Expires: 3/0/8

STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

CHARLESTON COUNTY

SWORN TO AND ACKNOWLEDGED before me by mortgagor herein this 5th day of February 2008.

 (Seal)

Notary Public for South Carolina

My Commission Expires: 3/10/8

ALL that parcel, tract and piece of land in the County of Charleston, State of South Carolina beginning Eleven Hundred Fifty (1,150') feet north of Highway 162 on Highway 17; thence for Two Hundred Ninety-Seven and Fifty-Six-Hundredths (297.56') feet in a northerly direction to a point, thence for Thirty-Six and Forty-Hundredths (36.40') feet in a northerly direction to a point, thence easterly direction for Twelve and Six Hundredths feet (12.06') to point; thence in a northerly direction for Fifteen (15') feet to a point; thence for Twenty-Five (25') feet in an easterly direction to a point; thence in a northerly direction for One Hundred Twenty-Seven and Ninety-Nine-Hundredths (127.99') feet to a point; thence in an easterly direction for Sixty Seven and Twenty Hundredths (67.20') feet to a point; thence in a southerly direction for One Hundred Eleven and Sixty Hundredths (111.66') feet to a point; thence in a southerly direction for One Hundred Fourteen (114') feet to a point; thence in a southerly direction for Two Hundred Eighty-Eight and Fourteen-Hundredths (288.14') feet to a point; thence in a westerly direction for Eighty-Two (82') feet to the beginning point.

Further being the same property bounded on the North by Wallace Creek, on the East and South by the lands of Ernest C. Seel, et al, and on the West by U. S. Highway 17 (Savannah Highway).

BEING the same premises conveyed to the ^{mortgagee} ~~grantor~~ herein by deed from Peter Miller as Trustee of the Peter Miller Living Trust dated December 31, 1999 dated August 30, 2002 and recorded in the RMC Office for Charleston County in Book U419, Page 263., and 1/2 interest in Book H610, page 775, dated December 28, 2006 and filed December 29, 2006.
TMS #: 244-00-00-122

AL BK S650PG256
RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



FILED

February 7, 2008

1:32:42 PM

BK

S650PG250

Charlie Lybrand, Register
Charleston County, SC

AL
Filed By:

Hill & Hill LLC

6209 Savannah Hwy.

Ravenel

SC 29470

Number of Pages:

7

DESCRIPTION

AMOUNT

	\$ 12.00
Postage	

TOTAL

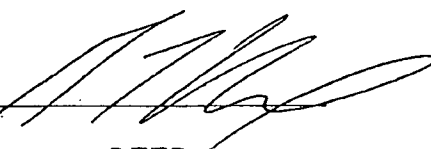
\$ 12.00

DRAWER:

B - ECP

DO NOT STAMP BELOW THIS LINE

EXHIBIT "C"

Title Not Examined: 

STATE OF SOUTH CAROLINA,

DEED

COUNTY OF CHARLESTON,



BP0189097

KNOW ALL MEN BY THESE PRESENTS, That I Mary Alice Miller, Trustee of the Mary Alice Miller Living Trust Dated December 31, 1999 (hereinafter whether singular or plural the "Grantor") in the State aforesaid, for and in consideration of the sum of One Hundred Two Thousand Nine Hundred Fifty-five and 67/100---(\$102,955.67)-----Dollars to the Grantor paid by Marilyn Miller Dillon (hereinafter whether singular or plural the "Grantee") has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release all of it's interest unto the said Grantee, Marilyn Miller Dillon, her heirs and assigns, forever, in the following described property, to wit:

All that certain piece, parcel or tract of land situate, lying and being in Saint Pauls Parish, Town of Ravenel, Charleston County, South Carolina known as Lot 1 containing 0.437 acres, more or less, and Lot 2 containing 0.514 acres, more or less, as shown on a plat entitled "PLAT SHOWING THE RE-LOCATION OF MILLERS ESTATE DRIVE PER S.C.D.O.T. PERMIT No 33765 (US-17) OWNED BY MARY ALICE MILLER, AS TRUSTEE OF THE MARY ALICE MILLER LIVING TRUST LOCATED IN SAINT PAULS PARISH IN THE TOWN OF RAVENEL, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by George A.Z. Johnson, Jr., Inc., F. Steven Johnson, RLS, 10038, dated June 7, 2006 and recorded in the RMC Office for Charleston County in Book EK at Page 95.

Said lot having such size, shape, dimensions, buttings and boundings as will appear upon review of the above referenced survey.

Being a portion of the same property conveyed to Grantor by deed recorded in Book R356 at Page 192 in the RMC Office for Charleston County.

TMS#: 245-00-00-232, and
TMS#: 245-00-00-203

ALSO

All that certain piece, parcel or tract of land situate, lying and being in Saint Pauls Parish, Town of Ravenel, Charleston County, South Carolina known as Lot 13

containing 1.089 acres, more or less as shown on a plat entitled "PLAT SHOWING THE RE-SUBDIVISION OF LOTS 1 THROUGH 11 A 7.969 ACRE TRACT OF LAND INTO LOTS 1 THROUGH 11 AND PLATING OF LOT 12, A 1.0899 ACRE LOT OWNED BY MARY ALICE MILLER, AS TRUSTEE OF THE MARY ALICE MILLER LIVING TRUST LOCATED IN SAINT PAULS PARISH IN THE TOWN OF RAVENEL, CHARLESTON COUNTY, SOUTH CAROLINA" prepared by George A.Z. Johnson, Jr., Inc., F. Steven Johnson, RLS, 10038, dated July 20, 2004 and revised May 31, 2005 and recorded in the RMC Office for Charleston County in Book EJ at Page 41.

Said lot having such size, shape, dimensions, buttings and boundings as will appear upon review of the above referenced survey.

Being a portion of the same property conveyed to Grantor by deed recorded in Book R356 at Page 192 in the RMC Office for Charleston County.

TMS#: 245-00-00-191

Grantee's Address: *1120 PRELUDE COURT*
Silver Springs, MD 20901

TOGETHER with all and singular, the rights, members, hereditaments and appurtenances to the said premises belonging or in anywise incident or appertaining.

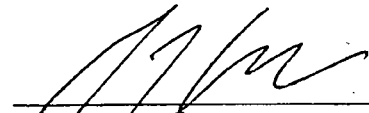
TO HAVE AND TO HOLD all and singular the premises before mentioned unto the said Grantee, Marilyn Miller Dillon, her heirs and assigns forever.

And the Grantor does not hereby warrant that the above described premises are free, clear, and discharged from any and all encumbrances, liens, judgments, and claims of any nature whatsoever, and Grantor does hereby bind itself and Grantor's Heirs and Assigns, to warrant and forever defend all and singular the said premises unto the said Grantee and Grantee's Heirs and Assigns, forever, against the Grantor and the Grantor's Heirs and against any and every person whomsoever lawfully claiming or to claim, the same or any part thereof.

WITNESS the Hands and Seals of the Grantor herein this 4 day of May, in the year of our Lord two thousand eleven and in the two hundredth and thirty-fourth year of the Sovereignty and Independence of the United States of America.

*Signed, Sealed and Delivered
in the presence of*

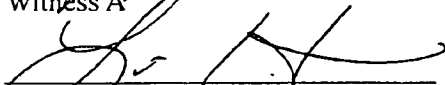
The Mary Alice Miller Living Trust
Dated December 31, 1999



Witness A

BY: 

Mary Alice Miller, Trustee



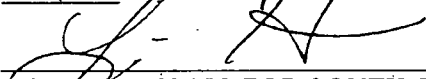
Witness B

STATE OF SOUTH CAROLINA,

ACKNOWLEDGMENT

COUNTY OF CHARLESTON,

SWORN TO AND ACKNOWLEDGED before me the grantor, namely, Mary Alice Miller,
Trustee of the Mary Alice Miller Living Trust Dated December 31, 1999 herein this
4 day of May, 2011.



(Seal)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: 4/4/2021

Note: No Opinion as to Title is rendered by G. Thomas Hill, of Hill and Hill, LLC.

STATE OF SOUTH CAROLINA)

COUNTY OF Charleston)

AFFIDAVIT OF TAXABLE OR EXEMPT TRANSFERS

RMC BK 0189 Pg 097 : pg 4 *

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred by Mary Alice Miller, Trustee of the Mary Alice Miller Living Trust Dated December 31, 1999 to Marilyn Dillon on May 4, 2011.
3. Check one of the following: THE DEED IS:
 - a. x subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - b. Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary
 - c. EXEMPT from the deed recording fee because (exemptions #) (Explanation if required) sibling to siblings (if exempt, please skip items 4-6 and go to item 7 of this Affidavit)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - a) The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of .
 - b) The fee is computed on the fair market value of the realty which is \$.
 - c) x The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ 102,955.67.
5. Check YES or NO to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$.
6. The DEED Recording Fee is computed as follows:
 - a. \$ 102,955.67 the amount listed in item 4 above.
 - b. \$ the amount listed in item 5 above (no amount place zero)
 - c. \$ 102,955.67 Subtract line 6(b) from line 6(a) and place the result.
7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ 381.10 document stamps plus \$10.00 Recording fee
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: GRANTOR.
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is not guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

Mary Alice Miller
Purchaser, Seller, Legal Representative of the Purchaser, or other
Responsible Person connected with the Transaction.

Mary Alice Miller, Trustee
Print or Type Name Here

SWORN to before me this
4th days of May, 2011

[Signature]
Notary Public for South Carolina

My Commission Expires: 4/4/2021

RECORDER'S PAGE

WMT
NOTE: This page **MUST** remain
with the original document

**Filed By:**

HILL & HILL LLC

6209 SAVANNAH HWY.
RAVENEL SC 29470**RECORDED**

Date: May 25, 2011

Time: 10:21:56 AM

Book

0189

Page

097

DocType

Deed

Charlie Lybrand, Register
Charleston County, SC**MAKER:**

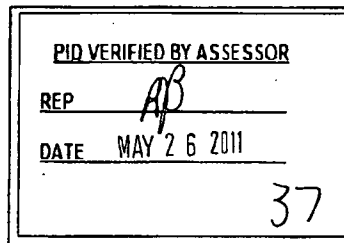
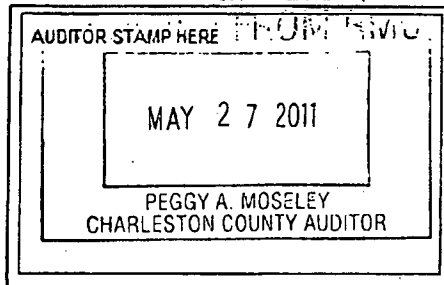
MILLER MARY A TR AL

Note: **RECIPIENT:**

DILLON MARILYN M

of Pages: 5

Recording Fee	\$ 10.00
State Fee	\$ 267.80
County Fee	\$ 113.30
Extra Pages	\$ -
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 391.10

Original Book:**Original Page:**DRAWER
CLERK Drawer 3
ECP0189
Book097
Page05/25/2011
Recorded Date5
Pgs

Original Book



Original Page

D
Doc Type10:21:56
Recorded Time

EXHIBIT "D"

SOUTH CAROLINA
(Interest Only—Modified Promissory Note)
(1 year balloon)

\$434,059.00

March 23, 2012

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of Marilyn L. Dillon in lawful money of the United States of America, the principal sum of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars, together with interest on unpaid principal at the rate of Seven (7%) per annum from the 1st day of March 2012, which said interest shall be payable in 12 equal installments of Two Thousand Five Hundred Thirty-two and 01/100 (\$2,532.01) Dollars first due on the 1st day of June 1, 2012 and due on the first (1st) day of each and every month, with a balloon payment due in addition to the 12th payment of interest on the 1st day of May 2013 in the amount of Two Thousand Five Hundred Thirty-two and 01/100 (\$2,532.01) Dollars and principal in the amount of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars. **(NO PREPAYMENT PENALTY)**. The borrower will pay a "late charge" of Fifty (\$50.00) Dollars when paid more than 10 days after due date. If promisor is ever thirty (30) days late with a payment she will be in default.

If default be made in the performance or compliance with any of the covenants and conditions of this note, then in said event, said principal sum shall become at once due and payable at the option of holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

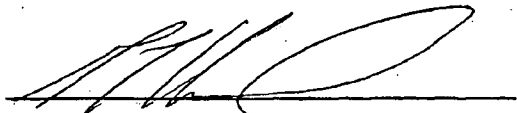
If this note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankrupt costs, or under foreclosure proceedings under the note, then all cost of collection, including the further and additional sum of ten (10%) percent, on the full amount due hereon, shall be added hereto as attorney's fees secured and collectible as the principal hereof.

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

Presentment, protest, and notice are hereby waived.

It is expressly agreed and declared that this note is given for an actual loan of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars,, and secured by a MORTGAGE MODIFICATION AGREEMENT of even date on the subject property bearing TMS:244-00-00-122 which shall be recorded in the RMC Office for Charleston County.

Witness the hand and seal of each of the signers hereof.



Amanda B. Wavelle

Miller Group Properties, LLC.,

By: Mary Alice Miller (Seal)
Mary Alice Miller, Member

STATE OF SOUTH CAROLINA)
)
 COUNTY OF CHARLESTON)

MODIFICATION OF MORTGAGE
 AGREEMENT

WHEREAS, Miller Group Properties, LLC executed a Note dated June 1, 2006 for a loan in the amount of Three Hundred Sixty Thousand and No/100---(\$360,000.00)—Dollars and a Mortgage securing the Note dated February 5, 2008 recorded in the RMC Office for Charleston County in Book S650 at Page 250, said Mortgage being secured by the property hereinafter described below.

FOR VALUABLE CONSIDERATION, the receipt whereof is hereby acknowledged, the undersigned owner and holder of that certain mortgage, namely, Marilyn L. Dillon hereby agrees to the terms of the modified Note, this being the Note dated simultaneously herewith from Miller Group Properties, LLC to Marilyn L. Dillon for the loan amount remaining due on the June 1, 2006 original Note (as of February 29, 2012 the amount of principal plus accrued interest and fees now due are in the amount of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars); with all parties Marilyn L. Dillon (Lender), Miller Group Properties, LLC (Borrower), [

agreeing that the modification of said Mortgage securing the original Note dated June 1, 2006 recorded in the RMC Office for Charleston County in Book S650 at Page 250, is necessary to secure as collateral, for the remaining loan amount of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars plus interest, the following described property.

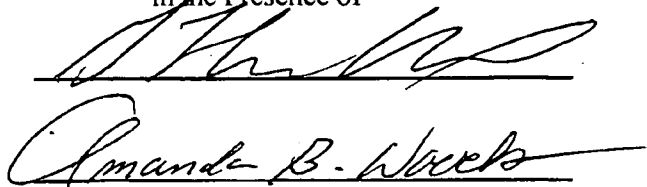
See: Exhibit A—legal description

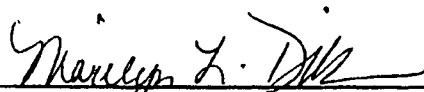
TMS #: 244-00-00-122

The original mortgage shall remain in full force and effect except as modified herein.

IN WITNESS WHEREOF, the mortgagee and mortgagor has caused this instrument to be duly executed this 23 day of March, 2012.

Signed, Sealed and Delivered
 in the Presence of


Amanda B. Weeks

By:  (Seal)
 MARILYN L. DILLON



STATE OF SOUTH CAROLINA,

ACKNOWLEDGMENT

COUNTY OF CHARLESTON,

The foregoing instrument was acknowledged by me this 23rd day of March, 2012,
by Marilyn L. Dillon, Mortgagee.

Amanda B. Woods (Seal)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: October 6, 2018

Signed, Sealed and Delivered
in the Presence of

[Signature]

Miller Group Properties, LLC.,

By: Mary Alice Miller (Seal)
Mary Alice Miller, Member

Amanda B. Woods

STATE OF SOUTH CAROLINA,

ACKNOWLEDGMENT

COUNTY OF CHARLESTON,

The foregoing instrument was acknowledged by me this 23 day of March, 2012,
by Mary Alice Miller, Member, as the duly authorized signatories for Miller Group Properties,
LLC, Mortgagor.

Amanda B. Woods (Seal)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: October 6, 2018

EXHIBIT A

ALL that parcel, tract and piece of land in the County of Charleston, State of South Carolina beginning Eleven Hundred Fifty (1,150') feet north of Highway 162 on Highway 17; thence for Two Hundred Ninety-Seven and Fifty-Six-Hundredths (297.56') feet in a northerly direction to a point, thence for Thirty-Six and Forty-Hundredths (36.40') feet in a northerly direction to a point, thence easterly direction for Twelve and Six Hundredths feet (12.06') to point; thence in a northerly direction for Fifteen (15') feet to a point; thence for Twenty-Five (25') feet in an easterly direction to a point; thence in a northerly direction for One Hundred Twenty-Seven and Ninety-Nine-Hundredths (127.99') feet to a point; thence in an easterly direction for Sixty Seven and Twenty Hundredths (67.20') feet to a point; thence in a southerly direction for One Hundred Eleven and Sixty Hundredths (111.66') feet to a point; thence in a southerly direction for One Hundred Fourteen (114') feet to a point; thence in a southerly direction for Two Hundred Eighty-Eight and Fourteen-Hundredths (288.14') feet to a point; thence in a westerly direction for Eighty-Two (82') feet to the beginning point.

Further being the same property bounded on the North by Wallace Creek, on the East and South by the lands of Ernest C. Seel, et al, and on the West by U. S. Highway 17 (Savannah Highway).

BEING the same premises conveyed to the grantor herein by deed from Peter Miller as Trustee of the Peter Miller Living Trust dated December 31, 1999 dated August 30, 2002 and recorded in the RMC Office for Charleston County in Book U419, Page 263.

TMS:244-00-00-122

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

HILL & HILL LLC

6209 SAVANNAH HWY.
RAVENEL SC 29470

RECORDED

Date: July 11, 2012

Time: 2:19:46 PM

Book

Page

DocType

0263

507

Mtg/Mod

Charlie Lybrand, Register
Charleston County, SC

MAKER:

MILLER GROUP PROPS LLC

of Pages: 4

of Sats:

of References:

RECIPIENT:

DILLON MARILYN L

Note:

Recording Fee \$ 6.00

Extra Reference Cost \$ -

Extra Pages \$ 2.00

Postage \$ -

Chattel \$ -

TOTAL \$ 8.00

Original Book:

S650

Original Page:

250

DRAWER

Drawer 1

CLERK

KLH



0263

Book



507

Page



07/11/2012

Recorded Date



4

Pgs



S650

Original Book



250

Original Page



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Doc Type



14:19:46

Recorded Time

EXHIBIT "E"



BP0263508

TITLE NOT EXAMINED:

STATE OF SOUTH CAROLINA,

WARRANTY DEED

COUNTY OF CHARLESTON,

WHEREAS, Miller Group Properties, LLC owns a 50% interest in the below described property;
and

WHEREAS, Miller Group Properties, LLC desires to transfer its 50% interest as follows: JLJ, LLC,
a forty (40%) percent interest, and PMC, LLC a ten (10%) percent interest: and

WHEREAS, the grantor hereby informs the grantees the property interest conveyed and the property
described in Exhibit A is subject to a Mortgage recorded in Book S650 at Page 250 in the RMC Office
for Charleston County, South Carolina.

KNOW ALL MEN BY THESE PRESENTS, THAT **Miller Group Properties, LLC.**

(Grantor) in the State aforesaid, for an in consideration of the sum of Five and 00/100 (\$5.00) Dollars,
to Grantor in hand paid at and before the sealing of these presents by Grantees in the State aforesaid,
the receipt of whereof is hereby acknowledged, have granted, bargained, sold and released, and by these
presents do grant, bargain, sell and release unto said JLJ, LLC, a forty (40%) percent interest, and PMC,
LLC a ten (10%) percent interest, the following described property:

See: Exhibit A---for legal description of Lot A

TMS #: 244-00-00-122

Grantee's Address: 5972 McKay Road, Ravenel, SC 29470

Together with all and singular the rights, members, hereditaments and appurtenances to the said
premises belonging, or in anywise incident or appertaining.

RMC Bk 0263 Pg 508 : pg 1 *

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said JIJ, LLC, a forty (40%) percent interest, and PMC, LLC a ten (10%) percent interest, its/their successors and assigns forever.

AND, Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the grantees against ourselves and its successors or assigns and any person or persons whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the hand(s) and seal(s) of the Grantor this 14th day of ~~March~~ ^{MAY}, in the year of our Lord two thousand twelve and in the two hundredth thirty-fifth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

 Miller Group Properties, LLC.,
By: Mary Alice Miller (Seal)
Mary Alice Miller, Member

Amanda B. Woods By: _____ (Seal)

STATE OF SOUTH CAROLINA,

ACKNOWLEDGMENT

COUNTY OF CHARLESTON,

The foregoing instrument was acknowledged by me this 23 day of March, 2012, by Mary Alice Miller, Member, as the duly authorized signatories for Miller Group Properties, LLC.

Amanda B. Woods (Seal)

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: October 6, 2018

Peter Miller

Miller Group Properties, LLC.,

By:

Cynthia Miller
Cynthia Miller, Member

(Seal)

Peter Miller

By:

(Seal)

STATE OF SOUTH CAROLINA,

ACKNOWLEDGMENT

COUNTY OF CHARLESTON,

The foregoing instrument was acknowledged by me this 14 day of ^{May} ~~March~~, 2012, by Cynthia Miller, Member as the duly authorized signatories for Miller Group Properties, LLC.

Mary D. Hancock (Seal)

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: August 27, 2018

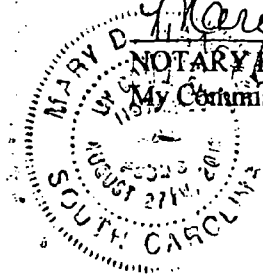


EXHIBIT A

ALL that parcel, tract and piece of land in the County of Charleston, State of South Carolina beginning Eleven Hundred Fifty (1,150') feet north of Highway 162 on Highway 17; thence for Two Hundred Ninety-Seven and Fifty-Six-Hundredths (297.56') feet in a northerly direction to a point, thence for Thirty-Six and Forty-Hundredths (36.40') feet in a northerly direction to a point, thence easterly direction for Twelve and Six Hundredths feet (12.06') to point; thence in a northerly direction for Fifteen (15') feet to a point; thence for Twenty-Five (25') feet in an easterly direction to a point; thence in a northerly direction for One Hundred Twenty-Seven and Ninety-Nine-Hundredths (127.99') feet to a point; thence in an easterly direction for Sixty Seven and Twenty Hundredths (67.20') feet to a point; thence in a southerly direction for One Hundred Eleven and Sixty Hundredths (111.66') feet to a point; thence in a southerly direction for One Hundred Fourteen (114') feet to a point; thence in a southerly direction for Two Hundred Eighty-Eight and Fourteen-Hundredths (288.14') feet to a point; thence in a westerly direction for Eighty-Two (82') feet to the beginning point.

Further being the same property bounded on the North by Wallace Creek, on the East and South by the lands of Ernest C. Seel, et al, and on the West by U. S. Highway 17 (Savannah Highway).

BEING the same premises conveyed to the grantor herein by deed from Peter Miller as Trustee of the Peter Miller Living Trust dated December 31, 1999 dated August 30, 2002 and recorded in the RMC Office for Charleston County in Book U419, Page 263.

TMS:244-00-00-122

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

AFFIDAVIT OF TAXABLE OR EXEMPT TRANSFERS

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred by Miller Group Properties, LLC to JLJ, LLC 40% and PMC, LLC 10% ownership interest respectively on May 14, 2012.
3. Check one of the following: THE DEED IS:
 - a. X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - b. _____ Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary
 - c. _____ EXEMPT from the deed recording fee because (exemptions # _____ Explanation if required) sibling to siblings (if exempt, please skip items 4-6 and go to item 7 of this Affidavit)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$
 - b) _____ The fee is computed on the fair market value of the realty which is \$
 - c) X The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ 436,000.00 (i.e. 1/2 of \$872,000.00 the tax assessed value).
5. Check YES X or NO _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$434,059.00, See: *Mortgage Modification recorded simultaneously herewith which modifies a Mortgage from Miller Group Properties, LLC to Marilyn L. Dillion dated 2/5/08 recorded in Book S650 at Page 250 on 2/7/08.*
6. The DEED Recording Fee is computed as follows:
 - a. \$ 436,000.00 the amount listed in item 4 above.
 - b. \$ 434,059.00 the amount listed in item 5 above (no amount place zero)
 - c. \$ 1,941.00 Subtract line 6(b) from line 6(a) and place the result.
7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is \$7.40 plus 10.00 Recording fee
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as: Attorney
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is not guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

[Signature]
 Purchaser, Seller, Legal Representative of the Purchaser, or other
 Responsible Person connected with the Transaction.

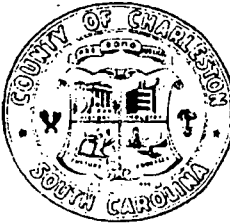
G. Thomas Hill
 Print or Type Name Here

SWORN to before me this
17th day of July, 2012

Annunzio B. Woods
 Notary Public for South Carolina
 My Commission Expires: October 6, 2018

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



RECORDED

Date: July 11, 2012

Time: 2:20:58 PM

Book	Page	DocType
0263	508	Deed

Charlie Lybrand, Register
Charleston County, SC

Filed By:

HILL & HILL LLC

6209 SAVANNAH HWY.
RAVENEL SC 29470

MAKER:

MILLER GROUP PROPS LLC

RECIPIENT:

JLJ LLC AL

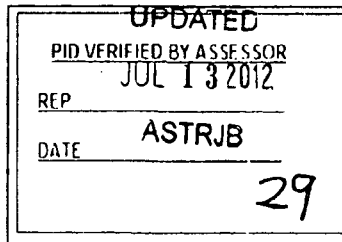
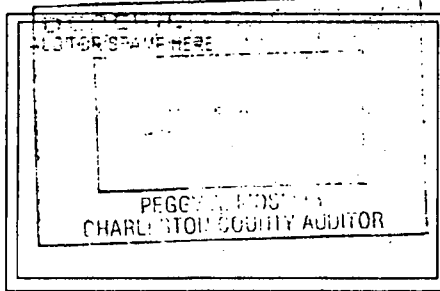
Note:

of Pages: 6

Recording Fee	\$ 10.00
State Fee	\$ 5.20
County Fee	\$ 2.20
Extra Pages	\$ 1.00
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 18.40

Original Book:

Original Page:



DRAWER Drawer 1
CLERK KLH



0263
Book



508
Page



07/11/2012
Recorded Date



6
Pgs



Original Book



Original Page



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Doc Type



14:20:58
Recorded Time

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Peter Miller, Mary Alice Miller, Mary Alice Miller as Trustee of Mary Alice Miller Living Trust, Miller Group Properties, LLC and C-Miller Properties, LLC,

Plaintiffs,

v.

Marilyn L. Dillon and JLJ, LLC,

Defendants;

and

Marilyn L. Dillon,

Third-Party Plaintiff,

v.

PMC, LLC,

Third-Party Defendant.

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

C/A NO.: 2015-CP-10-3389

**ANSWER, COUNTERCLAIM, CROSS-
CLAIM AND THIRD-PARTY
COMPLAINT**

(Non-Jury)
(Foreclosure)
(Deficiency Demanded)

FILED

SEP 17 2015

**JULIE J. ARMSTRONG
CLERK, C.P. & G.S.**

Horry County
CLOCK IN TIME
2015 SEP 18 PM 1:48
CANCELED
MELANIE HIGGINS
CLERK OF COURT

NOW COME Marilyn L. Dillon and JLJ Associates, LLC (incorrectly named above as JLJ, LLC) (collectively "Defendants"), by and through their undersigned counsel, who hereby allege and state as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in the Plaintiffs' Complaint not hereinafter admitted, qualified or otherwise explained is denied and strict proof thereof demanded.

2. Defendants admit only so much of the allegations contained in paragraphs 1, 2, and 3 of Plaintiffs' Complaint as are a matter of public record. The remaining allegations contained therein are denied and strict proof thereof demanded.

3. Defendants admit the allegations contained in paragraph 4 of Plaintiffs' Complaint.

4. Defendants deny the allegations contained in paragraph 5 of the Plaintiffs' Complaint and affirmatively assert that JLJ Associates, LLC is a limited liability company organized and existing under the laws of the State of South Carolina.

5. Defendants admit the allegations of paragraphs 6 and 7 of Plaintiffs' Complaint.

6. In response to the allegations of paragraphs 8, 9, and 10 of Plaintiffs' Complaint, Defendants crave reference to the documents referred to therein and deny any allegations inconsistent therewith.

7. Defendants admit only so much of the allegations contained in paragraph 11 of Plaintiffs' Complaint as are a matter of public record. The remaining allegations contained therein are denied and strict proof thereof demanded.

8. In response to the allegations of paragraph 12 of Plaintiffs' Complaint, Defendants crave reference to the documents referred to therein and deny any allegations inconsistent therewith.

9. Defendants admit only so much of the allegations contained in paragraph 13 of Plaintiffs' Complaint as are a matter of public record. The remaining allegations contained therein are denied and strict proof thereof demanded. Defendants specifically deny that the conveyance referenced in paragraph 13 was in anyway partial satisfaction of the debt evidenced by the Promissory Note dated June 1, 2006 as modified.

10. In response to the allegations contained in paragraph 14, each and every admission, qualification, explanation, denial and defense set forth herein is repeated and re-alleged as if in verbatim.

11. Defendants deny the allegations of paragraphs 15, 16, 17, and 18 including all subparts thereof.

FOR A SECOND DEFENSE

12. Plaintiffs' claims are barred by the Statute of Frauds.

FOR A THIRD DEFENSE

13. Plaintiffs' claims are barred by the applicable statute of limitations.

FOR A FOURTH DEFENSE

14. Plaintiffs' claims are barred by the doctrine of laches.

FOR A FIFTH DEFENSE

15. Plaintiffs' claims are barred by the doctrine of unclean hands.

FOR A SIXTH DEFENSE

16. Plaintiffs' claims are barred by the doctrine of estoppel.

FOR A SEVENTH DEFENSE

17. Plaintiffs' claims are barred by the doctrine of waiver.

**FOR AN EIGHTH DEFENSE AND BY WAY OF COUNTERCLAIM, CROSS-CLAIM
AND THIRD-PARTY COMPLAINT**

18. To the extent that they are not inconsistent, the allegations, claims, defenses, denials, admissions, explanations and qualifications contained in the preceding paragraphs are repeated and re-alleged herein as if in verbatim.

19. Third-Party Plaintiff, Marilyn L. Dillon (hereinafter "Dillon") is a citizen and resident of the State of Maryland.

20. Upon information and belief, Third-Party Defendant PMC, LLC ("PMC") is a limited liability company organized and existing under the laws of the State of South Carolina and doing business in Charleston County.

21. The following parties to this action have or may claim an interest in the real property which is the subject of this Action ("Subject Property"), all of whose interests in the Subject Property are junior, subordinate and subject to Dillon's Mortgage referenced herein:

- a. JLJ Associates, LLC ("JLJ") by virtue of that certain deed from Miller Group Properties, LLC ("Miller Group") to JLJ, LLC and PMC dated March 23, 2012 and May 14, 2012 and recorded July 11, 2012 in the office of the RMC for Charleston County in Deed Book 263 at page 508;
- b. PMC by virtue of that certain deed from Miller Group to PMC and JLJ dated May 14, 2012 and recorded July 11, 2012 in the office of the RMC for Charleston County in Deed Book 263 at page 508;
- c. C-Miller Properties, LLC ("C-Miller") by virtue of that certain deed dated December 28, 2006 and recorded on December 29, 2006 in the office of the RMC for Charleston County in Book H 610 at page 775; and
- d. Miller Group by virtue of any interest it may have retained in the Subject Property.

22. Upon information and belief, the deed from Miller Group contains a scrivener's error mistakenly identifying JLJ Associates, LLC as JLJ, LLC, it was the intention of Miller Group to convey the Subject Property to JLJ Associates, LLC and the conveyance to JLJ Associates, LLC is a valid conveyance.

23. On or about June 1, 2006, Peter Miller, Mary Alice Miller, Mary Alice Miller, as Trustee of the Mary Alice Miller Living Trust, and Miller Group (collectively, "Borrower") made, executed and delivered to Dillon a promissory note ("Note") in the original principal sum of Three Hundred Sixty Thousand and 00/100s (\$360,000.00) dollars together with interest

thereon at a rate of seven and 00/100ths (7.00%) percent per annum. The other terms and conditions are set forth more fully therein and reference is craved to said Note for its terms.

24. Thereafter, to better secure the Note and the sums loaned thereunder, Miller Group and C-Miller made, executed and delivered to Dillon a mortgage ("Mortgage") dated February 5, 2008 and recorded on February 7, 2008 in the office of the RMC for Charleston County in Book S 650 at page 250.

25. Said Mortgage constitutes a first priority lien on the Subject Property which is described herein below:

ALL that parcel, tract and piece of land in the County of Charleston, State of South Carolina beginning Eleven Hundred Fifty (1,150) feet north of Highway 162 on Highway 17; thence for Two Hundred Ninety-Seven and Fifty-Six-Hundredths (297.56) feet in a northerly direction to a point, thence for Thirty-Six and Forty-Hundredths (36.40) feet in a northerly direction to a point, thence easterly direction for Twelve and Six Hundredths feet (12.06) to point; thence in a northerly direction for Fifteen (15) feet to a point; thence for Twenty-Five (25) feet in an easterly direction to a point; thence in a northerly direction for One Hundred Twenty-Seven and Ninety-Nine-Hundredths (127.99) feet to a point; thence in an easterly direction for Sixty Seven and Twenty Hundredths (67.20) feet to a point; thence in a southerly direction for One Hundred Eleven and Sixty Hundredths (111.66) feet to a point; thence in a southerly direction for One Hundred Fourteen (114) feet to a point; thence in a southerly direction for Two Hundred Eighty-Eight and Fourteen-Hundredths (288.14) feet to a point; thence in a westerly direction for Eighty-Two (82) feet to the beginning point.

Further being the same property bounded on the North by Wallace Creek, on the East and South by the lands of Ernest C. Seel, et al, and on the West by U. S. Highway 17 (Savannah Highway).

BEING the same premises conveyed to the Miller Group Properties, LLC herein by deed from Peter Miller as Trustee of the Peter Miller Living Trust dated December 31, 1999 dated August 30, 2002 and recorded in the RMC Office for Charleston County in Book U4I9, Page 263. This also being the same property conveyed to C-Miller Properties, LLC by deed dated December 28,

2006 and recorded December 29, 2006 in the office of the RMC for Charleston County in Book H610 at page 775, said deed conveying a one-half (1/2) interest in and two the above-described property. This also being the same property conveyed to JLJ, LLC and PMC, LLC by deed dated May 14, 2012 and recorded on July 11, 2012 in the office of the RMC for Charleston County in Book 263 at page 508, said interest being the remaining one-half (1/2) interest in the property.

TMS: 244-00-00-122

26. Thereafter, Miller Group made, executed and delivered to Dillon an Interest Only-Modified Promissory Note ("Modified Note") dated March 23, 2012 in the face amount of Four Hundred Thirty-Four Thousand Fifty-Nine and 00/100s (\$434,059.00) dollars together with interest thereon at the rate of seven and 00/100ths (7.00%) percent per annum wherein and whereby the parties agreed to modify the terms of the Note as set forth more fully in the Modified Note. The other terms and conditions of the Modified Note are incorporated herein by reference.

27. Concurrent with the execution and delivery of Modified Note, Dillon and Miller Group executed and caused to be recorded a Modification of Mortgage Agreement ("Mortgage Modification"), the same being dated March 23, 2012 and recorded on July 11, 2012 in the office of the RMC for Charleston County in Book 263 at page 507.

28. Said Mortgage Modification sets forth in summary fashion the terms of the Modified Note and confirmed that the Mortgage continued to secure repayment of the Modified Note which is the subject of this Action.

29. According to the terms and conditions of said Note and Mortgage it is provided that in the event of default in the payment of any installment when due, and if such default is not made good prior to the due date of the next such installment, the entire principal and accrued interest shall at once become due and payable without notice at the option of the holder, and if

the same should be placed in the hands of any attorney for collection, all costs of collection, including a reasonable attorney's fee, would be secured by the said Mortgage as a part of the debt secured thereby.

30. That under the terms and conditions of said Note and Mortgage, it is provided that, together with, and in addition to, the monthly payments of principal and interest payable under the terms of the Note secured thereby, the mortgagor will pay to the mortgagee, on the payment due date each month until the said Note is fully paid, certain additional sums, including but not limited to, certain amounts for fire and other hazard insurance and taxes and assessments due on the Subject Property.

31. Further, under the terms and conditions of said Note and Mortgage, it was agreed that the mortgagor would pay all taxes, assessments, water rates and other governmental or municipal charges, fines or impositions for which provisions were not otherwise made, and if they failed to do so, the mortgagee might pay same, which amount, together with interest thereon, would be secured by said Mortgage.

32. According to the terms of said Note and Mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the Subject Property from and after any default thereunder, and should legal proceedings be instituted pursuant to said Mortgage, the mortgagee, its successors or assigns, was given the right to have a Receiver appointed of the rents, issues and profits, who, after deducting all charges and expenses attending such proceedings, and the execution of his trust as a Receiver, shall apply the residue of the rents, issues and profits, toward the debt secured by said Mortgage.

33. The Modified Note and Mortgage, as modified, are in default and there is currently due and owing the following amounts:

Principal:	\$434,059.00
Interest through August 26, 2015:	\$106,053.10
Late Fees:	\$650.00
Insurance 2014:	\$3,205.95
Total Secured by Note and Mortgage:	\$543,958.05

Together with any late fees, other charges and additional interest on said amounts that may accrue from and after August 26, 2015, as well as all costs and expenses incurred in enforcing the provisions of said Modified Note and Mortgage, including attorney's fees and costs.

34. Dillon specifically demands her right to a deficiency judgment against Defendant Miller Group and further demands an immediate entry of judgment against Defendant Miller Group pursuant to S.C. Code Ann. § 29-3-650.

35. Upon information and belief, certain costs for the preservation of the Subject Property may have been incurred by Dillon as a result of this delinquency, and Dillon is informed and believes she is entitled to reimbursement for such charges, if any.

36. This action concerns a commercial note and mortgage, the Subject Property is not, upon information and belief, owner-occupied by the Mortgagor, and, therefore this foreclosure action is not subject to the provisions of the Administrative Order issued on May 2, 2011, by the Honorable Jean H. Toal of The Supreme Court of South Carolina or the Home Affordable Modification Program.

WHEREFORE, Defendants and Third-Party Plaintiff would respectfully pray this Court for the following relief:

- a. Dismiss the Plaintiffs' claims with prejudice;
- b. Determine the rights of the parties hereto;
- c. Determine and ascertain the amount due upon the said Note, Modified Note and Mortgage together with attorney's fees and costs of this action;
- d. Enter a judgment immediately, pursuant to S.C. Code Ann. § 29-3-650, against Miller Group Properties, LLC for the amount due on the Note and Mortgage, together with interest at the rate set forth in the Note, plus all costs of collection, including attorney's fees;
- e. Declare the Mortgage dated February 5, 2008 and recorded on February 7, 2008 in Book S 650 at Page 250 in the RMC for Charleston County to be a first priority lien on the Subject Property, senior and superior to any and all interests in the Subject Property claimed by the Plaintiffs, JLJ and PMC;
- f. Award Dillon a judgment of foreclosure for the amount so found to be due and owing on the Modified Note and Mortgage, together with any taxes or insurance premiums which may be due, with a reasonable sum as attorney's fees and for the costs of this action;
- g. Sell the Subject Property under the direction of this court, bar the equity of redemption, and apply the proceeds as follows:
 - (1) First, to the costs and expenses of the within action and sale;
 - (2) Second, to the payment and discharge of the amount due on the Modified Note and Mortgage, together with attorney's fees as aforesaid;
 - (3) Third, the surplus, if any, be distributed according to the law;

- h. Enter an order directing and empowering the Sheriff of Charleston County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary;
- i. Enter an order granting the appointment of a Receiver to secure and supervise the rental of the property sought to be foreclosed;
- j. Award Dillon reimbursement of all costs related to the preservation of the subject real property incurred by Dillon as a result of the delinquency;
- k. Award Dillon a deficiency judgment against Miller Group; and
- l. For such other and further relief as may be just and proper.

TURNER PADGET GRAHAM & LANEY, P.A.



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E-mail: imcvey@turnerpadget.com

Counsel for Defendants and Third-Party Plaintiff

August 26, 2015
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT
CASE NO. 2015-CP-10-3389

PETER MILLER, MARY ALICE)
MILLER, MARY ALICE MILLER, AS)
TRUSTEE OF MARY ALICE MILER)
LIVING TRUST, MILLER GROUP)
PROPERTIES, LLC, AND C-MILLER)
PROPERTIES, LLC)

Plaintiffs)

vs.)

MARILYN L. DILLON AND JLJ, LLC)

Defendants)

and)

MARILYN L. DILLON)

Third-Party Plaintiff)

vs.)

PMC, LLC)

Third-Party Defendant.)

REPLY

FILED
2015 SEP 25 PM 2:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Now come the Plaintiffs, and by way of Reply to the Counterclaims by the
Defendants, allege and say as follows:

FOR A FIRST DEFENSE

(General Denial)

1. Each allegation of the Counterclaim is denied unless otherwise admitted,
qualified, or explained.

FOR A SECOND DEFENSE

(Response to Allegations)

2. The allegations of Paragraph 18 require no response.
3. The allegations of Paragraph 19 are admitted.
4. Plaintiffs are without sufficient knowledge and information with which to form a belief as to the allegations of Paragraph 20, and therefore deny the same.
5. The allegations of Paragraph 21 are admitted.
6. The allegations of Paragraph 22 are denied, and Plaintiffs affirmatively state that it was the intention that the Subject Property be conveyed to Marilyn L. Dillon or her designee.
7. Answering Paragraphs 23 and 24, Plaintiffs crave reference to the documents and instruments mentioned and set forth therein together with the public records of Charleston County.
8. The allegation of Paragraph 25 is a conclusion of law which Plaintiffs are neither required to admit nor deny.
9. Answering Paragraph 26, Plaintiffs crave reference to the documents and instruments mentioned and set forth therein together with the public records of Charleston County, but affirmatively allege and state that Peter Miller, Mary Alice Miller, Mary Alice Miller, as Trustee of the Mary Alice Miller Living Trust, and C-Miller Properties, LLC, did not consent to and did not execute the "Modified Note." Further, Plaintiffs affirmatively allege that Mary Alice Miller did not have sole corporate authority to execute the "Modified Note" on behalf of Miller Group Properties, LLC.

10. Answering Paragraph 27, Plaintiffs crave reference to the documents and instruments mentioned and set forth therein together with the public records of Charleston County, but affirmatively allege and state that Peter Miller, Mary Alice Miller, Mary Alice Miller, as Trustee of the Mary Alice Miller Living Trust, and C-Miller Properties, LLC, did not consent to and did not execute the "Mortgage Modification." Further, Plaintiffs affirmatively allege that Mary Alice Miller did not have sole corporate authority to execute the "Mortgage Modification" on behalf of Miller Group Properties, LLC.

11. Answering Paragraphs 28, 29, 30, 31, and 32, Plaintiffs crave reference to the documents and instruments mentioned and set forth therein together with the public records of Charleston County.

12. The allegations of Paragraphs 33, 34, and 35 are denied.

13. The allegations of Paragraph 36 are admitted.

FOR A THIRD DEFENSE

(Accord and Satisfaction)

14. Plaintiffs restate all defenses set forth above as fully as if incorporated herein.

15. That subsequent to the execution of the Promissory Note and Mortgage, Plaintiffs and Defendants agreed that the borrower's obligation under the Promissory Note would be reduced and ultimately satisfied by the conveyance of certain real properties to the Defendants. This agreement constitutes an Accord between the parties.

16. That on May 4, 2011, and on May 14, 2012, and in consideration of the Accord between the parties, Plaintiffs conveyed or caused to be conveyed certain real properties to the Defendants by deeds recorded in Book 0189 at page 097 and Book 0263 at page 508.

17. That the foregoing constitutes an Accord and Satisfaction between the parties, thereby discharging all of the Plaintiffs' obligations to the Defendants.

FOR A FOURTH DEFENSE

(Payment)

18. Plaintiffs restate all defenses set forth above as fully as if incorporated herein.

19. That on May 4, 2011, and on May 14, 2012, and as consideration for the payment and satisfaction of the Promissory Note, Plaintiffs conveyed or caused to be conveyed certain real properties to the Defendants by deeds recorded in Book 0189 at page 097 and Book 0263 at page 508.

20. That the foregoing constitutes payment of all of the Plaintiffs' obligations to the Defendants.

FOR A FIFTH DEFENSE

(Waiver)

21. Plaintiffs restate all defenses set forth above as fully as if incorporated herein.

22. That on May 4, 2011, and on May 14, 2012, and as consideration for the payment and satisfaction of the Promissory Note, Plaintiffs conveyed or caused to be

conveyed certain real properties to the Defendants by deeds recorded in Book 0189 at page 097 and Book 0263 at page 508.

23. That based upon the foregoing, Defendants' claims are barred by the doctrine of Waiver.

FOR A SIXTH DEFENSE

(Invalidity/Illegality)

24. Plaintiffs restate all defenses set forth above as fully as if incorporated herein.

25. Plaintiffs, Peter Miller, Mary Alice Miller, and Mary Alice Miller, as Trustee of the Mary Alice Miller Living Trust were and are the only borrowers/obligors legally and enforceably indebted to the Defendants under the Promissory Note. That Mary Alice Miller did not have sole corporate authority to execute the Promissory Note on behalf of Miller Group Properties, LLC.

26. That Plaintiffs, Peter Miller, Mary Alice Miller, Mary Alice Miller, as Trustee of the Mary Alice Miller Living Trust, and C Miller Properties, LLC, did not consent to and did not execute the "Modified Note."

27. That Mary Alice Miller did not have sole corporate authority to execute the "Modified Note" and/or the "Mortgage Modification" on behalf of Miller Group Properties, LLC, and did not have corporate authority to bind Miller Group Properties, LLC

28. That by reason of the foregoing, the Promissory Note is not binding or enforceable against Miller Group Properties, LLC, and the "Modified Note" and "Mortgage Modification" are null, void, and of no force and effect.

FOR A SEVENTH DEFENSE

(Failure to Mitigate)

29. Plaintiffs restate all defenses set forth above as fully as if incorporated herein.

30. Defendants' alleged damages, if any, should be denied, extinguished, or otherwise modified by their failure to mitigate.

FOR AN EIGHTH DEFENSE

(Statute of Limitations)

(Section 15-3-530(1))

31. Plaintiffs restate all defenses set forth above as fully as if incorporated herein.

32. The only binding monetary obligations to the Defendant Dillon arise out of the Promissory Note dated June 1, 2006.

33. That the aforesaid Promissory Note matured on May 31, 2009.

34. That the Defendants' claims in this action are barred by virtue of Section 15-3-530(1), Code of Laws of South Carolina, 1976, as amended.

FOR A NINTH DEFENSE

(Merger)

35. Plaintiffs restate all defenses set forth above as fully as if incorporated herein.

36. Subsequent to the execution of the mortgage dated January 2, 2008, recorded in Book S650 at page 250, Defendants acquired a 40% interest in the _____ mortgaged premises by deed recorded in Book 0263 at page 508.

37. That by virtue of the foregoing, there has been a merger of title by deed such that the subject mortgage is now void and unenforceable.

FOR A TENTH DEFENSE

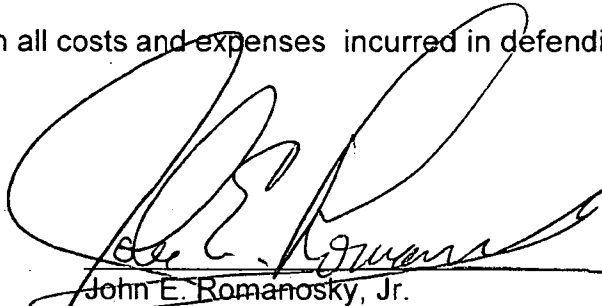
(Reservation and Non-Waiver)

38. Plaintiffs restate all defenses set forth above as fully as if incorporated herein.

39. Defendants hereby give notice that they intend to rely upon such other defenses as may become available or appear during discovery in this case or otherwise, and hereby reserve the right to amend this Answer to assert any such defenses.

PRAYER FOR RELIEF

WHEREFORE, having fully answered Defendants' Counterclaims, Plaintiffs pray that the same be dismissed, together with all costs and expenses incurred in defending this action.



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Attorney for Plaintiffs

Charleston, South Carolina
September 24, 2015

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Peter Miller, Mary Alice Miller, Mary Alice
Miller, as Trustee of Mary Alice Miller Living
Trust, Miller Group Properties, LLC, and C-Miller
Properties, LLC,

☐ Plaintiff

v.

Marilyn L. Dillon and JLJ, LLC,

☒ Defendants.

and

Marilyn L. Dillon

Third-Party Plaintiff

vs.

PMC, LLC

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT

CASE NO. 2015-CP-10-3389

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:

John E. Romanosky, Jr., Bar No. 4903

Address:

One Cool Blow Street, Suite 201
Charleston, SC 29403

phone: 843-724-1054 **fax:**

e-mail: john@jromanlaw.com other:

Defendant's Attorney:

Ian D. McVey, Bar No. 71196

Address:

Turner, Padget, Graham & Laney, P.A.
P.O. Box 1473

Columbia, SC 29202

phone: 803-227-4267 **fax:** 803-400-1564

e-mail: imcvey@turnerpadget.com other:

- ☒ **MOTION HEARING REQUESTED** (attach written motion and complete **SECTIONS I and III**)
☐ **FORM MOTION, NO HEARING REQUESTED** (complete **SECTIONS II and III**)
☐ **PROPOSED ORDER/CONSENT ORDER** (complete **SECTIONS II and III**)

Nature of Motion: Defendants' Expedited Motion for Appointment of a Receiver
Estimated Time Needed: 15 minutes Court Reporter Needed: ☐ YES / ☒ NO

☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

June 28, 2016

Date submitted

☒ PAID - AMOUNT: \$25.00☐ Rule to Show Cause in Child or Spousal Support

☐ Indigent Status ☐ State Agency v. Indigent Party

☐ Motion for Stay in Bankruptcy

☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions

☐ Other:

☐ Motion Fee to be paid upon filing of the attached order.

☐ Other:

JUDGE

CODE: _____ Date: _____

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

☐ CONTESTED – AMOUNT DUE: _____

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-10-3389

PETER MILLER, MARY ALICE MILLER,))
MARY ALICE MILLER, AS TRUSTEE))
OF MARY ALICE MILLER LIVING))
TRUST, MILLER GROUP PROPERTIES,))
LLC, AND C-MILLER PROPERTIES,))
LLC,))

Plaintiffs,

vs.

MARILYN L. DILLON AND JLJ, LLC,

Defendants

and

MARILYN L. DILLON

Third-Party Plaintiff

vs.

PMC, LLC

DEFENDANTS' EXPEDITED MOTION FOR APPOINTMENT OF A RECEIVER

TO JOHN E. ROMANOSKY, ATTORNEY FOR THE PLAINTIFFS AND THIRD PARTY
DEFENDANT:

PLEASE TAKE NOTICE THAT the Marilyn L. Dillon (“Dillon”) and JLJ, LLC (“JLJ”)(collectively, “Defendants”), through their undersigned attorney, hereby moves this Court, pursuant to Rule 66, SCRPC, S.C. Code Section 15-65-10, et seq., and the general law of South Carolina, for an order appointing a suitable and proper entity as receiver for the mortgaged premises as described in the Complaint in the foregoing action. This motion is based upon the foregoing authority and the following:

FILED
2016 JUN 30 PM 2:31
JULIE J. ARISTARONG
CLERK OF COURT
BY _____

1. Dillon holds a first priority lien on the real property which is the subject of the above-captioned action ("Subject Property") by virtue of that certain mortgage given by Miller Group Properties, LLC and C-Miller Properties, LLC dated February 5, 2008 and recorded in the office of the Register of Mesne Conveyances for Charleston County on February 7, 2008 in Book S650 at page 250.

2. JLJ is a forty (40%) percent owner of the Subject Property pursuant to that certain deed from Miller Group Properties, LLC to JLJ and PMC, LLC recorded on July 11, 2012 in the office of the RMC for Charleston County in Book 0263 at page 508.

3. Upon information and belief, there are various tenants renting the Subject Property which are paying funds to the Plaintiffs.

4. Heretofore, Plaintiffs have refused to apply these sums collected to the outstanding debt or make any payments to JLJ as forty (40%) percent owner of the Subject Property.

5. Defendants are informed and believe that portions of the Subject Property are in severe states of disrepair and the funds collected are not being used to make the repairs necessary to preserve the Subject Property.

6. Further, Plaintiffs have informed Defendants that they do not intend to renew the insurance for the Subject Property.

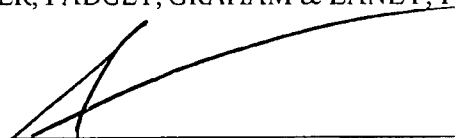
As such, Defendants would respectfully request that a receiver be appointed to take such actions as may be necessary to collect the rents, preserve the Subject Property and such other actions as may be authorized by South Carolina law and this Honorable Court. Pursuant to S.C. Code Section 15-65-20, Plaintiff respectfully requests that after five (5) days have passed from

the time of service upon the Plaintiffs herein, if no motion for a hearing on this appointment has been filed, the Court proceed immediately with the appointment of a receiver in this matter.

Respectfully submitted,

TURNER, PADGET, GRAHAM & LANEY, P.A.

By:



Ian D. McVey
PO Box 1473
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Tel. (803)227-4267
Fax (803)400-1564
E-mail: imcvey@turnerpadget.com

Attorneys for Defendants

June 27, 2016
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT
CASE NO. 2015-CP-10-3389

PETER MILLER, MARY ALICE)
MILLER, MARY ALICE MILLER, AS)
TRUSTEE OF MARY ALICE MILER)
LIVING TRUST, MILLER GROUP)
PROPERTIES, LLC, AND C-MILLER)
PROPERTIES, LLC)

Plaintiffs)

vs.)

MARILYN L. DILLON AND JLJ, LLC)

Defendants)

and)

MARILYN L. DILLON)

Third-Party Plaintiff)

vs.)

PMC, LLC)

Third-Party Defendant.)

**RETURN TO DEFENDANTS'
MOTION FOR APPOINTMENT
OF A RECEIVER**

FILED
2016 JUL -1 PM 1:14
JULIE J. ARMSTRONG
CLERK OF COURT
BY 

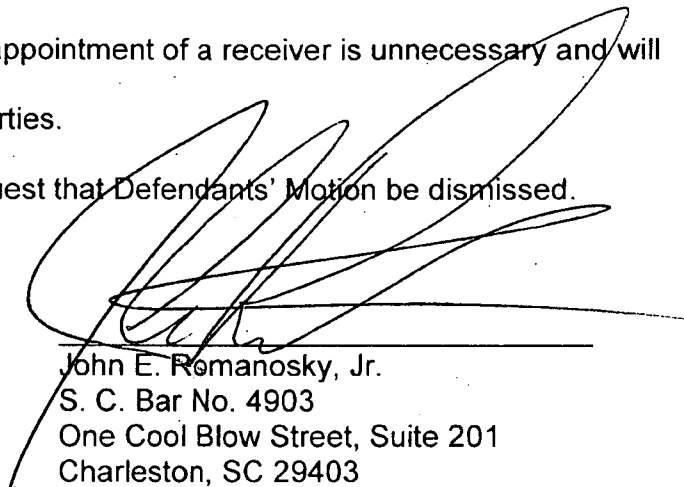
Now come the Plaintiffs, and by way of Return to Defendants' Motion, allege and say as follows:

1. The allegations of Paragraphs 1, 2, and 3 are admitted.
2. The allegations of Paragraphs 4, 5, and 6 are denied.
3. By way of further response to the motion, Plaintiffs allege that they have offered and consented to Defendants receiving and collecting all rents associated with

the property, subject only to the condition that Defendants also pay all charges and expenses associated with the property.

4. Plaintiffs believe that the appointment of a receiver is unnecessary and will result in additional expense to all parties.

WHEREFORE, Plaintiffs request that Defendants' Motion be dismissed.



John E. Romanosky, Jr.
S. C. Bar No. 4903
One Cool Blow Street, Suite 201
Charleston, SC 29403
843-724-1054
john@jromanlaw.com

Charleston, South Carolina
July 1, 2016

Attorney for Plaintiffs

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Peter Miller, Mary Alice Miller, Mary Alice Miller, as
Trustee of Mary Alice Miller Living Trust, Miller Group
Properties, LLC, and C-Miller Properties, LLC,

Plaintiff,

vs.

Marilyn L. Dillon, et al.,

Defendants.

IN THE COURT OF COMMON PLEAS

CASE NO.: 2015-CP-10-3389

**MOTION AND ORDER INFORMATION
FORM AND COVERSHEET**

Plaintiff's Attorney: Ian D. McVey (SC Bar No. 71196) Address: Post Office Box 1473 Columbia, SC 29202 Phone: 803-227-4267 Fax: 803-400-1564 E-mail: _____ Other: _____	Defendant's Attorney: _____, Bar No. _____ Address: _____ Phone: _____ Fax: _____ E-mail: _____ Other: _____
☐ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☒ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☒ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: <u>Motion for Summary Judgment</u> Estimated Time Needed: _____ Court Reporter Needed: ☐ YES/ ☐ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☒ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. _____ Signature of Attorney for ☒ Plaintiff/ ☐ Defendant 07/28/16 Date submitted	
SECTION III: Motion Fee	
☒ PAID – AMOUNT: <u>\$ 25.00</u> ☐ EXEMPT: (check reason) ☐ Rule to Show Cause in Child or Spousal Support ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: _____ ☐ Other: _____	
JUDGE'S SECTION	
☐ Motion Fee to be paid upon filing of the attached order. ☐ Other: _____	JUDGE CODE _____ Date: _____, 20____
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____, 20____ ☐ MOTION FEE COLLECTED: \$ CONTESTED – AMOUNT DUE: \$	

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-10-3389

PETER MILLER, MARY ALICE MILLER,)
MARY ALICE MILLER, AS TRUSTEE)
OF MARY ALICE MILLER LIVING)
TRUST, MILLER GROUP PROPERTIES,)
LLC, AND C-MILLER PROPERTIES,)
LLC,)

Plaintiffs,)

vs.)

MARILYN L. DILLON AND JLJ, LLC,)

Defendants)

and)

MARILYN L. DILLON)

Third-Party Plaintiff)

vs.)

PMC, LLC)
_____)

**DEFENDANTS' AND THIRD-PARTY
PLAINTIFF'S NOTICE OF MOTION AND
MOTION FOR SUMMARY JUDGMENT.**

FILED
2016 JUL 28 AM 11:19
JULIE J. ARMSTRONG
CLERK OF COURT
BY JS

TO: John E. Romanosky, Counsel for Plaintiffs and Third-Party Defendant PMC, LLC:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service of this Notice upon you or as soon thereafter as counsel may be heard, counsel for the Defendants and Third-Party Plaintiff will move before the presiding judge for an Order granting them summary judgment as to all causes of action on the grounds that there is no genuine issue of material fact and Defendants and Third-Party Plaintiff are entitled to judgment as a matter of law.

This motion is based upon the pleadings, discovery, affidavits, exhibits, deposition transcripts, other admissible evidence and such memorandum as may be submitted as well as the applicable common law and statutory law. Further, this motion is based upon the following:

1. Defendant/Third-Party Plaintiff Marilyn L. Dillon is owner and holder of that certain Modified Promissory Note ("Modified Note") dated March 23, 2012 in the face amount of Four Hundred Thirty-Four Thousand Fifty-Nine and 00/100s (\$434,059.00) dollars. **See Exhibit A.**
2. Said Modified Note is a renewal and modification of that certain promissory note ("Note") in the original principal sum of Three Hundred Sixty Thousand and 00/100s (\$360,000.00) dollars dated June 1, 2006. **See Exhibit B.**
3. The afore-mentioned loan is secured by a mortgage ("Mortgage") dated February 5, 2008 and recorded on February 1, 2008 in the office of the RMC for Charleston County in Book S 650 at page 250. **See Exhibit C.**

4. Said Mortgage constitutes a first priority lien on the below-described real property ("Subject Property"):

ALL that parcel, tract and piece of land in the County of Charleston, State of South Carolina beginning Eleven Hundred Fifty (1,150) feet north of Highway 162 on Highway 17; thence for Two Hundred Ninety-Seven and Fifty-Six-Hundredths (297.56) feet in a northerly direction to a point, thence for Thirty-Six and Forty-Hundredths (36.40) feet in a northerly direction to a point, thence easterly direction for Twelve and Six Hundredths feet (12.06) to point; thence in a northerly direction for Fifteen (15) feet to a point; thence for Twenty-Five (25) feet in an easterly direction to a point; thence in a northerly direction for One Hundred Twenty-Seven and Ninety-Nine-Hundredths (127.99) feet to a point; thence in an easterly direction for Sixty Seven and Twenty Hundredths (67.20) feet to a point; thence in a southerly direction for One Hundred Eleven and Sixty Hundredths (111.66) feet to a point; thence in a southerly direction for One Hundred Fourteen (114) feet to a point; thence in a southerly direction for Two

Hundred Eighty-Eight and Fourteen-Hundredths (288.14) feet to a point; thence in a westerly direction for Eighty-Two (82) feet to the beginning point.

Further being the same property bounded on the North by Wallace Creek, on the East and South by the lands of Ernest C. Seel, et al, and on the West by U. S. Highway 17 (Savannah Highway).

BEING the same premises conveyed to the Miller Group Properties, LLC herein by deed from Peter Miller as Trustee of the Peter Miller Living Trust dated December 31, 1999 dated August 30, 2002 and recorded in the RMC Office for Charleston County in Book U419, Page 263. This also being the same property conveyed to C-Miller Properties, LLC by deed dated December 28, 2006 and recorded December 29, 2006 in the office of the RMC for Charleston County in Book H610 at page 775, said deed conveying a one-half (1/2) interest in and two the above-described property. This also being the same property conveyed to JLJ, LLC and PMC, LLC by deed dated May 14, 2012 and recorded on July 11, 2012 in the office of the RMC for Charleston County in Book 263 at page 508, said interest being the remaining one-half (1/2) interest in the property.

TMS: 244-00-00-122

5. Concurrent with the execution and delivery of Modified Note, Dillon and Miller Group executed and caused to be recorded a Modification of Mortgage Agreement ("Mortgage Modification"), the same being dated March 23, 2012 and recorded on July 11, 2012 in the office of the RMC for Charleston County in Book 263 at page 507. **See Exhibit D.**
6. As is set forth in the derivation above, the titleholders of record of the Subject Property are C-Miller Properties, LLC, JLJ Associates, LLC (incorrectly named as JLJ, LLC) and PMC, LLC. **See Exhibits E and F.**
7. Each of the conveyances were made subject to the Mortgage, and, in fact, the deed to JLC Associates, LLC and PMC, LLC expressly states:

WHEREAS, the grantor hereby informs the grantees the property interest conveyed and the property described in EXHIBIT A is subject to a Mortgage recorded in Book S650 at Page 250 in the RMC Office for Charleston County, South Carolina.

See Exhibit F.

8. Plaintiffs' Complaint alleges that the conveyance of the Subject Property to JLJ Associates, LLC was in partial or total satisfaction of the debt secured by the Mortgage.
9. However, the face of the deed into JLJ Associates, LLC and PMC, LLC clearly indicates that this was not the case.
10. Further, the deposition of Tommy Hill, a copy of which is attached hereto as **Exhibit G**, clearly confirms that the parties' understanding at the time of the conveyance to JLJ Associates, LLC was that the mortgage and the debt were not satisfied in whole or in part by the deed.
11. As is indicated on the affidavit attached hereto as **Exhibit H**, there is currently due and owing on the loan and secured by the Mortgage, a total of Six Hundred Twenty-Five Thousand Eight Hundred Seventy-One and 53/100s (\$625,871.53) dollars.¹

WHEREFORE, Defendants and Third-Party Plaintiff would respectfully submit that there are no issues of material fact and they are entitled to judgment as a matter of law. Dillon would further submit that it is entitled to an order of foreclosure and public sale of the Subject Property.

I SO MOVE.

[Signature on following page]

¹ Also due on under the Modified Note and Mortgage are amounts paid by Marilyn L. Dillon for insurance and property taxes. For the purposes of this motion alone, Dillon has agreed to waive those amounts to simplify matters. However, in the event this matter goes to trial, Dillon reserves the right to include those amounts in the sums due and owing under the Modified Note and Mortgage.

TURNER PADGET GRAHAM & LANEY P.A.

By:



Ian D. McVey, S.C. Bar #71196
PO Box 1473
Columbia, South Carolina 29202
Tel. (803)227-4267
Fax (803)400-1564
Email: imcvey@turnerpadget.com

*Attorneys for Marilyn L. Dillon and JLJ Associates,
LLC*

July 27, 2016
Columbia, South Carolina

SOUTH CAROLINA
(Interest Only—Modified Promissory Note)
(1 year balloon)

\$434,059.00

March 23, 2012

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of Marilyn L. Dillon in lawful money of the United States of America, the principal sum of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars, together with interest on unpaid principal at the rate of Seven (7%) per annum from the 1st day of March 2012, which said interest shall be payable in 12 equal installments of Two Thousand Five Hundred Thirty-two and 01/100 (\$2,532.01) Dollars first due on the 1st day of June 1, 2012 and due on the first (1st) day of each and every month, with a balloon payment due in addition to the 12th payment of interest on the 1st day of May 2013 in the amount of Two Thousand Five Hundred Thirty-two and 01/100 (\$2,532.01) Dollars and principal in the amount of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars. (NO PREPAYMENT PENALTY). The borrower will pay a "late charge" of Fifty (\$50.00) Dollars when paid more than 10 days after due date. If promisor is ever thirty (30) days late with a payment she will be in default.

If default be made in the performance or compliance with any of the covenants and conditions of this note, then in said event, said principal sum shall become at once due and payable at the option of holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

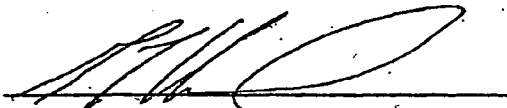
If this note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankrupt costs, or under foreclosure proceedings under the note, then all cost of collection, including the further and additional sum of ten (10%) percent, on the full amount due hereon, shall be added hereto as attorney's fees secured and collectible as the principal hereof.

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

Presentment, protest, and notice are hereby waived.

It is expressly agreed and declared that this note is given for an actual loan of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars, and secured by a MORTGAGE MODIFICATION AGREEMENT of even date on the subject property bearing TMS:244-00-122 which shall be recorded in the RMC Office for Charleston County.

Witness the hand and seal of each of the signers hereof.



Amanda B. Navels

Miller Group Properties, LLC.,

By: Mary Alice Miller (Seal)
Mary Alice Miller, Member

EXHIBIT A

PROMISSORY NOTE**\$360,000.00****Date: June 01, 2006**

For value received, the undersigned Peter Miller, Mary Alice Miller, Mary Alice Miller as Trustee of Mary Alice Miller Living Trust, Miller Group Properties, LLC (the "Borrower"), at 4213 Savannah Highway, Ravenel, South Carolina 29470, promises to pay to the order of Marilyn L. Dillon, (the "Lender"), at 11201 Prelude Court, Silver Spring, Maryland 20901, (or at such other place as the Lender may designate in writing) the sum of \$360,000.00 with interest from June 01, 2006, on the unpaid principal at the rate of 7.00% per annum.

The unpaid principal and accrued interest shall be payable in full on May 31, 2009 (the "Due Date").

All payments on this Note shall be applied first in payment of accrued interest and any remainder in payment of principal.

If any payment obligation under this Note is not paid when due, the remaining unpaid principal balance and any accrued interest shall become due immediately at the option of the Lender.

The Borrower reserves the right to prepay this Note (in whole or in part) prior to the Due Date with no prepayment penalty.

If any payment obligation under this Note is not paid when due, the Borrower promises to pay all costs of collection, including reasonable attorney fees, whether or not a lawsuit is commenced as part of the collection process.

This Note is secured by a Real Estate owned by Mary Alice Miller, as Trustee of the Mary Alice Miller Living Trust which lots and tract of land located on Highway 17 South in Ravenel, near Rantowles, Charleston County and All Buildings and Real Estate located at 4213 Savannah Highway, Ravenel, SC—See exhibit A for description of property at 4213 Savannah Highway, dated June 01, 2006. The Lender is not required to rely on the above security instrument and the assets secured therein for the payment of this Note in the case of default, but may proceed directly against the Borrower.

If any of the following events of default occur, this Note and any other obligations of the Borrower to the Lender, shall become due immediately, without demand or notice:

- 1) the failure of the Borrower to pay the principal and any accrued interest in full on or before the Due Date;

EXHIBIT B

- 2) the death of the Borrower or Lender;
- 3) the filing of bankruptcy proceedings involving the Borrower as a debtor;
- 4) the application for the appointment of a receiver for the Borrower;
- 5) the making of a general assignment for the benefit of the Borrower's creditors;
- 6) the insolvency of the Borrower;
- 7) a misrepresentation by the Borrower to the Lender for the purpose of obtaining or extending credit.

In addition, the Borrower shall be in default if there is a sale, transfer, assignment, or any other disposition of any assets pledged as security for the payment of this Note, or if there is a default in any security agreement which secures this Note.

If any one or more of the provisions of this Note are determined to be unenforceable, in whole or in part, for any reason, the remaining provisions shall remain fully operative.

All payments of principal and interest on this Note shall be paid in the legal currency of the United States. The Borrower waives presentment for payment, protest, and notice of protest and nonpayment of this Note.

No renewal or extension of this Note, delay in enforcing any right of the Lender under this Note, or assignment by Lender of this Note shall affect the liability or the obligations of the Borrower. All rights of the Lender under this Note are cumulative and may be exercised concurrently or consecutively at the Lender's option.

This Note shall be construed in accordance with the laws of the State of South Carolina.

Signed this 31 day of July, 2006 at Miller's Liquors
Ravenel, South Carolina

Borrower:

Peter Miller, Mary Alice Miller, Mary Alice Miller as Trustee of Mary Alice Miller Living Trust,
Miller Group Properties, LLC

By: Peter Miller Mary Alice Miller
Peter Miller, Mary Alice Miller, Mary Alice Miller as Trustee of Mary Alice Miller Living
Trust, Miller Group Properties, LLC

After Recording Return To:
G. Thomas Hill, Esquire
PO Box 369
Ravenel, SC 29470

BA S650PG250

MORTGAGE
(title not examined)

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined herein.

- (A) "Security Instrument" means this document, which is dated January, 2008.
(B) "Borrowers" are delineated on the below referenced Promissory Note:
(C) "Mortgagors" are Miller Group Properties, LLC., and C-Miller Properties, LLC. (NoteC-Miller Properties, LLC hypothecates its' interest in said collateral by signing below).
Borrower is the mortgagor under this Security Instrument.
(D) "Lender" is Marilyn L. Dillon.
Lender is a Lender organized and existing under the laws of South Carolina.
Lender's address is 11201 Prelude Court, Silver Spring, MD 20901.
Lender is the mortgagee under this Security Instrument.
(E) "Note" means the promissory note signed by Borrower and dated June 1, 2006 and signed on July 31, 2006. The Note states that Borrower owes Lender THREE HUNDRED SIXTY THOUSAND AND 00/100THS Dollars (U.S.\$360,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than May 31, 2009.
(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(I) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSE OF RIGHTS IN THE PROPERTY

See: Exhibit A -for legal description of 1.06 acres, more or less

TMS:244-00-00-122

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the CHARLESTON COUNTY RMC OFFICE FOR CHARLESTON COUNTY:
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

which currently has the address of 4213 Savannah Hwy
[Street]
Ravenel, South Carolina 29470 ("Property Address"):
[City] [Zip Code]

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property".

MORTGAGOR COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.

EXHIBIT C

THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or Partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have not or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender, shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically

feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

3. Preservation, Maintenance and Protection of the Property; Inspections. Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspection of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such and interior inspection specifying such reasonable cause.

4. Borrower Not Released; Forbearance By Lender Not a Waiver. Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right to remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

5. Joint and Several Liability; Co-signers; Successors and Assigns Bound. Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender.

6. Loan Charges. Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

7. Notices. All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any on Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required

by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

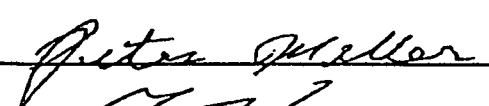
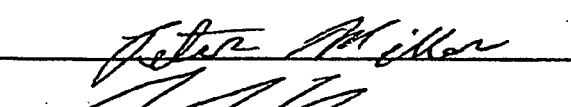
8. **Governing Law; Severability; Rules of Construction.** This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

9. **Release.** Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

10. **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply too the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid any may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in § 12-37-250 of the South Carolina Code of Laws.

BY SIGNING BELOW, Mortgagors accept and agree to the terms and covenants contained in this Security Instrument. Signed, Sealed and delivered in the presence of:

	Miller Group Properties, LLC.,
	By: <u>Mary Alice Miller</u> (Seal)
	Mary Alice Miller, Member
	By: <u>Cynthia Miller</u> (Seal)
	Cynthia Miller, Member
	C-Miller Properties, LLC
	By: <u>Cynthia Miller</u> (Seal)
	Cynthia Miller, Member

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

ACKNOWLEDGMENT

SWORN TO AND ACKNOWLEDGED before me by mortgagor herein this 5th day of February 2008.

Notary Public for South Carolina
My Commission Expires: 9/9/08

STATE OF SOUTH CAROLINA

ACKNOWLEDGMENT

CHARLESTON COUNTY

SWORN TO AND ACKNOWLEDGED before me by mortgagor herein this 5th day of February 2008.

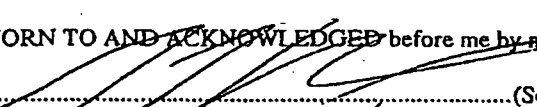

.....(Seal)
Notary Public for South Carolina
My Commission Expires: 3/10/8

EXHIBIT: "A"

MA S650PG255

ALL that parcel, tract and piece of land in the County of Charleston, State of South Carolina beginning Eleven Hundred Fifty (1,150') feet north of Highway 162 on Highway 17; thence for Two Hundred Ninety-Seven and Fifty-Six-Hundredths (297.56') feet in a northerly direction to a point, thence for Thirty-Six and Forty-Hundredths (36.40') feet in a northerly direction to a point, thence easterly direction for Twelve and Six Hundredths feet (12.06') to point; thence in a northerly direction for Fifteen (15') feet to a point; thence for Twenty-Five (25') feet in an easterly direction to a point; thence in a northerly direction for One Hundred Twenty-Seven and Ninety-Nine-Hundredths (127.99') feet to a point; thence in an easterly direction for Sixty Seven and Twenty Hundredths (67.20') feet to a point; thence in a southerly direction for One Hundred Eleven and Sixty Hundredths (111.66') feet to a point; thence in a southerly direction for One Hundred Fourteen (114') feet to a point; thence in a southerly direction for Two Hundred Eighty-Eight and Fourteen-Hundredths (288.14') feet to a point; thence in a westerly direction for Eighty-Two (82') feet to the beginning point.

Further being the same property bounded on the North by Wallace Creek, on the East and South by the lands of Ernest C. Seel, et al, and on the West by U. S. Highway 17 (Savannah Highway).

BEING the same premises conveyed to the ^{mortgages} ~~grantor~~ herein by deed from Peter Miller as Trustee of the Peter Miller Living Trust dated December 31, 1999 dated August 30, 2002 and recorded in the RMC Office for Charleston County in Book U419, Page 263., and 1/2 interest in Book H610, page 775, dated December 28, 2006 and filed December 29, 2006.
TMS #: 244-00-00-122

AK BX S650PG256
RECORDER'S PAGE
NOTE: This page MUST remain
with the original document



FILED
February 7, 2008 1:32:42 PM
BK S650PG250
Charlie Lybrand, Register Charleston County, SC

AK

Filed By:	
Hill & Hill LLC	
6209 Savannah Hwy. Ravenel	SC 29470

Number of Pages:
7

DESCRIPTION	AMOUNT
	\$ 12.00
Postage	
TOTAL	\$ 12.00

DRAWER:

	B - ECP
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DO NOT STAMP BELOW THIS LINE

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

MODIFICATION OF MORTGAGE
AGREEMENT

WHEREAS, Miller Group Properties, LLC executed a Note dated June 1, 2006 for a loan in the amount of Three Hundred Sixty Thousand and No/100---(\$360,000.00)—Dollars and a Mortgage securing the Note dated February 5, 2008 recorded in the RMC Office for Charleston County in Book S650 at Page 250, said Mortgage being secured by the property hereinafter described below.

FOR VALUABLE CONSIDERATION, the receipt whereof is hereby acknowledged, the undersigned owner and holder of that certain mortgage, namely, Marilyn L. Dillon hereby agrees to the terms of the modified Note, this being the Note dated simultaneously herewith from Miller Group Properties, LLC to Marilyn L. Dillon for the loan amount remaining due on the June 1, 2006 original Note (as of February 29, 2012 the amount of principal plus accrued interest and fees now due are in the amount of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars); with all parties Marilyn L. Dillon (Lender), Miller Group Properties, LLC (Borrower), [

agreeing that the modification of said Mortgage securing the original Note dated June 1, 2006 recorded in the RMC Office for Charleston County in Book S650 at Page 250, is necessary to secure as collateral, for the remaining loan amount of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars plus interest, the following described property.

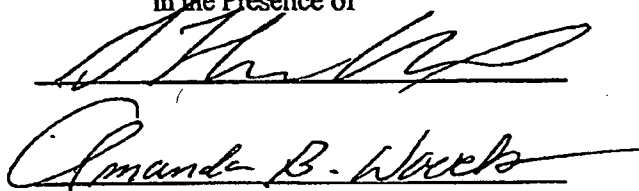
See: Exhibit A—legal description

TMS #: 244-00-00-122

The original mortgage shall remain in full force and effect except as modified herein.

IN WITNESS WHEREOF, the mortgagee and mortgagor has caused this instrument to be duly executed this 23 day of March, 2012.

Signed, Sealed and Delivered
in the Presence of


Amanda B. Weeks

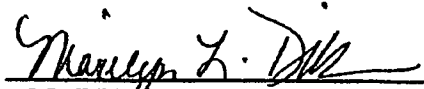
By:  (Seal)
MARILYN L. DILLON

EXHIBIT D

BP0263507

STATE OF SOUTH CAROLINA,

ACKNOWLEDGMENT

COUNTY OF CHARLESTON,

The foregoing instrument was acknowledged by me this 23rd day of March, 2012,
by Marilyn L. Dillon, Mortgagee.

Amanda B. Novels (Seal)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: October 6, 2018

Signed, Sealed and Delivered
in the Presence of

[Signature]

Miller Group Properties, LLC.,

By: Mary Alice Miller (Seal)
Mary Alice Miller, Member

Amanda B. Novels

STATE OF SOUTH CAROLINA,

ACKNOWLEDGMENT

COUNTY OF CHARLESTON,

The foregoing instrument was acknowledged by me this 23 day of March, 2012,
by Mary Alice Miller, Member, as the duly authorized signatories for Miller Group Properties,
LLC, Mortgagor.

Amanda B. Novels (Seal)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: October 6, 2018

EXHIBIT A

ALL that parcel, tract and piece of land in the County of Charleston, State of South Carolina beginning Eleven Hundred Fifty (1,150') feet north of Highway 162 on Highway 17; thence for Two Hundred Ninety-Seven and Fifty-Six-Hundredths (297.56') feet in a northerly direction to a point, thence for Thirty-Six and Forty-Hundredths (36.40') feet in a northerly direction to a point, thence easterly direction for Twelve and Six Hundredths feet (12.06') to point; thence in a northerly direction for Fifteen (15') feet to a point; thence for Twenty-Five (25') feet in an easterly direction to a point; thence in a northerly direction for One Hundred Twenty-Seven and Ninety-Nine-Hundredths (127.99') feet to a point; thence in an easterly direction for Sixty Seven and Twenty Hundredths (67.20') feet to a point; thence in a southerly direction for One Hundred Eleven and Sixty Hundredths (111.66') feet to a point; thence in a southerly direction for One Hundred Fourteen (114') feet to a point; thence in a southerly direction for Two Hundred Eighty-Eight and Fourteen-Hundredths (288.14') feet to a point; thence in a westerly direction for Eighty-Two (82') feet to the beginning point.

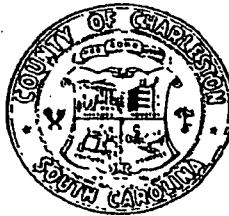
Further being the same property bounded on the North by Wallace Creek, on the East and South by the lands of Ernest C. Seel, et al, and on the West by U. S. Highway 17 (Savannah Highway).

BEING the same premises conveyed to the grantor herein by deed from Peter Miller as Trustee of the Peter Miller Living Trust dated December 31, 1999 dated August 30, 2002 and recorded in the RMC Office for Charleston County in Book U419, Page 263.

TMS:244-00-00-122

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

HILL & HILL LLC

6209 SAVANNAH HWY.
RAVENEL SC 29470

RECORDED

Date: July 11, 2012

Time: 2:19:46 PM

Book

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Mtg/Mod

Charlie Lybrand, Register
Charleston County, SC

MAKER:

MILLER GROUP PROPS LLC

of Sats:

of Pages: 4

of References:

RECIPIENT:

DILLON MARILYN L

Note:

Original Book:

S650

Original Page:

250

Recording Fee \$ 6.00

Extra Reference Cost \$ -

Extra Pages \$ 2.00

Postage \$ -

Chattel \$ -

TOTAL \$ 8.00

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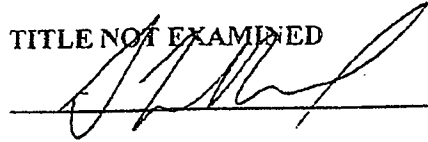


14:19:46

Recorded Time

BXH 610PG775

TITLE NOT EXAMINED



WARRANTY DEED

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

KNOW ALL MEN BY THESE PRESENTS, THAT The Miller Group Properties, LLC (Grantor) in the State aforesaid, for an in consideration of the sum of Five and 00/100 (\$5.00) Dollars, to Grantor in hand paid at and before the sealing of these presents by Grantee in the State aforesaid, the receipt of whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents do grant, bargain, sell and release unto said C-MILLER PROPERTIES, LLC, its successors and assigns, an undivided one half interest in the below described property, to wit:

ALL that parcel, tract and piece of land in the County of Charleston, State of South Carolina beginning Eleven Hundred Fifty (1,150') feet north of Highway 162 on Highway 17; thence for Two Hundred Ninety-Seven and Fifty-Six-Hundredths (297.56') feet in a northerly direction to a point, thence for Thirty-Six and Forty-Hundredths (36.40') feet in a northerly direction to a point, thence easterly direction for Twelve and Six Hundredths feet (12.06') to point; thence in a northerly direction for Fifteen (15') feet to a point; thence for Twenty-Five (25') feet in an easterly direction to a point; thence in a northerly direction for One Hundred Twenty-Seven and Ninety-Nine-Hundredths (127.99') feet to a point; thence in an easterly direction for Sixty Seven and Twenty Hundredths (67.20') feet to a point; thence in a southerly direction for One Hundred Eleven and Sixty Hundredths (111.66') feet to a point; thence in a southerly direction for One Hundred Fourteen (114') feet to a point; thence in a southerly direction for Two Hundred Eighty-Eight and Fourteen-Hundredths (288.14') feet to a point; thence in a westerly direction for Eighty-Two (82') feet to the beginning point.

1/2 int.

*Same dimensions
on
plat
DA-213*

Further being the same property bounded on the North by Wallace Creek, on the East and South by the lands of Ernest C. Seel, et al, and on the West by U. S. Highway 17 (Savannah Highway).

BEING the same premises conveyed to the grantor herein by deed from Peter Miller as Trustee of the Peter Miller Living Trust dated December 31, 1999 dated August 30, 2002 and recorded in the RMC Office for Charleston County in Book U419, Page 263.

TMS #: 244-00-00-122

Grantee's Address: *4213-B SAVANNAH HWY
RAOEWEL, SC 29470*

EXHIBIT E

Together with all and singular the rights, members, hereditaments and appurtenances to the said premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said C-Miller Properties, LLC, its successors and assigns, forever.

AND, I do hereby bind myself and my Heirs, Executors and Administrators, to warrant and forever defend, all and singular, the said Premises unto the said grantee, its successors and Assigns, against myself and my heirs and any person or persons whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the hand(s) and seal(s) of the Grantor this 28th day of December, in the year of our Lord two thousand six and in the two hundredth thirtieth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of

Gustav Miller
Dwendolyn Richardson

*THE MILLER GROUP PROPERTIES, LLC

Mary Alice Miller
MARY ALICE MILLER, MEMBER
Cynthia Miller
CYNTHIA MILLER MEMBER

STATE OF SOUTH CAROLINA

PROBATE

COUNTY OF CHARLESTON

The foregoing instrument was acknowledged by me this 28 day of December, 2006, by
The Miller Group Properties, LLC.

[Signature]
NOTARY PUBLIC FOR SOUTH CAROLINA
MY COMMISSION EXPIRES: 9/10/8

BKH 610PG777

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

AFFIDAVIT

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says.

- 1 I have read the information on this Affidavit and I understand such information
- 2 The property being transferred by ¹MILLER GROUP PROPERTIES, LLC to C-MILLER PROPERTIES, LLC dated December 28, 2006
- 3 Check one of the following. The DEED is
 - (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - (b) _____ Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary
 - (c) x EXEMPT from the deed recording fee because (exemptions 8- LLC to LLC (if exempt, please skip items 4-6, and go to item 7 of this Affidavit)
- 4 Check one of the following if either item 3(a) or item 3(b) above has been checked
 - (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$
 - (b) _____ The fee is computed on the fair market value of the realty which is \$0.
 - (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is \$
- 5 Check YES _____ or NO X to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer If "YES," the amount of the outstanding balance of this lien or encumbrance is \$
- 6 The DEED Recording Fee is computed as follows:
 - (a) \$0 00 the amount listed in item 4 above.
 - (b) \$ the amount listed in item 5 above (no amount place zero)
 - (c) \$0 00 Subtract line 6(b) from Line 6(a) and place the result
7. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as ATTORNEY
8. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is not guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

SWORN to before me this 28th
Day of December, 2006


NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires. 10/28/14


Grantor, Grantee, or Legal Representative
G. THOMAS HILL
Print or Type Name Here

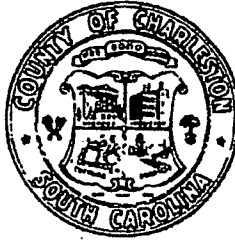
BKH 610PG778

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document

Filed By:

CYNTHIA MILLER
4213 SAVANNAH HWY
RAVENEL SC 29470



FILED

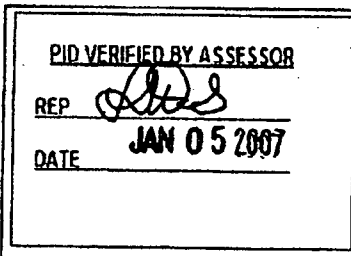
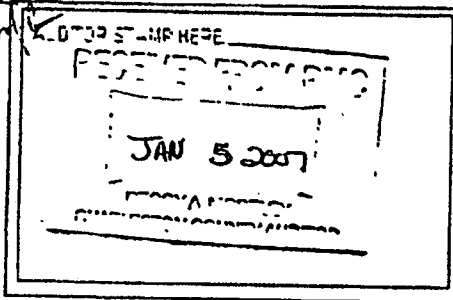
December 29, 2006

1:04:36 PM

BKH 610PG775

Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION		AMOUNT
Recording Fee	\$	10.00
State Fee	<Exempt>	
County Fee	<Exempt>	
Postage	\$	0.50
TOTAL		\$ 10.50
\$ Amount (In thousands).		
DRAWER:		B - BJA



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H6

TITLE NOT EXAMINED:

STATE OF SOUTH CAROLINA,

WARRANTY DEED

COUNTY OF CHARLESTON,

WHEREAS, Miller Group Properties, LLC owns a 50% interest in the below described property;
and

WHEREAS, Miller Group Properties, LLC desires to transfer its 50% interest as follows: JLJ, LLC,
a forty (40%) percent interest, and PMC, LLC a ten (10%) percent interest: and

WHEREAS, the grantor hereby informs the grantees the property interest conveyed and the property
described in Exhibit A is subject to a Mortgage recorded in Book S650 at Page 250 in the RMC Office
for Charleston County, South Carolina.

KNOW ALL MEN BY THESE PRESENTS, THAT Miller Group Properties, LLC.

(Grantor) in the State aforesaid, for an in consideration of the sum of Five and 00/100 (\$5.00) Dollars,
to Grantor in hand paid at and before the sealing of these presents by Grantees in the State aforesaid,
the receipt of whereof is hereby acknowledged, have granted, bargained, sold and released, and by these
presents do grant, bargain, sell and release unto said JLJ, LLC, a forty (40%) percent interest, and PMC,
LLC a ten (10%) percent interest, the following described property:

See: Exhibit A—for legal description of Lot A

TMS #: 244-00-00-122

Grantee's Address: 5972 McKay Road, Ravenel, SC 29470

Together with all and singular the rights, members, hereditaments and appurtenances to the said
premises belonging, or in anywise incident or appertaining.

EXHIBIT F

RMC Bk 0263 Pg 508 : pg 1 *

TO HAVE AND TO HOLD, all and singular, the said Premises before mentioned unto the said JLI, LLC, a forty (40%) percent interest, and PMC, LLC a ten (10%) percent interest, its/their successors and assigns forever.

AND, Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the grantees against ourselves and its successors or assigns and any person or persons whomsoever lawfully claiming or to claim the same, or any part thereof.

WITNESS the hand(s) and seal(s) of the Grantor this 14th day of MAY, in the year of our Lord two thousand twelve and in the two hundredth thirty-fifth year of the Sovereignty and Independence of the United States of America.

Signed, Sealed and Delivered
in the Presence of


Amanda B. Woods

Miller Group Properties, LLC.,

By: Mary Alice Miller (Seal)
Mary Alice Miller, Member

By: _____ (Seal)

STATE OF SOUTH CAROLINA,

ACKNOWLEDGMENT

COUNTY OF CHARLESTON,

The foregoing instrument was acknowledged by me this 23 day of March, 2012, by Mary Alice Miller, Member, as the duly authorized signatories for Miller Group Properties, LLC.

Amanda B. Woods (Seal)

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: October 6, 2018

Peterson Clarker

Miller Group Properties, LLC.,

By:

Cynthia Miller
Cynthia Miller, Member

(Seal)

Peter Miller

By:

(Seal)

STATE OF SOUTH CAROLINA,

ACKNOWLEDGMENT

COUNTY OF CHARLESTON,

The foregoing instrument was acknowledged by me this 14 day of ^{May not} ~~March~~, 2012, by
Cynthia Miller, Member as the duly authorized signatories for Miller Group Properties, LLC.

Mary D. Hancock (Seal)

NOTARY PUBLIC FOR SOUTH CAROLINA

My Commission Expires: August 27, 2018

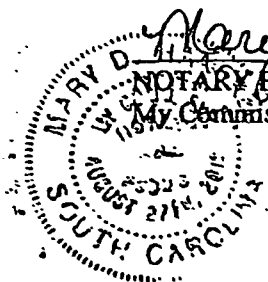


EXHIBIT A

ALL that parcel, tract and piece of land in the County of Charleston, State of South Carolina beginning Eleven Hundred Fifty (1,150') feet north of Highway 162 on Highway 17; thence for Two Hundred Ninety-Seven and Fifty-Six-Hundredths (297.56') feet in a northerly direction to a point, thence for Thirty-Six and Forty-Hundredths (36.40') feet in a northerly direction to a point, thence easterly direction for Twelve and Six Hundredths feet (12.06') to point; thence in a northerly direction for Fifteen (15') feet to a point; thence for Twenty-Five (25') feet in an easterly direction to a point; thence in a northerly direction for One Hundred Twenty-Seven and Ninety-Nine-Hundredths (127.99') feet to a point; thence in an easterly direction for Sixty Seven and Twenty Hundredths (67.20') feet to a point; thence in a southerly direction for One Hundred Eleven and Sixty Hundredths (111.66') feet to a point; thence in a southerly direction for One Hundred Fourteen (114') feet to a point; thence in a southerly direction for Two Hundred Eighty-Eight and Fourteen-Hundredths (288.14') feet to a point; thence in a westerly direction for Eighty-Two (82') feet to the beginning point.

Further being the same property bounded on the North by Wallace Creek, on the East and South by the lands of Ernest C. Seel, et al, and on the West by U. S. Highway 17 (Savannah Highway).

BEING the same premises conveyed to the grantor herein by deed from Peter Miller as Trustee of the Peter Miller Living Trust dated December 31, 1999 dated August 30, 2002 and recorded in the RMC Office for Charleston County in Book U419, Page 263.

TMS:244-00-00-122

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

AFFIDAVIT OF TAXABLE OR EXEMPT TRANSFERS

RMC BK 0263 Pg 508 : pg 5 *

PERSONALLY appeared before me the undersigned, who being duly sworn, deposes and says:

1. I have read the information on this Affidavit and I understand such information.
2. The property being transferred by Miller Group Properties, LLC to JLJ, LLC 40% and PMC, LLC 10% ownership interest respectively on May 14, 2012.
3. Check one of the following: THE DEED IS:
 - a. X subject to the deed recording fee as a transfer for consideration paid or to be paid in money or money's worth.
 - b. _____ Subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary
 - c. _____ EXEMPT from the deed recording fee because (exemptions # _____ Explanation if required) sibling to siblings (if exempt, please skip items 4-6 and go to item 7 of this Affidavit)
4. Check one of the following if either item 3(a) or item 3(b) above has been checked.
 - a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of \$
 - b) _____ The fee is computed on the fair market value of the realty which is \$
 - c) X The fee is computed on the fair market value of the realty as established for property tax purposes which is \$ 436,000.00 (i.e. $\frac{1}{2}$ of \$872,000.00 the tax assessed value).
5. Check YES X or NO _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement or realty after the transfer. If "YES", the amount of the outstanding balance of this lien or encumbrance is \$434,059.00. See: *Mortgage Modification recorded simultaneously herewith which modifies a Mortgage from Miller Group Properties, LLC to Marilyn L. Dillion dated 2/5/08 recorded in Book S650 at Page 250 on 2/7/08.*
6. The DEED Recording Fee is computed as follows:
 - a. \$ 436,000.00 the amount listed in item 4 above.
 - b. \$ 434,059.00 the amount listed in item 5 above (no amount place zero)
 - c. \$ 1,941.00 Subtract line 6(b) from line 6(a) and place the result.
7. The deed recording fee is based on the amount listed on Line 6(c) above and the deed recording fee due is \$7.40 plus 10.00 Recording fee
8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as:
Attorney
9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is not guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.

[Signature]
Purchaser, Seller, Legal Representative of the Purchaser, or other Responsible Person connected with the Transaction.

G. Thomas H. H.
Print or Type Name Here

SWORN to before me this

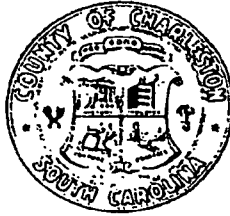
11th day of July, 2012

[Signature]
Notary Public for South Carolina

My Commission Expires: October 6, 2018

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Filed By:

HILL & HILL LLC

6209 SAVANNAH HWY.
RAVENEL SC 29470

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Date: July 11, 2012

Time: 2:20:58 PM

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0263

508

Deed

Charlie Lybrand, Register
Charleston County, SC

671

MAKER:

MILLER GROUP PROPS LLC

Note:

RECIPIENT:

JLJ LLC AL

of Pages: 6

Recording Fee \$ 10.00

State Fee \$ 5.20

County Fee \$ 2.20

Extra Pages \$ 1.00

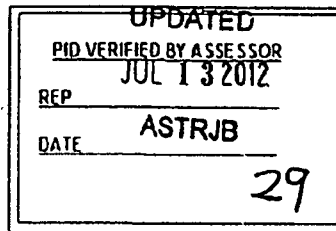
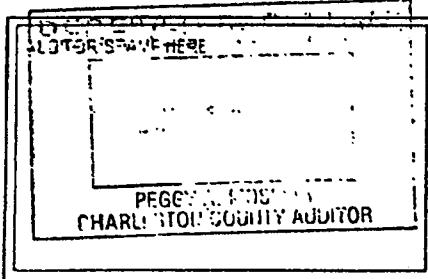
Postage \$ -

Chattel \$ -

TOTAL \$ 18.40

Original Book:

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0263
Book



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Page



07/11/2012
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1 STATE OF SOUTH CAROLINA
2 COUNTY OF CHARLESTON
3 PETER MILLER, MARY ALICE MILLER, MARY ALICE MILLER,
4 AS TRUSTEE OF MARY ALICE MILLER LIVING TRUST, MILLER
5 GROUP PROPERTIES, LLC, AND C-MILLER PROPERTIES,
6 LLC,

7 Plaintiffs,

8 vs. CASE NO. 2015-CP-10-3389

9 MARILYN L. DILLON AND JLJ, LLC,

10 Defendants,

11 AND

12 MARILYN L. DILLON,

13 Third-Party Plaintiff,

14 vs.

15 PMC, LLC,

16 Third-Party Defendant.

17 DEPOSITION OF: G. THOMAS HILL

18 DATE: June 23, 2016

19 TIME: 11:06 AM

20 LOCATION: One Cool Blow Street
Charleston, SC

21 TAKEN BY: Counsel for the Plaintiff

22 REPORTED BY: Priscilla Nay,
23 Certified Shorthand Reporter

24 EXHIBIT G

25 A W R

A. WILLIAM ROBERTS, JR., & ASSOCIATES (800) 743-DEPO
scheduledepo.com

Page 2 1 A. WILLIAM ROBERTS, JR., & ASSOCIATES 2 Fast, Accurate & Friendly 3 Charleston, SC Hilton Head, SC Myrtle Beach, SC (843) 722-8414 (843) 785-3263 (843) 839-3376 4 5 Columbia, SC Greenville, SC Charlotte, NC (803) 731-5224 (864) 234-7030 (704) 573-3919 6 7 APPEARANCES OF COUNSEL: 8 ATTORNEYS FOR THE PLAINTIFFS 9 PETER MILLER, MARY ALICE MILLER, MARY 10 ALICE MILLER, AS TRUSTEE OF MARY ALICE 11 MILLER LIVING TRUST, MILLER GROUP 12 PROPERTIES, LLC, AND C-MILLER 13 PROPERTIES, LLC: 14 JOHN E. ROMANOSKY, JR., ESQUIRE 15 BY: JOHN E. ROMANOSKY, JR. 16 One Cool Blow Street, Suite 201 17 Charleston, SC 29403 18 (843) 724-1054 19 john@romanlaw.com 20 ATTORNEYS FOR THE DEFENDANT 21 MARILYN L. DILLON and JLJ, LLC: 22 23 TURNER PADGET 24 BY: IAN D. McVEY 25 1901 Main Street, 17th Floor Columbia, SC 29201 (803) 227-4267 john@romanlaw.com ALSO PRESENT: Cynthia Miller Peter Miller Joseph Dillon (via telephone) Marilyn Dillon (via telephone) (INDEX AT REAR OF TRANSCRIPT)	Page 3 1 (PLF. EXH. 1, Promissory note, was 2 marked for identification.) 3 (PLF. EXH. 2, Mortgage, was marked for 4 identification.) 5 (PLF. EXH. 3, Deed, was marked for 6 identification.) 7 (PLF. EXH. 4, Modified note, was marked 8 for identification.) 9 (PLF. EXH. 5, Modification, was marked 10 for identification.) 11 (PLF. EXH. 6, Warranty Deed, was marked 12 for identification.) 13 (PLF. EXH. 7, Satisfaction of Mortgage, 14 was marked for identification.) 15 MR. McVEY: I'll put a stipulation on 16 the record. Mr. Hill is the deponent today and has 17 represented the Miller family and my clients, the 18 Dillons, on multiple different occasions. As such 19 there's an attorney-client privilege that extends 20 to all of these things. 21 To the extent that we do not have in 22 writing from our clients at this point a waiver of 23 the attorney-client privilege and we do expect to 24 get it we're reserving any and all objections to 25 what may be testified to that is privileged today
Page 4 1 until, I guess, trial. Then to the extent that 2 anything you're about to testify to would go 3 outside of the parole evidence rule or the Statute 4 of Frauds or any other evidentiary rule related to 5 these documents, et cetera, we're certainly 6 reserving that objection until a later time, 7 probably trial. 8 In the interest of moving discovery 9 along we're going to go forward with the deposition 10 today. 11 MR. ROMANOSKY: Agreed. 12 G. THOMAS HILL 13 being first duly sworn, testified as follows: 14 EXAMINATION 15 BY MR. ROMANOSKY: 16 Q. Tommy, we're going to dispense with any 17 formalities because you've been through this plenty 18 of times. 19 A. Right. 20 Q. I'm going to hand you what has been 21 marked as Plaintiff's Exhibit No. 1. It appears to 22 be a promissory note dated June 1st, 2006. 23 I ask if you have seen that or if you 24 can identify that or know anything about that 25 document at all.	Page 5 1 A. Well, I think I've seen it before. I 2 don't know if I drew it up or not. 3 Q. Okay. 4 A. I don't think I did, but only because 5 it doesn't look like a note that I've drawn up 6 before. 7 Q. Okay. 8 A. I think I've probably seen that. 9 Q. Okay. But you don't think you prepared 10 that? 11 A. No. I don't think I prepared that. 12 Q. All right. Let me hand you know what's 13 been marked as Plaintiff's Exhibit Number 2 for 14 identification which appears to be a real estate 15 mortgage recorded in Book S650 at Page 250. I ask 16 if you recognize that document. 17 A. Yeah. I'm sure I drafted this because 18 this is the type of mortgage I use. 19 Q. Okay. 20 A. Yeah. Okay. 21 Q. Do you have any independent 22 recollection of the purpose or reason that that 23 mortgage was drawn? 24 A. Only that I think the Miller Group 25 and C-Miller Properties may have been in some



Page 6

1 financial -- I don't want to say distress, but they
2 needed cash flow or money and I believe the Dillons
3 or Marilyn loaned them money.
4 Q. Okay.
5 A. I don't want to overexaggerate. They
6 needed cash flow and in '08 everybody -- I don't
7 know anybody that didn't need it --
8 Q. I understand.
9 A. -- me probably included.
10 Q. I understand. All right. Let me hand
11 you know what's been marked as Plaintiff's Exhibit
12 Number 3 for identification. It appears to be a
13 deed recorded in Book 0189 at Page 97 from Mary
14 Alice Miller, Trustee, to Marilyn Dillon.
15 I ask you if you can identify that
16 document and if you prepared it.
17 A. Yes. I prepared it and I can identify
18 it.
19 Q. Okay.
20 A. It's a copy that I would have drawn up.
21 Q. Okay. Do you have any independent
22 recollection of the purpose of that conveyance or
23 what it was for?
24 A. By memory I would say this was used to
25 pay down on, I guess, part of the loan that was

Page 8

1 I ask you to look at that and see if
2 you can identify it or --
3 A. Yeah. I would have drawn this up.
4 Q. Okay. And do you have any independent
5 recollection of the purpose that that document was
6 prepared, drawn, and executed?
7 A. Well, it shows what was left due on the
8 loan that was made by Ms. Dillon. So I guess that
9 360 had grown to \$434,059 because no payments were
10 being made and the interest was accruing and the
11 principal was still owed.
12 Q. Okay. I'll hand you know what's been
13 marked as Plaintiff's Exhibit Number 5 for
14 identification. It appears to be a modification of
15 mortgage agreement recorded in Book 0263 at Page
16 507.
17 I'll ask you if you can identify that
18 document and if you prepared the same.
19 A. Yeah. I drew this up and I recognize
20 the document. I guess it goes along with
21 Plaintiff's Exhibit 4.
22 Q. All right. So it conforms to the
23 modified promissory note --
24 A. Right.
25 Q. -- and modifies the mortgage

Page 7

1 due, maybe interest or I don't know. I don't know
2 what exactly the breakdown of how this was being
3 applied, but I believe it was being applied to
4 pay down.
5 Q. Okay. That's from your independent
6 recollection that you have of that transaction?
7 A. Yeah.
8 Q. Okay. Would you take a close look at
9 that instrument and see if there's anything on
10 there that would lead one to believe or give
11 notice or state that it was, in fact, given as
12 consideration for a reduction of the mortgage?
13 Is there anything on that deed saying
14 that?
15 A. There's no clause that would explain
16 why, you know, this was being done.
17 Q. Okay.
18 A. It was a value of \$102,955. Let me
19 look at when the document stamps were paid. So,
20 you know, it appears to be an arm length
21 transaction, not a gift that I can determine.
22 Q. Okay. All right. I'm going to hand
23 you know now what's been marked as Plaintiff's
24 Exhibit 4 for identification. It appears to be a
25 modified promissory note dated March 23rd, 2012.

Page 9

1 accordingly is the way I read it. Is that --
2 A. Yeah. I mean, those two documents go
3 hand in hand. It modifies the original mortgage,
4 but back from -- was it '08 if I remember? It
5 might be Exhibit 2. Yeah.
6 Let's see. Yeah. The Exhibit 2,
7 mortgage recorded at S650 at Page 250.
8 Q. I'm going to digress for one second.
9 The promissory note we talked about was dated in
10 June of '06 and, of course, that mortgage we looked
11 at was not recorded until March of 2012.
12 Do you have any knowledge of why there
13 was a length of such a long period of time between
14 the promissory note and the recording of the
15 mortgage?
16 A. I don't know. I don't know.
17 Q. Okay. I'll ask you to again look at
18 the modification agreement. It appears to me that
19 it was executed on March 23rd of 2012 but not
20 recorded until July 11th of that year.
21 Again, if you know, do you have any
22 independent knowledge of why that might have been
23 signed and recorded at a later date?
24 A. No, other than maybe it was just set
25 aside and realized that it wasn't sent down to the

Page 10

1 RMC and once that was figured out it was taken down
2 there. That's all I can figure out is some
3 clerical issue.
4 Q. Okay. Now, I am going to hand you
5 what's been marked as Plaintiff's Exhibit Number 6
6 for identification, title to real estate, recorded
7 in Book 0263 at Page 508, a conveyance from Miller
8 Group Properties, LLC conveying a 40 percent
9 interest in property to JLJ, LLC and a 10 percent
10 interest in property to PMC, LLC.
11 I ask if you can take a look at that
12 document and identify it for me.
13 A. I drew this up.
14 Q. Okay. Do you have any independent
15 knowledge or recollection as to the purpose or
16 reason that that deed was drawn and prepared and
17 recorded?
18 A. If I remember correctly I think Cynthia
19 and Patrice already had an interest in this family
20 property and it was set up where Marilyn would have
21 an interest in the family property through that
22 JLJ.
23 It also had the effect of stopping any
24 foreclosure rights that Marilyn or Ms. Dillon had
25 because technically I think they could have

Page 12

1 Q. Okay. Item Number 4 on the affidavit
2 to me tells me -- and I'm asking you this to see if
3 you agree with me -- that the value of the interest
4 in real estate transferred by this deed was
5 \$436,000?
6 A. Well, it was 50 percent of -- we didn't
7 have an appraisal. So I used a tax assessed value
8 which I think is proper and 50 percent of that
9 would be \$336,000.
10 Q. But someone who was a lawyer or knows
11 what these affidavits are all about would conclude
12 that the value of the property transferred was
13 \$436,000. Is that correct?
14 A. Yeah. The 50 percent was worth
15 436,000.
16 Q. All right. Tell me if you can what
17 Item Number 5 of the affidavit tells us.
18 A. Well, it shows that \$434,059, the lien,
19 was still against the property.
20 Q. Okay.
21 A. And this is the only place that -- and
22 I've looked over this and thought, well, maybe I
23 made a mistake on the calculation of document
24 stamps. That was the mistake that I think I could
25 have made and I looked over it last night. I guess

Page 11

1 foreclosed on this years earlier and the family --
2 of course, it's family and -- and that -- if it --
3 if Ms. Dillon were not family this property would
4 have been foreclosed on years prior.
5 The family was negotiating amongst
6 themselves how to work this out and, you know,
7 there was -- I know part of the family wanted to
8 wipe out the mortgage. The other part would not,
9 refused to agree to that. The Dillons did not want
10 to wipe out the mortgage and so this is the final
11 result of the negotiations, what I've drawn up
12 here.
13 Q. Okay. Well, let me ask you if you
14 would turn to the affidavit section of the deed.
15 A. Consideration affidavit?
16 Q. Yes, consideration affidavit. Were
17 this conveyance to have been a gift what would be
18 the proper box to check in Item Number 3 of the
19 affidavit?
20 A. Exempt, Number 3-C, with an
21 explanation.
22 Q. Okay. So the affidavit attached to the
23 deed tells us that this was not at least on its
24 face intended as a gift. Do you agree with that?
25 A. Yes.

Page 13

1 there's a couple of ways to figure it out.
2 Q. Okay. Would you say then in your
3 opinion that the affidavit is contradictory?
4 MR. McVEY: Object to the form of the
5 question.
6 THE WITNESS: I don't know. The two --
7 in retrospect I used the 346 minus the 434 and I
8 think I probably should have used the 434 minus --
9 or I may have just misstated that, but 872 minus
10 434 and then did my calculations.
11 BY MR. ROMANOSKY:
12 Q. Okay.
13 A. I think that's -- I was thinking about
14 it and that could be an issue.
15 Q. Okay. Well, I will tell you that the
16 issue in this litigation concerns the reason that
17 this deed was given and that it is the position of
18 the plaintiffs that it was given to JLJ, LLC as
19 partial satisfaction of the mortgage which is the
20 subject matter of this lawsuit.
21 Do you have any independent
22 recollection of such discussions with any of the
23 Millers in connection with the preparation and
24 recording of this deed?
25 A. The final result because the Dillons

Page 14

1 were unyielding is the fact that this was not going
2 to be a forgiveness of the debt. So, I mean,
3 that's my -- that's my recollection.
4 **Q. Well, was it going to be --**
5 **A. They weren't going to wipe out that**
6 **debt, you know, for an interest in this loan.**
7 **Q. To your knowledge and recollection if**
8 **you know were they going to credit anything towards**
9 **the balance of the mortgage in consideration of**
10 **this conveyance?**
11 **A. No. Like I said earlier when I first**
12 **started, my recollection is that Cynthia and**
13 **Patrice had already gotten their share and Marilyn**
14 **was getting her share.**
15 **Q. Okay. So what do you believe or what**
16 **do you -- if you know, what was, in fact, the**
17 **consideration for the transaction?**
18 **We've already determined that it was**
19 **not a gift because the proper box is not checked as**
20 **a gift.**
21 **A. You know, I don't -- yeah. I know and**
22 **that's --**
23 **Q. And perhaps --**
24 **A. Without the agreement that we have**
25 **it's -- you know, that's -- I think I've told you**

Page 16

1 **consideration was for this transfer if any?**
2 **Because we've determined --**
3 **A. Well --**
4 **Q. -- that it's not a gift. So there's**
5 **got to be some consideration, something that --**
6 **A. I just think it requires -- I think --**
7 **this was done for the county because it requires**
8 **that document stamps be paid. It's not exempt. So**
9 **you have to calculate document stamps, gift, or --**
10 **Q. Okay.**
11 **A. You know...**
12 **Q. Okay. Lastly I'm going to hand you**
13 **Plaintiff's Exhibit No. 7, a form entitled:**
14 **Satisfaction of mortgage. I'll ask if you can**
15 **identify that, if you've ever seen it, and perhaps**
16 **if you may have even prepared it.**
17 **A. I did prepare it, but it didn't fly.**
18 **Q. Okay. Tell me what you know about that**
19 **document and why it didn't fly.**
20 **A. I think Cynthia probably asked me to**
21 **draw up this document before really this matter**
22 **got -- we were in the infancy stages of all this**
23 **discussion and I think Cynthia -- you have to**
24 **understand I've done work for the Millers and --**
25 **Q. For a long time?**

Page 15

1 what I remember.
2 **Q. Okay.**
3 **A. I think an issue we had was could --**
4 **family members can gift. This is the problem, I**
5 **think, and the reason it was done this way. I can**
6 **gift to my children but can -- can my corporation**
7 **gift to my child's corporation?**
8 **And that's -- that was the issue. So**
9 **that's why I think it had to be -- it's like you**
10 **can create a -- and this is an analogy. If you**
11 **start an LLC you can fund your LLC with money and**
12 **it's not necessarily a gift but it's exempt. When**
13 **it comes back out of that LLC it's got to have**
14 **document stamps on it.**
15 **Q. Okay.**
16 **A. That was the theory I was using. I**
17 **didn't see, you know, any exemption that we could**
18 **use since we were dealing with corporate LLCs and**
19 **so that's why I had to do it like that.**
20 **If we just went with the family members**
21 **I would have put on there an "X" for exempt and we**
22 **would have rolled on, but we couldn't do it that**
23 **way because of the fact that LLCs were involved.**
24 **Q. Okay. So I guess my question was, do**
25 **you have an opinion or do you know what the**

Page 17

1 **A. A long time. So I'm not trying to take**
2 **sides. I'm not -- I care for both families. In**
3 **fact, I know Cynthia better than anybody and I**
4 **surely don't want to do anything to upset her.**
5 **Q. I understand.**
6 **A. I've tried a case for her before. In**
7 **fact, I saw Melvin Bowens at the Dollar General in**
8 **Ravenel in which I tried two cases for her on rent**
9 **on one of the units in this place. It was a**
10 **coincidence because I haven't seen him since the**
11 **last trial. Okay?**
12 **Q. Okay.**
13 **A. So I just don't have a dog in this**
14 **fight and I don't want to hurt either side.**
15 **Q. I understand.**
16 **A. Cynthia asked me to draw up a**
17 **satisfaction because I think she wanted to present**
18 **that to satisfy -- you know, wanted to get rid of**
19 **this debt.**
20 **Q. Right.**
21 **A. And Ms. Dillon or Marilyn, you know,**
22 **just -- that wasn't going to fly. So this kind of**
23 **just was created. It was created off of -- you**
24 **know, it was recycled from other satisfactions I**
25 **did. I just typed it in there, probably e-mailed**

Page 18

1 it to her.
2 Q. So what you're telling me is I believe
3 there were at least some discussions among the
4 Miller family members? One or more of the Miller
5 family members concerning a satisfaction of the
6 mortgage?
7 A. I believe Cynthia wanted this presented
8 to Ms. Dillon in the infant stages of them trying
9 to work out this mortgage loan.
10 Q. Okay.
11 A. How they were going to do -- because I
12 know Ms. Dillon and them I think helped pay for the
13 house, you know, her parents' home, or some of this
14 money was used to keep mortgages -- other mortgages
15 from going in default and that gets back to the
16 cash flow issue about '08 because money dried up.
17 Q. Okay.
18 A. I went from 600 closings in '05 to
19 doing nine in 2009 and that's when I quit doing
20 closings. So that's how bad things got.
21 Q. Okay.
22 A. So...
23 MR. ROMANOSKY: If everybody will bear
24 with us, at this point I'm going to break because
25 I'm done with my exhibits. I'm going to meet with

Page 20

1 Cynthia was not at that time. I think Patrice may
2 have been there. We discussed what I consider to
3 be on these documents and I drew documents up from
4 that discussion.
5 Now, you know, they may -- that's how I
6 perceive what I did on these papers is what I
7 perceive we talked about.
8 Q. So are you telling me you perceived
9 that it was a transfer and that it was not intended
10 to be applied towards any of the mortgage balance
11 if you know?
12 A. Yeah. I don't recall it being --
13 having any effect on the mortgage balance.
14 MR. ROMANOSKY: Okay. That's all I
15 have.
16 EXAMINATION
17 BY MR. McVEY:
18 Q. Tommy, just a couple of questions, if I
19 may. You were talking about a meeting in which you
20 looked at these documents and drew them up and
21 based upon that meeting.
22 Who was present at that the time at
23 that meeting?
24 A. Myself, Mr. and Mrs. Miller, and
25 Patrice, I believe.

Page 19

1 Cynthia for a minute.
2 MR. McVEY: Could she make some copies
3 for me?
4 MR. ROMANOSKY: Of course.
5 (A recess transpired.)
6 BY MR. ROMANOSKY:
7 Q. Two more questions, please. You had
8 stated at some point in your testimony that you
9 believe that Patrice had already been given some
10 interest in this property. The deed -- it appears
11 she received her interest simultaneously with the
12 interest to JLJ. Does that sound correct?
13 A. Yeah. I may be mistaken on that. I
14 know she had gotten 10 percent of out of this.
15 Q. All right. Last question. Do you
16 recall any specific conversations or discussions
17 with Mr. or Ms. Miller concerning what their
18 intentions were with respect to the deed of the 40
19 percent? Specifically did they intend it to be
20 applied towards the balance -- a portion of the
21 mortgage?
22 MR. McVEY: Object to the form of the
23 question. You can answer.
24 THE WITNESS: We had a meeting at my
25 office. I know Mr. and Ms. Miller were there.

Page 21

1 Q. By Mr. And Mrs. Miller you mean Peter
2 Miller, correct?
3 A. Right.
4 Q. From that meeting the documents that
5 have been entered here as Plaintiff's 6 --
6 Plaintiff's 5. Excuse me. I guess Plaintiff's --
7 was it 6 which that is the conveying the interest?
8 Is that the document you're talking
9 about that was right there?
10 A. Yeah. It's signed the day that she
11 was -- Ms. Miller was there.
12 Q. Okay.
13 A. It looks like it's the 23rd of March.
14 Q. Okay. Do you have any knowledge as to
15 who was present the day Plaintiff's 5 which is
16 right there, the modification of the mortgage
17 agreement, was signed?
18 A. Well, that was done the same day, March
19 23rd, 2012.
20 Q. Again, Mr. And Mrs. Miller, Patrice.
21 And was Cynthia Miller present?
22 A. No --
23 Q. She was not? Okay.
24 A. -- because I think ended up with the
25 deed in -- we e-mailed the signature page and the

Page 22

1 deed to Cynthia, I think, in Atlanta and, you
2 know --
3 **Q. Okay.**
4 **A. I don't know. Mary Hinkle. She's in**
5 **South Carolina. Somehow this was signed May 14th,**
6 **2012, the deed was.**
7 **Q. Okay. Obviously it looks like you drew**
8 **it up in March and it didn't get executed until**
9 **May. Is that correct?**
10 **A. Yeah.**
11 **Q. Okay.**
12 **A. You can see where March is scratched**
13 **through and May is written.**
14 **Q. Okay. You said that was drawn up at**
15 **the same time as the mortgage modification**
16 **agreement marked as Plaintiff's 6?**
17 **A. That's dated March 23rd?**
18 **Q. Yes, it is.**
19 **A. Oh, yeah. All that would have been**
20 **done at the same time.**
21 **Q. Okay. Let me show you another deed.**
22 **We'll mark that as Defendant's 1.**
23 **(DFT. EXH. 1, Warranty Deed, was marked**
24 **for identification.)**
25 **BY MR. McVEY:**

Page 24

1 **A. You follow what I'm saying?**
2 **Q. I follow.**
3 **A. You learn as you go.**
4 **Q. That's why they call it the practice of**
5 **law.**
6 **A. Right.**
7 **Q. But the intent of Plaintiff's 1 and the**
8 **intent of Defendant's 1 and Plaintiff's 6, those**
9 **are gifts?**
10 **A. Those are gifts.**
11 **Q. You just got yourself convinced when**
12 **you said Plaintiff's Exhibit --**
13 **A. I had a case of some kind in the**
14 **interim in that four-year period that I think --**
15 **you know, usually at the RMC they will kick**
16 **something out if they see -- if it doesn't look**
17 **quite right or have the right exemption number and**
18 **that sort of thing.**
19 **Q. Sure.**
20 **A. I learned over a period of time that I**
21 **do not think that one corporation can give to**
22 **another corporation --**
23 **Q. Okay.**
24 **A. -- or LLC.**
25 **Q. Right.**

Page 23

1 **Q. Did you prepare that deed as well.**
2 **A. Yeah.**
3 **Q. And in that deed -- and what I'm**
4 **referring to just specifically for purposes of the**
5 **record is this is a deed to Miller Properties, LLC**
6 **to C-Miller Properties, LLC?**
7 **A. Uh-huh.**
8 **Q. And I believe this is a one-half**
9 **interest being conveyed to the property that we're**
10 **talking about, correct?**
11 **A. Uh-huh.**
12 **Q. Okay. And it appears if you look at**
13 **the affidavit on that --**
14 **A. I think this is the one that -- after I**
15 **researched that -- that could be -- could or**
16 **couldn't -- could not be correct.**
17 **Q. All right. So you're not sure if --**
18 **A. The document stamps may be on that.**
19 **Q. You're not sure whether these actually**
20 **applied?**
21 **A. No.**
22 **Q. The intent of --**
23 **A. In the interim of years I think I**
24 **determined they --**
25 **Q. I'm sorry.**

Page 25

1 **A. And so that's why I had to do --**
2 **Q. Right. It has to be affiliates?**
3 **A. Yeah.**
4 **Q. It doesn't have to be sort of -- I've**
5 **always looked at it that if an LLC is a member of**
6 **another LLC it can certainly contribute property**
7 **and would be exempt in that fashion and if it's**
8 **not -- if it's just transferred from one to one --**
9 **A. Right.**
10 **Q. The only other question I have, you're**
11 **familiar with the property we're talking about,**
12 **correct?**
13 **A. Yeah. Very, very familiar.**
14 **Q. Is it currently fully occupied to your**
15 **knowledge?**
16 **A. You know, I doubt it, but it looks**
17 **pretty busy right now. So I don't know.**
18 **Q. Do you know what's there right now**
19 **tenant-wise?**
20 **A. Looks like a granite shop, a place that**
21 **sells granite, and I don't know if they still have**
22 **a nightclub there or not.**
23 **Q. Okay.**
24 **A. There's a little motel around the back.**
25 **I don't know if they're renting out rooms or not.**

Page 26 1 I haven't driven around the back. I've driven by 2 it. I don't know what -- there may be some kind of 3 real estate thing or something in the middle, but 4 I'm not 100 percent sure. 5 Q. Have you drawn any of the leases up for 6 that property? 7 A. I've defended them in court. 8 Q. But you have not prepared any leases 9 for that property to your knowledge -- 10 A. I don't -- 11 Q. -- within the past three years? 12 A. No, not in the past three years. 13 Q. Okay. 14 A. I don't think I've prepared any leases, 15 but, you know, I can't say -- I've done a lot for 16 the Millers. 17 Q. Sure. 18 A. I may have. I don't remember. 19 Q. Okay. 20 A. I know that that Melvin Bowen guy 21 sued twice and we counterclaimed in one -- both 22 counterclaims -- 23 Q. Right. 24 A. -- but he doesn't have -- he can't 25 pay us with any money; so our counterclaims are	Page 27 1 no good. 2 Q. Yes. 3 A. I mean, it's a piece of paper. 4 Q. Sure. 5 A. We knew that going in. I think he was 6 just taking a stab at trying to get some money. 7 Q. And I believe your testimony earlier 8 is that the debts that are represented by 9 Plaintiff's 1 was is the promissory note, the 10 modified note that's marked as Plaintiff's 4 and 11 the mortgage modifications, et cetera, those are 12 all sort of a culmination of debts of money lent? 13 Your understanding is it's various 14 moneys that are lent by Marilyn and Joe Dillon over 15 the years? Is that right? That's your 16 understanding? 17 A. Yeah. I mean, I think if you go 18 through it sort of tells a story and it sort of 19 starts out with the first promissory note. 20 Q. Okay. 21 A. I think the first promissory note was 22 done without a mortgage and at some point it was 23 decided, well, shoot, there's a promissory note, 24 but we don't have any collateral. I mean -- and so 25 that's maybe why the mortgage was done. If I
Page 28 1 remember right it was done in '08, but the note was 2 done in '06. That's probably -- you know, and 3 that's why I seen that before. You know, that was 4 given to me and I drew up a promissory note 5 according to -- 6 Q. And the obligor changed under the note, 7 didn't it? It went to the -- the obligor changed 8 at that point or at that point or the obligors 9 changed to -- 10 A. Well -- 11 Q. -- looks like -- 12 A. Well, I don't know. I mean, you 13 know... 14 Q. Well, from -- 15 A. I think what -- I think C-Miller 16 Group -- I don't know that -- I don't think they 17 signed the note, but if the property was foreclosed 18 on they were taking their interest subject to the 19 mortgage. 20 Q. Right. But the original -- 21 A. I don't think -- I don't think I can 22 get a judgment under this note against C-Miller 23 Group if the property were foreclosed on. 24 Q. Right. 25 A. When -- C-Miller Group if the property	Page 29 1 were foreclosed on and the Dillons -- Ms. Dillon 2 prevailed both Miller Group properties and C-Miller 3 Properties, LLC would lose the property. 4 Q. Right. Okay. But you agree with me 5 that the promissory note marked as Plaintiff's 4 6 the borrower under that is Miller Group Properties, 7 correct? 8 A. Under Plaintiff's 4? 9 Q. Plaintiff's 4. Modified promissory 10 note? 11 A. Yeah. 12 Q. Okay. All right. There's no question 13 in your mind that this debt is secured by this 14 mortgage, correct? The mortgage marked as 15 Plaintiff's 2? 16 A. Yeah. 17 Q. Okay. 18 A. In the modification. I mean, coupled 19 with the -- 20 Q. Right. 21 A. -- modification. 22 Q. Or as modified, I guess? 23 A. As modified. 24 MR. McVEY: That's all the questions I 25 have.

Page 30

1 EXAMINATION

2 BY MR. ROMANOSKY:

3 Q. Tommy, the gist then of what I get from

4 Ian's cross-examination is that you did not make

5 any disbursements from your office or your trust

6 account in connection with any of these loans at

7 all?

8 You were just drawing papers?

9 You don't know what money transpired

10 between the Dillons and any of the parties to this

11 litigation?

12 A. I did not receive any funds and

13 disburse anything through my trust account on this

14 matter.

15 MR. ROMANOSKY: Okay. That's all I

16 have.

17 MR. McVEY: That's all I have.

18 MR. ROMANOSKY: Do you want to waive or

19 sign?

20 THE WITNESS: I'll waive.

21 MR. ROMANOSKY: Thank you, Tommy.

22 That's all.

23 (The witness, after having been advised

24 of his right to read and sign this transcript,

25 waives that right.)

Page 31

1 (The deposition was concluded at 12:04

2 PM.)

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Page 32

1 CERTIFICATE OF REPORTER

2

3 I, Priscilla Nay, Court Reporter and

4 Notary Public for the State of South Carolina, do

5 hereby certify that the foregoing transcript is a

6 true, accurate, and complete record.

7 I further certify that I am neither

8 related to nor counsel for any party to the cause

9 pending or interested in the events thereof.

10 Witness my hand, I have hereunto

11 affixed my official seal this 5th day of July, 2016

12 at Charleston, Charleston County, South Carolina.

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25

 Priscilla Nay

Priscilla Nay,
Court Reporter
My Commission expires
December 2, 2021

Page 33

1 INDEX

2

3

4

5 G. THOMAS HILL 4 12

6 EXAMINATION 4 14

7 BY MR. ROMANOSKY

8 EXAMINATION 20 16

9 BY MR. McVEY

10 EXAMINATION 30 1

11 BY MR. ROMANOSKY

12 CERTIFICATE OF REPORTER 32 1

13

14 REQUESTED INFORMATION INDEX

15 (No Information Requested)

16

17

18 EXHIBITS

19

20

21 PLF. EXH. 1, Promissory note 3 1

22 PLF. EXH. 2, Mortgage 3 3

23 PLF. EXH. 3, Deed 3 5

24 PLF. EXH. 4, Modified note 3 7

25

		Page 34	
1	PLF. EXH. 5, Modification	3	9
2	PLF. EXH. 6, Warranty Deed	3	11
3	PLF. EXH. 7, Satisfaction of	3	13
4	Mortgage		
5	DFT. EXH. 1, Warranty Deed	22	23
6			
7			
8			
9			
10			
11			
12			
13			
14			
15			
16			
17			
18			
19			
20			
21			
22			
23			
24			
25			

Exhibits	11th 9:20	8:16 508 10:7	23:20 appraisal 12:7 arm 7:20 assessed 12:7 Atlanta 22:1 attached 11:22	24:4 care 17:2 Carolina 22:5 case 17:6 24:13 cases 17:8 cash 6:2,6 18:16 cetera 4:5 27:11 changed 28:6,7,9 check 11:18 checked 14:19 child's 15:7 children 15:6 clause 7:15 clerical 10:3 close 7:8 closings 18:18,20 coincidence 17:10 collateral 27:24 concerns 13:16 conclude 12:11 conforms 8:22 connection 13:23 consideration 7:12 11:15,16 14:9, 17 16:1,5 contradictory 13:3 contribute 25:6 conversations 19:16
PLF.EXH.001 3:1 4:21 33:21	14th 22:5			
PLF.EXH.002 3:3 5:13 9:5,6 33:22	1st 4:22	6		
PLF.EXH.003 3:5 6:11,12 33:23	2	6 10:5 21:5,7 22:16 24:8		
PLF.EXH.004 3:7 7:24 8:21 33:24	2 5:13 9:5,6	600 18:18		
PLF.EXH.005 3:9 8:13 34:1	2006 4:22	7	B	
PLF.EXH.006 3:11 10:5 34:2	2009 18:19	7 16:13	back 9:4 15:13 18:15 25:24 26:1	
PLF.EXH.007 3:13 16:13 34:3	2012 7:25 9:11,19 21:19 22:6	8	bad 18:20	
DFT.EXH.001 22:23 34:5	23rd 7:25 9:19 21:13,19 22:17	872 13:9	balance 14:9 19:20 20:10,13	
\$	250 5:15 9:7	9	based 20:21	
\$102,955 7:18	3	97 6:13	bear 18:23	
\$336,000 12:9	3 6:12 11:18	A	Book 5:15 6:13 8:15 10:7	
\$434,059 8:9 12:18	3-C 11:20	accruing 8:10	Bowen 26:20	
\$436,000 12:5,13	346 13:7	affidavit 11:14,15,16,19,22 12:1,17 13:3 23:13	Bowens 17:7	
0	360 8:9	affidavits 12:11	box 11:18 14:19	
0189 6:13	4	affiliates 25:2	break 18:24	
0263 8:15 10:7	4 7:24 8:21 12:1 27:10	agree 11:9,24 12:3	breakdown 7:2	
05 18:18	40 10:8 19:18	Agreed 4:11	busy 25:17	
06 9:10 28:2	434 13:7,8,10	agreement 8:15 9:18 14:24 21:17 22:16	C	
08 6:6 9:4 18:16 28:1	436,000 12:15	Alice 6:14	C-miler 5:25 28:15	
1	5 8:13 12:17 21:6,15	analogy 15:10	C-miller 23:6 28:22,25	
1 4:21 22:22,23 24:7, 8 27:9	50 12:6,8,14	appears 4:21 5:14 6:12 7:20, 24 8:14 9:18 19:10 23:12	calculate 16:9	
10 10:9 19:14	507	applied 7:3 19:20 20:10	calculation 12:23	
100 26:4			calculations 13:10	
			call	

conveyance 6:22 10:7 11:17 14:10	dealing 15:18	dog 17:13	25:7	forgiveness 14:2
conveyed 23:9	debt 14:2,6 17:19	Dollar 17:7	exemption 15:17 24:17	form 13:4 16:13 19:22
conveying 10:8 21:7	debts 27:8,12	doubt 25:16	EXH 22:23	formalities 4:17
convinced 24:11	decided 27:23	drafted 5:17	Exhibit 4:21 5:13 6:11 7:24 8:13,21 9:5,6 10:5 16:13 24:12	forward 4:9
copies 19:2	deed 6:13 7:13 10:16 11:14,23 12:4 13:17,24 19:10,18 21:25 22:1,6,21,23 23:1,3,5	draw 16:21 17:16	exhibits 18:25	four-year 24:14
copy 6:20	default 18:15	drawn 5:5,23 6:20 8:3,6 10:16 11:11 22:14 26:5	explain 7:15	Frauds 4:4
corporate 15:18	Defendant's 22:22 24:8	drew 5:2 8:19 10:13 20:3, 20 22:7 28:4	explanation 11:21	fully 25:14
corporation 15:6,7 24:21,22	defended 26:7	dried 18:16	extent 4:1	fund 15:11
correct 12:13 19:12 21:2 22:9 23:10,16 25:12	deposition 4:9	driven 26:1	F	G
correctly 10:18	determine 7:21	due 7:1 8:7	face 11:24	General 17:7
counterclaimed 26:21	determined 14:18 16:2 23:24	duly 4:13	fact 7:11 14:1,16 15:23 17:3,7	gift 7:21 11:17,24 14:19,20 15:4,6,7, 12 16:4,9
counterclaims 26:22,25	DFT 22:23	E	familiar 25:11,13	gifts 24:9,10
county 16:7	digress 9:8	e-mailed 17:25 21:25	families 17:2	give 7:10 24:21
couple 13:1 20:18	Dillon 6:14 8:8 10:24 11:3 17:21 18:8,12 27:14	earlier 11:1 14:11 27:7	family 10:19,21 11:1,2,3,5, 7 15:4,20 18:4,5	good 27:1
court 26:7	Dillons 6:2 11:9 13:25	effect 10:23 20:13	fashion 25:7	granite 25:20,21
create 15:10	discovery 4:8	ended 21:24	fight 17:14	Group 5:24 10:8 28:16,23, 25
created 17:23	discussed 20:2	entered 21:5	figure 10:2 13:1	grown 8:9
credit 14:8	discussion 16:23 20:4	entitled 16:13	figured 10:1	guess 4:1 6:25 8:8,20 12:25 15:24 21:6
culmination 27:12	discussions 13:22 18:3 19:16	estate 5:14 10:6 12:4 26:3	final 11:10 13:25	guy 26:20
Cynthia 10:18 14:12 16:20, 23 17:3,16 18:7 19:1 20:1 21:21 22:1	dispense 4:16	evidence 4:3	financial 6:1	H
D	distress 6:1	evidentiary 4:4	flow 6:2,6 18:16	hand 4:20 5:12 6:10 7:22 8:12 9:3 10:4 16:12
date 9:23	document 4:25 5:16 6:16 7:19 8:5,18,20 10:12 12:23 15:14 16:8,9, 19,21 21:8 23:18	EXAMINATION 4:14 20:16	fly 16:17,19 17:22	helped 18:12
dated 4:22 7:25 9:9 22:17	documents 4:5 9:2 20:3,20 21:4	Excuse 21:6	follow 24:1,2	HILL 4:12
day 21:10,15,18		executed 8:6 9:19 22:8	foreclosed 11:1,4 28:17,23	
		exempt 11:20 15:12,21 16:8	foreclosure 10:24	



Hinkle 22:4 home 18:13 house 18:13 hurt 17:14	10:9,22 13:18 19:12 Joe 27:14 judgment 28:22 July 9:20 June 4:22 9:10	LLCS 15:18,23 loan 6:25 8:8 14:6 18:9 loaned 6:3 long 9:13 16:25 17:1 looked 9:10 12:22,25 20:20 25:5 lot 26:15	Miller 5:24 6:14 10:7 18:4 19:17,25 20:24 21:1,2,11,20,21 23:5 Millers 13:23 16:24 26:16 minus 13:7,8,9 minute 19:1 misstated 13:9 mistake 12:23,24 mistaken 19:13 modification 8:14 9:18 21:16 22:15 modifications 27:11 modified 7:25 8:23 27:10 modifies 8:25 9:3 money 6:2,3 15:11 18:14, 16 26:25 27:6,12 moneys 27:14 mortgage 5:15,18,23 7:12 8:15,25 9:3,7,10,15 11:8,10 13:19 14:9 16:14 18:6,9 19:21 20:10,13 21:16 22:15 27:11,22,25 28:19 mortgages 18:14 motel 25:24 moving 4:8	negotiations 11:11 night 12:25 nightclub 25:22 note 4:22 5:5 7:25 8:23 9:9,14 27:9,10,19, 21,23 28:1,4,6,17, 22 notice 7:11 number 5:13 6:12 8:13 10:5 11:18,20 12:1,17 24:17
I	K	M		O
identification 5:14 6:12 7:24 8:14 10:6 22:24 identify 4:24 6:15,17 8:2,17 10:12 16:15 included 6:9 independent 5:21 6:21 7:5 8:4 9:22 10:14 13:21 infancy 16:22 infant 18:8 instrument 7:9 intend 19:19 intended 11:24 20:9 intent 23:22 24:7,8 intentions 19:18 interest 4:8 7:1 8:10 10:9, 10,19,21 12:3 14:6 19:10,11,12 21:7 23:9 28:18 interim 23:23 24:14 involved 15:23 issue 10:3 13:14,16 15:3, 8 18:16 Item 11:18 12:1,17	kick 24:15 kind 17:22 24:13 26:2 knew 27:5 knowledge 9:12,22 10:15 14:7 21:14 25:15 26:9 L Lastly 16:12 law 24:5 lawsuit 13:20 lawyer 12:10 lead 7:10 learn 24:3 learned 24:20 leases 26:5,8,14 left 8:7 length 7:20 9:13 lent 27:12,14 lien 12:18 litigation 13:16 LLC 10:8,9,10 13:18 15:11,13 23:5,6 24:24 25:5,6	made 8:8,10 12:23,25 make 19:2 March 7:25 9:11,19 21:13, 18 22:8,12,17 Marilyn 6:3,14 10:20,24 14:13 17:21 27:14 mark 22:22 marked 4:21 5:13 6:11 7:23 8:13 10:5 22:16,23 27:10 Mary 6:13 22:4 matter 13:20 16:21 Mcvey 13:4 19:2,22 20:17 22:25 meet 18:25 meeting 19:24 20:19,21,23 21:4 Melvin 17:7 26:20 member 25:5 members 15:4,20 18:4,5 memory 6:24 middle 26:3	negotiating 11:5 necessarily 15:12 needed 6:2,6 N	Object 13:4 19:22 objection 4:6 obligor 28:6,7 obligors 28:8 occupied 25:14 office 19:25 one-half 23:8 opinion 13:3 15:25 original 9:3 28:20 overexaggerate 6:5 owed 8:11 P
J				
JLJ				

parole 4:3	prepare 16:17 23:1	real 5:14 10:6 12:4 26:3	result 11:11 13:25	signature 21:25
part 6:25 11:7,8	prepared 5:9,11 6:16,17 8:6, 18 10:16 16:16 26:8,14	realized 9:25	retrospect 13:7	signed 9:23 21:10,17 22:5 28:17
partial 13:19	present 17:17 20:22 21:15, 21	reason 5:22 10:16 13:16 15:5	rid 17:18	simultaneously 19:11
past 26:11,12	presented 18:7	recall 19:16 20:12	rights 10:24	sort 24:18 25:4 27:12,18
Patrice 10:19 14:13 19:9 20:1,25 21:20	pretty 25:17	received 19:11	RMC 10:1 24:15	sound 19:12
pay 6:25 7:4 18:12 26:25	principal 8:11	recess 19:5	rolled 15:22	South 22:5
payments 8:9	prior 11:4	recognize 5:16 8:19	ROMANOSKY 4:11,15 13:11 18:23 19:4,6 20:14	specific 19:16
perceive 20:6,7	problem 15:4	recollection 5:22 6:22 7:6 8:5 10:15 13:22 14:3,7, 12	rooms 25:25	specifically 19:19 23:4
perceived 20:8	promissory 4:22 7:25 8:23 9:9, 14 27:9,19,21,23 28:4	record 23:5	rule 4:3,4	stab 27:6
percent 10:8,9 12:6,8,14 19:14,19 26:4	proper 11:18 12:8 14:19	recorded 5:15 6:13 8:15 9:7, 11,20,23 10:6,17	S	stages 16:22 18:8
period 9:13 24:14,20	Properties 5:25 10:8 23:5,6	recording 9:14 13:24	S650 5:15 9:7	stamps 7:19 12:24 15:14 16:8,9 23:18
Peter 21:1	property 10:9,10,20,21 11:3 12:12,19 19:10 23:9 25:6,11 26:6,9 28:17,23,25	recycled 17:24	satisfaction 13:19 16:14 17:17 18:5	start 15:11
piece 27:3	purpose 5:22 6:22 8:5 10:15	reduction 7:12	satisfactions 17:24	started 14:12
place 12:21 17:9 25:20	purposes 23:4	referring 23:4	satisfy 17:18	starts 27:19
Plaintiffs 4:21 5:13 6:11 7:23 8:13,21 10:5 16:13 21:5,6,15 22:16 24:7,8,12 27:9,10	put 15:21	refused 11:9	scratched 22:12	state 7:11
plaintiffs 13:18	Q	related 4:4	section 11:14	stated 19:8
plenty 4:17	question 13:5 15:24 19:15,23 25:10	remember 9:4 10:18 15:1 26:18 28:1	sells 25:21	Statute 4:3
PMC 10:10	questions 19:7 20:18	rent 17:8	set 9:24 10:20	stopping 10:23
point 18:24 19:8 27:22 28:8	quit 18:19	renting 25:25	share 14:13,14	story 27:18
portion 19:20	R	represented 27:8	shoot 27:23	subject 13:20 28:18
position 13:17	Ravenel 17:8	requires 16:6,7	shop 25:20	sued 26:21
practice 24:4	read 9:1	researched 23:15	show 22:21	surely 17:4
preparation 13:23		reserving 4:6	shows 8:7 12:18	sworn 4:13
		respect 19:18	side 17:14	T
			sides 17:2	taking 27:6 28:18

talked 9:9 20:7	transpired 19:5	
talking 20:19 21:8 23:10 25:11	trial 4:1,7 17:11	
tax 12:7	Trustee 6:14	
technically 10:25	turn 11:14	
telling 18:2 20:8	type 5:18	
tells 11:23 12:2,17 27:18	typed 17:25	
tenant-wise 25:19	U	
testified 4:13	Uh-huh 23:7,11	
testify 4:2	understand 6:8,10 16:24 17:5, 15	
testimony 19:8 27:7	understanding 27:13,16	
theory 15:16	units 17:9	
thing 24:18 26:3	unyielding 14:1	
things 18:20	upset 17:4	
thinking 13:13	W	
THOMAS 4:12	wanted 11:7 17:17,18 18:7	
thought 12:22	Warranty 22:23	
time 4:6 9:13 16:25 17:1 20:1,22 22:15,20 24:20	ways 13:1	
times 4:18	wipe 11:8,10 14:5	
title 10:6	work 11:6 16:24 18:9	
today 4:10	worth 12:14	
told 14:25	written 22:13	
Tommy 4:16 20:18	Y	
transaction 7:6,21 14:17	year 9:20	
transfer 16:1 20:9	years 11:1,4 23:23 26:11, 12 27:15	
transferred 12:4,12 25:8		

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2015-CP-10-3389

PETER MILLER, MARY ALICE MILLER,)
MARY ALICE MILLER, AS TRUSTEE)
OF MARY ALICE MILLER LIVING)
TRUST, MILLER GROUP PROPERTIES,)
LLC, AND C-MILLER PROPERTIES,)
LLC,)

Plaintiffs,)

vs.)

MARILYN L. DILLON AND JLJ, LLC,)

Defendants)

and)

MARILYN L. DILLON)

Third-Party Plaintiff)

vs.)

PMC, LLC)
_____)

AFFIDAVIT OF MARILYN L. DILLON

PERSONALLY APPEARED BEFORE ME, Marilyn L. Dillon, who, first being duly sworn, deposes and states as follows:

1. I am over the age of eighteen (18) and competent to make this affidavit.
2. I am a Defendant as well as the Third-Party Plaintiff in this action.
3. I am also a member of Defendant JLJ Associates, LLC. The other member is my husband, Joseph L. Dillon.
4. I am the owner and holder of the following loan documents:

- a. Modified Promissory Note ("Modified Note") dated March 23, 2012 in the face amount of Four Hundred Thirty-Four Thousand Fifty-Nine and 00/100s (\$434,059.00) dollars;
 - b. Promissory Note ("Note") in the original principal sum of Three Hundred Sixty Thousand and 00/100s (\$360,000.00) dollars dated June 1, 2006;
 - c. Mortgage ("Mortgage") dated February 5, 2008 and recorded on February 7, 2008 in the office of the RMC for Charleston County in Book S 650 at page 250; and
 - d. Modification of Mortgage Agreement ("Mortgage Modification"), the same being dated March 23, 2012 and recorded on July 11, 2012 in the office of the RMC for Charleston County in Book 263 at page 507.
5. The Mortgage is a first priority lien on the below-described real property ("Subject Property"):

ALL that parcel, tract and piece of land in the County of Charleston, State of South Carolina beginning Eleven Hundred Fifty (1,150) feet north of Highway 162 on Highway 17; thence for Two Hundred Ninety-Seven and Fifty-Six-Hundredths (297.56) feet in a northerly direction to a point, thence for Thirty-Six and Forty-Hundredths (36.40) feet in a northerly direction to a point, thence easterly direction for Twelve and Six Hundredths feet (12.06) to point; thence in a northerly direction for Fifteen (15) feet to a point; thence for Twenty-Five (25) feet in an easterly direction to a point; thence in a northerly direction for One Hundred Twenty-Seven and Ninety-Nine-Hundredths (127.99) feet to a point; thence in an easterly direction for Sixty Seven and Twenty Hundredths (67.20) feet to a point; thence in a southerly direction for One Hundred Eleven and Sixty Hundredths (111.66) feet to a point; thence in a southerly direction for One Hundred Fourteen (114) feet to a point; thence in a southerly direction for Two Hundred Eighty-Eight and Fourteen-Hundredths (288.14) feet to a point; thence in a westerly direction for Eighty-Two (82) feet to the beginning point.

Further being the same property bounded on the North by Wallace Creek, on the East and South by the lands of Ernest C. Seel, et al, and on the West by U. S. Highway 17 (Savannah Highway).

BEING the same premises conveyed to the Miller Group Properties, LLC herein by deed from Peter Miller as Trustee of the Peter Miller Living Trust dated December 31, 1999 dated August

30, 2002 and recorded in the RMC Office for Charleston County in Book U419, Page 263. This also being the same property conveyed to C-Miller Properties, LLC by deed dated December 28, 2006 and recorded December 29, 2006 in the office of the RMC for Charleston County in Book H610 at page 775, said deed conveying a one-half (1/2) interest in and two the above-described property. This also being the same property conveyed to JLJ, LLC and PMC, LLC by deed dated May 14, 2012 and recorded on July 11, 2012 in the office of the RMC for Charleston County in Book 263 at page 508, said interest being the remaining one-half (1/2) interest in the property.

TMS: 244-00-00-122

6. JLJ Associates, LLC was conveyed a forty (40%) percent interest in the Subject Property by deed dated May 14, 2012 and recorded on July 11, 2012 in the office of the RMC for Charleston County in Book 263 at page 508.
7. This conveyance was made with the express understanding that the debt evidenced by the afore-mentioned loan documents was not being satisfied in whole or in part. In fact, the deed into JLJ Associates, LLC clearly states:

WHEREAS, the grantor hereby informs the grantees the property interest conveyed and the property described in EXHIBIT A is subject to a Mortgage recorded in Book S650 at Page 250 in the RMC Office for Charleston County, South Carolina.

8. No payment has been made under the terms of the Modified Note, and the Modified Note has long since matured.
9. There is currently due and owing under the terms of the Modified Note and Mortgage the following amounts:

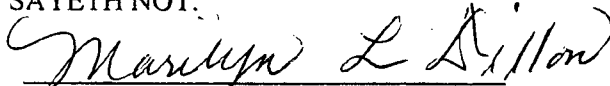
- | | |
|--|--------------|
| a. Principal: | \$434,059.00 |
| b. Interest to March 1, 2012 to July 26, 2016: | \$133,856.67 |
| c. Late Fees: | \$650.00 |

Total as of July 26, 2016:

\$568,565.67

10. Also due and owing under the Modified Note and Mortgage are attorney's fees and costs as well as taxes and insurance incurred in the prosecution of this matter.
11. I am asking the Court to review this affidavit, the motion for summary judgment to which it is attached and grant the motion for summary judgment.
12. I am further asking the Court to enter an order granting the foreclosure of the Mortgage and public sale of the Subject Property.

FURTHER THE AFFIANT SAYETH NOT.


Marilyn L. Dillon

SWORN before me this
28 day of July, 2016.


Notary for the State of ~~Maryland~~ South Carolina
My Commission Expires may 14, 2023

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-10-3389

Plaintiffs,

VS.

Defendants

and

MARILYN L. DILLON

Third-Party Plaintiff

VS.

PMC, LLC

AFFIDAVIT OF ATTORNEYS FEES AND COSTS

I was retained by the Plaintiff to defend this action and to foreclose the Mortgage as expeditiously as possible, given the detriment to Plaintiff's equity position as a direct result of increasing losses from the running of interest. Upon receipt of the case file, title was ordered and examined to identify all parties having or claiming any interest in the subject property.

Since that time I or others in my office have prepared an Answer, Counterclaim, Cross-Claim, and Third-Party Complaint, an Order of Reference, Motion for the Appointment of a Receiver, Discovery Requests and various other pleadings and notices. Further, this matter has been litigated and depositions been taken of the parties and other fact witnesses. By the time the motion to which this affidavit is attached has been heard, the parties will have participated in a mediation.

Additionally, the pleadings were served upon the parties personally and/or by statutory/substitute service; review and handling of title issues; reinstatement and payoff figures and payment histories were provided as requested or required.

Future duties include the preparation and service of an Order of Judgment of Foreclosure and Sale to Defendant, obtaining bidding instructions from Plaintiff, representing Plaintiff at the sale or arranging for such representation, preparing the Master's Report on Sale and Disbursements, if needed, and preparing the Foreclosure Deed and any other documents that may be necessary in this particular action.

In regard to the professional standing of counsel, I was admitted into the practice of law in South Carolina in 2004 and am an active member of the South Carolina Bar Association. I am also admitted to the United States District Court for the State of South Carolina and the Fourth Circuit Court of Appeals. I am Of Counsel to Turner Padgett Graham & Laney, P.A. with an emphasis in Commercial Litigation, Banking, Real Estate and Bankruptcy. I am rated "AV" by Martindale-Hubbell, its highest rating, indicating "Very High to Preeminent" legal abilities and "Very High" general ethical standards, as is my firm. I was further rated as a Rising Star by the publication Super Lawyers in 2014 and have been recognized as one of the Midlands Legal

Elite by the Columbia Business Journal. I am the attorney of record for the Plaintiff in the above-captioned action. The services rendered on behalf of Plaintiff have been performed by me or those under my direction.

Based upon the fact that the above-captioned matter is a commercial foreclosure action, as well as my as well as my firm's status in the legal community, fees customarily charged for a matter such as this, the complexity of this matter and the plain language of the Promissory Note which calls for no less than 10% attorney fees, I think that a reasonable attorney fee for this matter is \$56,856.57. Further, my firm has incurred \$449.29 in costs during the course of the prosecution of this matter and will incur additional costs of publication in connection with the sale of the Property. I believe that all services performed were reasonable and necessary for the proper representation of my client, Marilyn L. Dillon.

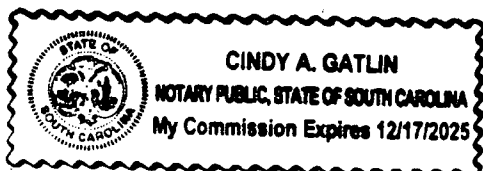
I am requesting that the Court review the file, this Affidavit, and the evidence presented to the Court and grant Plaintiff a reasonable sum of attorneys' fees and costs to date.

Further, deponent sayeth naught.



Ian D. McVey
Attorney for Plaintiff

SWORN TO AND SUBSCRIBED
before me this 27th day of July, 2016.
Cindy A. Gatlin (L.S.)
Notary Public for South Carolina
My commission expires: 12/17/2025



STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Peter Miller, et al

☒ Plaintiff

v.

Marilyn L.. Dillon and JLJ, LLC

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2015-CP-10-3389

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: John E. Romanosky, Jr., Bar No. 4903 Address: OneCool Blow Street, Suite 201 Charleston, SC 29403 phone: 843-724-1054 fax: 843-724-1061 e-mail: john@jromanlaw.com other:	Defendant's Attorney: Ian D. Mcvey, Bar No. Address: PO. Box 1473 Columbia, SC 29202 phone: 803-254-2200 fax: 803-799-3957 e-mail: imcvey@turnerpadget.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information	
Nature of Motion: Motion to Enforce Settlement Order Estimated Time Needed: 15 minutes Court Reporter Needed: ☐ YES / ☒ NO	
SECTION II: Motion/Order Type	
☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.	
Signature of Attorney for ☒ Plaintiff / ☐ Defendant April 28, 2017 Date submitted	
SECTION III: Motion Fee	
☒ PAID – AMOUNT: \$25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION	
Collected by: _____ Date Filed: _____	
☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED – AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT
CASE NO. 2015-CP-10-3389

PETER MILLER, MARY ALICE)
MILLER, MARY ALICE MILLER, AS)
TRUSTEE OF MARY ALICE MILLER)
LIVING TRUST, MILLER GROUP)
PROPERTIES, LLC, AND C-MILLER)
PROPERTIES, LLC)

Plaintiffs)

vs.)

MARILYN L. DILLON AND JLJ, LLC)

Defendants)

and)

MARILYN L. DILLON)

Third-Party Plaintiff)

vs.)

PMC, LLC)

Third-Party Defendant.)

NOTICE OF MOTION AND
MOTION TO ENFORCE
SETTLEMENT ORDER

FILED
2017 APR 28 PM 12:14
JULIE J. ARMSTRONG
CLERK OF COURT
RY

TO: Marilyn L. Dillon and JLJ, LLC, and their attorney, Ian D. McVey, Esquire

PLEASE TAKE NOTICE that the Plaintiffs, by and through the undersigned attorney, will move before the Presiding Judge for the Court of Common Pleas for Charleston County, in the Charleston County Courthouse, at 10:00 a.m. on the tenth (10) day after service hereof, or at such other time and place as is convenient to the

Court and counsel, for an Order requiring the Defendants to comply with the terms and conditions of the Consent Settlement Order filed in the above captioned action on September 12, 2016, and in support of this motion, the undersigned would respectfully show the Court as follows:

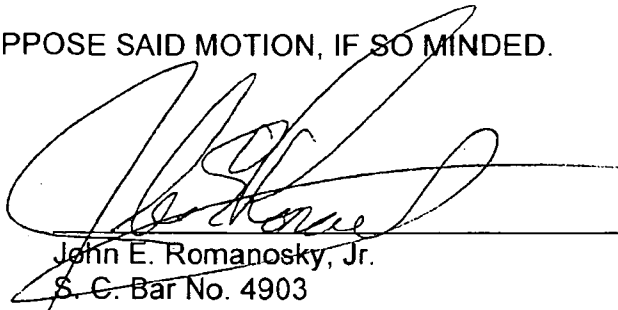
1. That a Consent Settlement Order was executed between the parties to this action and filed with the Clerk of Court on September 12, 2016 (Exhibit "A").
2. That pursuant to the terms of the Settlement Order, Plaintiffs were required to provide Defendants with a contract of sale for the subject property no later than March 11, 2017.
3. That in keeping with the terms of the Consent Settlement Order, Plaintiffs submitted a Real Estate Purchase Agreement to the Defendants prior to March 11, 2017 (Exhibit "B").
4. That on March 10, 2017, the Defendants, through their attorney, rejected and refused to sign the Real Estate Purchase Agreement (Exhibit "C").
5. That by reason of the foregoing, the Plaintiffs ask the Court for an Order requiring the Defendants to comply with the Consent Settlement Order by executing the Real Estate Purchase Agreement attached as Exhibit "B" and comply with the terms thereof so that the Real Estate Purchase Agreement may proceed to closing.

SOUTH CAROLINA RULES OF CIVIL PROCEDURE

RULE 11 CERTIFICATION

I certify that prior to filing this Motion, I communicated, orally or in writing, with opposing counsel and attempted in good faith to resolve the matter contained in this Motion.

PLEASE BE PRESENT TO OPPOSE SAID MOTION, IF SO MINDED.



John E. Romanosky, Jr.

S. C. Bar No. 4903

One Cool Blow Street, Suite 201

Charleston, South Carolina 29403

843-724-1054

john@jromanlaw.com

Attorney for Plaintiffs

Charleston, South Carolina

April 28, 2017

EXHIBIT "A"

Consent Settlement Order

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Peter Miller, Mary Alice Miller, Mary
Alice Miller, as Trustee of Mary Alice
Miller Living Trust, Miller Group
Properties, LLC, and C-Miller Properties,
LLC,

Plaintiff,

vs.

Marilyn L. Dillon and JLJ, LLC

Defendants.

Marilyn L. Dillon,

Third-Party Plaintiff,

vs.

PMC, LLC

Third-Party Defendants.

IN THE COURT OF COMMON PLEAS
FOR THE NINTH JUDICIAL CIRCUIT
CASE NO.: 2015-CP-10-3389

CONSENT SETTLEMENT ORDER

2016 SEP 12 PM 2:56
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

THIS MATTER COMES BEFORE THE COURT by and with the consent of the parties.
The above-captioned matter was referred to the undersigned by a Consent Order of Reference filed on December 16, 2015. Pursuant to said Order of Reference, this Court has jurisdiction over this matter.

PROCEDURAL HISTORY

This matter was commenced by the filing of a Lis Pendens, Summons and Complaint by the Plaintiffs on June 15, 2015. Plaintiffs' Complaint seeks a declaration of this Court as the amount due and owing under a Modified Promissory Note ("Modified Note") dated March 23, 2012. Said Modified Note is secured by a mortgage ("Mortgage") dated February 1, 2008 and

recorded on February 7, 2008 in the office of the RMC for Charleston County in Book S 650 at page 257. Said Mortgage is a first priority mortgage on the following real property:

INSERT LEGAL DESCRIPTION

On September 17, 2015, Defendants and Third-Party Plaintiff filed their Answer, Counterclaim, Cross-Claim and Third-Party Complaint in which they generally denied the allegations of the Plaintiffs' Complaint, asserted various affirmative defenses and further sought foreclosure of the Mortgage. Plaintiffs' Reply was filed on September 25, 2015. Pursuant to this Court's Scheduling Order filed on March 15, 2016, the parties mediated this matter and were able to resolve the differences between them. The Parties now wish to reduce their settlement to an Order of this Court.

BASED UPON THE AGREEMENT AND CONSENT OF THE PARTIES, I FIND, ORDER AND CONCLUDE AS FOLLOWS:

1. Within one hundred and eighty (180) days of the date of the filing of this Consent Order described below, the Plaintiffs must provide Defendants with one of the following:
 - a. A ratified contract to sell the property identified as TMS #244-00-00-122 (the "Subject Property") for Eight Hundred Fifty Thousand and 00/100s (\$850,000.00) or higher; or
 - b. An unqualified loan commitment letter from a reputable lender licensed by the state or federal government for a loan on commercially reasonable terms in an amount sufficient to pay the debt owed Defendants/Third Party Plaintiff as more fully described in the Answer, Counterclaim, Cross-Claim and Third-Party Complaint filed in this matter, with the caveat that the attorneys' fees due to Defendant/Third-Party Plaintiff Marilyn L. Dillon will be attorney's fees and costs actually incurred by her related to this matter and not the attorneys' fees provided for under the Modified Note, Mortgage and other related loan documents.
2. If Plaintiffs obtain a ratified contract or loan commitment as described in paragraph 1 hereof, any such sale or refinance must be closed within Two Hundred Seventy (270) days of the date of the entry of this consent order.

3. Failure to obtain a ratified contract or a loan commitment within one hundred eighty (180) days of the date of entry of this consent order shall be considered a default hereunder.
4. Likewise, failure to close the sale or refinance contemplated herein within two hundred seventy (270) days of the date of the entry of this consent order shall be a default hereunder.
5. Reid Davis and the firm of Lee & Associates are hereby appointed as the broker to list the Property for sale as indicated by the consent of the parties.
6. Plaintiffs shall continue to manage the Property and pay the regular expenses, taxes, insurance and maintenance on the buildings during until such time as the sale or refinance contemplated herein has been consummated.
7. Plaintiffs will shall use the revenue generated by the property to pay expenses related the Subject Property to the extent available.
8. Plaintiff Petrease Clarkson will advance Nine Thousand and 00/100s (\$9,000.00) dollars to be used for the payment of taxes, insurance and general maintenance of the Subject Property including without limitation for roof repair and matters related to the underground storage tanks.
9. Likewise, Defendants/Third-Party Plaintiff will advance Six Thousand and 00/100s (\$6,000.00) dollars to be used for the payment of taxes, insurance and general maintenance of the Subject Property including without limitation for roof repair and matters related to the underground storage tanks.
10. Any funds advanced by Ms. Clarkson and Defendants/Third-Party Plaintiff will be considered loans and shall be repaid at the same time, in the same manner and in the same percentages as the loans by each. By way of example, if the Subject Property generates Ten Thousand and 00/100s (\$10,000.00) dollars for repayment

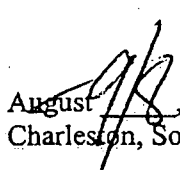
of the loans, then Six Thousand Seven Hundred and 00/100s (\$6,700.00) dollars would be paid to Clarkson and Three Thousand Three Hundred and 00/100s (\$3,300.00) dollars to Defendants/Third-Party Plaintiff.

11. Plaintiffs agree not to enter into any leases in excess of one (1) year during the course of their management of the Subject Property.
12. The parties agree not to convey, mortgage, encumber, or take any action to affect the current status of title to the Subject Property.
13. The parties will execute and deliver a Deed in Lieu of Foreclosure to counsel for Defendants/Third-Party Plaintiff.
14. Said Deed in Lieu of Foreclosure will be held in trust by counsel for Defendants/Third-Party Plaintiff and will not be recorded unless Plaintiffs breach the terms hereof.
15. The parties shall execute such documents as are reasonably requested to effectuate the Deed in Lieu including any corrective deeds and affidavits as may be required by any title insurance carrier.
16. In the event of a sale of the Property which generates more funds than necessary to repay the debt owed Defendants/Third Party Plaintiff as more fully described in the Answer, Counterclaim, Cross-Claim and Third-Party Complaint filed in this matter, the excess proceeds will be divided as follows: Fifty (50%) percent to Cynthia Miller or such person or entity designated by her; Forty (40%) percent to Defendants/Third-Party Plaintiffs or such person or entity designated by them; and Ten (10%) percent to Petrease Clarkson or such person or entity as designated by her.
17. The parties agree to keep the terms of this agreement confidential to the extent permitted by law, and the Court does hereby order the Clerk of Court to seal this

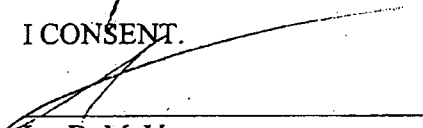
Consent Order pending further order of this Court or another Court of competent jurisdiction.

18. The parties agree that this action will remain pending during compliance with the terms of this agreement. In the event that a change in the status of title makes a deed in lieu of foreclosure impractical, the Plaintiffs agree not to contest the foreclosure.

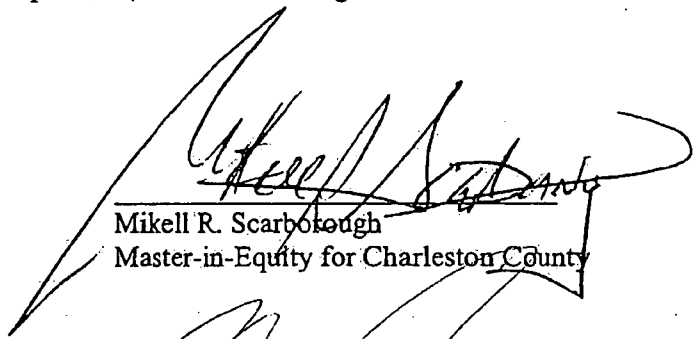
IT IS SO ORDERED.


August 18, 2016
Charleston, South Carolina

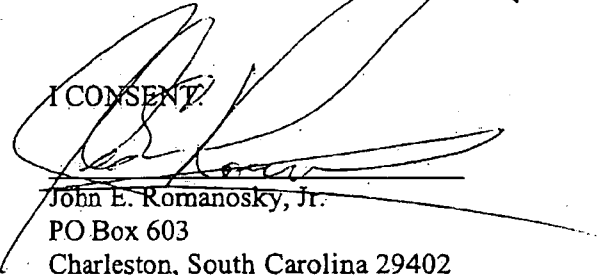
I CONSENT.


Ian D. McVey
TURNER PADGET GRAHAM & LANEY, P.A.
PO Box 1473
Columbia, South Carolina 29202
Tel. (803)227-4267
Fax (803)400-1564
Email: imcvey@turnerpadget.com

*Attorneys for Marilyn L. Dillon
and JJJ Associates, LLC*


Mikell R. Scarborough
Master-in-Equity for Charleston County

I CONSENT.


John E. Romanosky, Jr.
PO Box 603
Charleston, South Carolina 29402
Tel. (843)724-1054
Fax (843)724-1061
Email: john@jromanlaw.com

Attorney for Plaintiffs and PMC, LLC

EXHIBIT "B"

Real Estate Purchase Agreement

REAL ESTATE PURCHASE AGREEMENT

This REAL ESTATE PURCHASE AGREEMENT (hereinafter referred to as the "**Agreement**") is made and entered into on March 10, 2017, by and between C-Miller Properties LLC, JLI LLC, PMC LLC, a(n) LLC ("**Seller**") and CRM Agency LLC, a(n) LLC ("**Buyer**") (Seller and Buyer each a "**Party**" to this Agreement and collectively referred to as the "**Parties**").

1. Purchase Agreement. Seller hereby agrees to sell and convey to Buyer, and Buyer hereby agrees to purchase from the Seller, the property located at 4213 Savannah Highway, Hollywood, South Carolina 29470 (the "**Property**") including all fixtures and improvements attached or located on the land other than those excluded herein and subject to all easements, protective covenants, rights-of-way, and mineral rights, if any, according to the terms and conditions contained herein.

2. Legal Description. The Property is legally described as follows: TMS# 244-00-00-122, 1.06 acres.

ALL that parcel, tract and piece of land in the County of Charleston, State of South Carolina beginning Eleven Hundred Fifty (1,150') feet north of Highway 62 on Highway 17; thence for Two Hundred Ninety-Seven and Fifty-Six-Hundredths (297.56') feet in a northerly direction to a point, thence for Thirty-Six and Forty-Hundredths (36.40') feet in a northerly direction to a point, thence easterly direction for Twelve and Six Hundredths feet (12.06') to point; thence in a northerly direction for Fifteen (15') feet to a point; thence for Twenty-Five (25') feet in an easterly direction to a point; thence in a northerly direction for One Hundred Twenty-Seven and Ninety-Nine-Hundredths (127.99') feet to a point; thence in an easterly direction for Sixty Seven and Twenty Hundredths (67.20') feet to a point; thence in a southerly direction for One Hundred Eleven and Sixty Hundredths (111.66') feet to a point; thence in a southerly direction for One Hundred Fourteen (114') feet to a point; thence in a southerly direction for Two Hundred Eighty-Eight and Fourteen-Hundredths (288.14') feet to a point; thence in a westerly direction for Eighty-Two (82') feet to the beginning point. Further being the same property bounded on the North by Wallace Creek, on the East and South by the lands of Ernest C. Seel, et al, and on the West by U. S. Highway 17 (Savannah Highway).

3. Purchase Price. The total purchase price for the Property is \$850,000.00. Buyer will pay no money down, 0.00 ("**Earnest Money**") upon the execution of this Agreement and will pay the entire \$850,000.00 of the purchase price at closing.

4. Closing

Closing Date. Closing will occur on or before June 09, 2017 (the "**Closing Date**"), at which point Seller will transfer title to the Property to Buyer. However, either Party may unilaterally delay closing for any

reason, but in no event will closing occur more than 30 days after the Closing Date specified herein unless both Parties agree to extend the Closing Date in writing. If closing is delayed or extended as permitted by this Agreement, the Closing Date for purposes of this Agreement will be the date on which closing actually occurs.

5. Delivery of Possession. On the Closing Date, Seller will deliver possession of the Property to Buyer unless the Parties agree to a different date in writing. Seller will maintain all insurance covering the Property until the Closing Date. Seller agrees to deliver the Property in substantially the same condition as its present state. If subject property is damaged prior to transfer of title, Buyer has the option of accepting any insurance proceeds with title to the property in "as is" condition.

a. Closing Costs. The costs associated with closing this Agreement will be paid as follows:

- i. Seller pays all costs associated with preparation of the deed to the Property;
- ii. Seller pays for a title search, a title report, and a property owner's title insurance policy covering the amount of the purchase price;
- iii. Seller pays all property taxes, fees, and assessments up to, but not including, the Closing Date, including any transfer tax;
- iv. Buyer does hold a real estate sales agent license. Seller and Buyer agree that no real estate broker or agent has otherwise engaged in, any activity which could form the basis for a claim for real estate commission, brokerage fee, finder's fee or other similar charge, in connection with this Purchase;
- v. Seller pays for any loans and other debts on the Property not assumed by Buyer including any associated fees;
- vi. Seller pays for any judgments, tax liens, or other liens necessary to clear title;
- vii. Seller pays for any recording charges for documents necessary to clear title;
- viii. Buyer pays for recording any documents in Buyer's name;
- ix. Buyer pays the lender's title insurance premium, if applicable;
- x. Buyer pays for any new loan charges required by the lender;
- xi. Buyer pays for any costs associated with financing the purchase of the Property;
- xii. Buyer pays for the notary fee, if applicable;
- xiii. Buyer agrees to pay for all other costs associated with closing this Agreement unless otherwise agreed by the Parties in writing.

b. Procedure at Closing. On the Closing Date, Buyer and Seller, and any other party required to be present will gather to execute the necessary documents, at which point the Closing Attorney will distribute the funds to the appropriate parties and file the deed to the Property. Closing will not occur if any of the following conditions have not been met:

- i. The purchase price, closing costs, and all other payments required herein are deposited into the Closing Attorney's Escrow Account;
- ii. The deed to the Property and any other documentation needed to close the transaction are prepared and delivered to the necessary parties;
- iii. The title company is ready to issue a title policy and, if title defects are preventing the title company from issuing the policy, closing will not occur unless Buyer chooses to waive such title defects in writing; or
- iv. All other conditions of closing stated in this Agreement or required by law are satisfied.

c. Proration. Seller agrees to transfer all tenant deposits and prorated rents to Buyer at closing.

6. Title Requirements

a. Title Report. Upon executing this Agreement, Seller will order a title report as required by the Buyer's lender.

b. Title Insurance. Seller agrees to purchase a standard form property owner's title insurance policy covering the amount of the purchase price for Buyer from a certified insurance company. Such policy will insure Buyer against any defect or encumbrance on the title to the Property other than those stated on the deed transferring title to Buyer.

c. Assumption of Leases. Seller agrees that the transaction contemplated by this Agreement is permitted under the terms of all existing leases or rental agreements for tenancies on the Property. Notwithstanding anything to the contrary in this Agreement, the Parties agree that the Property is being conveyed subject to the following tenancies: Possession of the property and occupancy of all tenants, will be delivered to the Buyer when title transfers.

7. Buyer Contingencies

a. Financing: Third-Party Lender. Unless waived by Buyer in writing, this Agreement is contingent on Buyer's ability to obtain a financing commitment from an institutional third-party lender on or before June 2, 2017 (the "**Financing Contingency Date**"). The loan must be at the prevailing interest rate, and the loan must finance at least 80% of the purchase price unless Buyer has sufficient funds by the Contingency Date to pay for the portion of the purchase price not being financed by a third-party lender. Buyer will make a good faith effort to secure such financing by the Contingency Date; however, if Buyer is nonetheless unable to secure such financing, this Agreement will be canceled.

i. Commitment or Denial Statement. Buyer will provide Seller a copy of a commitment or denial statement from the third-party lender by the Financing Contingency Date. If Buyer does not provide Seller a copy of a commitment or denial statement from the third-party lender by the Financing Contingency Date, this Agreement will be canceled. If Buyer does provide Seller a copy of a denial statement from the third-party lender by the Financing Contingency Date and Buyer so requests, Seller may choose to give written consent to extend the Financing Contingency Date to allow Buyer additional time to secure financing. In this event, if Seller does not then extend financing by the extended Financing Contingency Date this Agreement will be canceled.

ii. Alternative Financing. Buyer reserves the right to obtain alternative financing by the Financing Contingency Date, any alternative financing obtained shall not result in any increased costs to Seller.

b. Waiver of Contingencies. If Buyer so chooses, Buyer may waive any or all contingencies set forth herein by so stating in a signed writing.

8. Seller Representations and Warranties

Assessments and Taxes. Seller covenants to pay any and all assessments or taxes on the Closing Date, and Buyer will pay any assessments or taxes thereafter.

9. Release of Dower. If not already a Party to this Agreement, Seller's spouse, if any, joins in signing this Agreement in order to give his or her consent to the release of any dower or other marital rights in the Property.

10. Risk of Loss. Seller assumes the risk of loss if the Property is destroyed or a material defect or other loss occurs between the date of this Agreement and the Closing Date. If Seller fails to restore the Property to its former condition, Buyer may choose to accept the Property with the loss and require Seller to pay or assign to Buyer any insurance proceeds payable to Seller as a result of such loss.

11. Cancellation of Agreement. If this Agreement is canceled as permitted by the terms herein, it will be deemed voided, with both Parties being fully released from performance, and neither Party will have any recourse against the other.

12. Default and Remedies. Upon Seller's default of this Agreement, Buyer will be entitled to either (a) cancel this Agreement, or (b) pursue any remedy available by law or equity, including seeking specific performance. Upon Buyer's default of this Agreement, Seller will be entitled to either (a) cancel this Agreement, or (b) pursue any remedy available by law or equity, including seeking specific performance. In addition to any other relief that may be awarded, the prevailing Party of any action at law or in equity brought to enforce or interpret this Agreement will be entitled to reasonable attorneys' fees and costs.

13. Mediation. All claims or disputes related to the performances or interpretation of this Agreement that the Parties are unable to resolve themselves will be first submitted to a mediation services provider mutually acceptable to both Parties or otherwise through a mediator with the American Arbitration Association. Both Parties will share the costs of mediation equally.

14. Further Assurances. The Parties agree to execute such further documents and do any and all such further things as may be necessary to implement and carry out the intent of this Agreement, including, without limitation, any documents or things that may be required by a third-party lender or title company.

15. Notices. Any notice, service of process, or demands required or permitted under this Agreement or under law will be deemed sufficiently given or served if sent by United States certified mail, return receipt requested, or by Registered Email, addressed as follows:

IF TO SELLER SEND TO:

C-Miller Properties LLC, Registered Email – cynthia.r.miller@att.net

JLI LLC, 11201 Prelude Court, Silver Spring, MD 20901

PMC LLC, 409 Blue Jasmine Lane, Charleston, SC 29414

IF TO BUYER SEND TO:

CRM Agency LLC, Registered Email – cynthia.r.miller@att.net

16. Miscellaneous Terms

a. Entire Agreement. This Agreement, including any attachments, addendums, exhibits, and amendments hereto, represents the entire and singular agreement between the Parties with respect to the matters herein stated, and any prior agreements, promises, or representations not included herein are void and of no effect.

b. Governing Law. The Parties agree and acknowledge that all provisions of this Agreement shall be governed by and construed in accordance with the laws of South Carolina exclusively and without reference to principles of conflict of laws.

c. Assignment. This Agreement will be binding and inure to the benefit of the Parties, their personal representatives, successors, guardians, and assigns, but only to the extent that such assignment is permitted by the terms of this Agreement, if at all.

d. Survival. The terms of this Agreement that imposes an obligation on either Party after the delivery of the deed to Buyer will continue to survive until satisfied.

e. Severability. If any provision of this Agreement shall be held to be invalid or unenforceable for any reason, that provision shall be considered removed from this Agreement; however, the remaining provisions shall continue to be valid and enforceable according to the intentions of the Parties. If a court finds that any provision of this Agreement is invalid or unenforceable, but that by limiting such provision it would become valid and enforceable, then such provision will be deemed written, construed, and enforced as so limited.

f. Force Majeure. Neither Party will be liable for any failure or delay in performing an obligation under this Agreement that results from causes or events beyond its reasonable control, including, without limitation, uncontrollable natural forces, war, labor or trade disputes, riots or civil unrest, or government action.

g. Joint and Several Liability. In the event two or more persons or entities are named as one Party to this Agreement, such persons' obligations and responsibilities will be joint and several.

h. Amendments. Any amendments, modifications, or additions to this Agreement must be expressly made in a writing signed by all Parties.

i. Time of Essence. Time is of the essence for this Agreement.

j. Construction. In this Agreement, the masculine, feminine, and neuter genders will be interpreted to include each other, as will the singular and plural. Headings used herein are for convenience only and will not be interpreted to give any meaning to their respective provisions.

k. Counterparts. This Agreement may be executed in counterparts, each of which will be deemed an original but considered part of one agreement.

The Parties have read this entire Agreement and hereby agree to fully perform all the terms and conditions in good faith. By signing this Agreement each Party swears that the information it has provided is true and accurate to the best of its knowledge and belief.

BUYER

Name: CRM Agency LLC

Sign: Cynthia R. Miller Date: 3/8/2017

SELLER

Name: C-Miller Properties LLC, JLI LLC, PMC LLC

Sign: Cynthia Miller Date: 3/8/2017

Sign: _____ Date: _____

Sign: _____ Date: _____

SELLER'S SPOUSE - SPOUSAL ACKNOWLEDGMENT

By signing below I hereby release any right of dower in the Property.

Sign: _____ Date: _____

Witnesses

Witness

Witness

EXHIBIT "C"

Letter of Rejection

Turner | Padget

REPLY TO:

Ian D. McVey

E-Mail: Imcvey@turnerpadget.com
Writer's Direct Dial: 803-227-4267
Writer's Direct Fax: 803-400-1564

March 10, 2017

VIA EMAIL and U.S. MAIL

(john@jromanlaw.com)

John E. Romanosky, Jr., Esquire
One Cool Blow Street, Suite 201
Charleston, SC 29403

Re: *Peter Miller, Mary Alice Miller, Mary Alice Miller, as Trustee of Mary Alice Miller Living Trust, Miller Group Properties, LLC, and C-Miller Properties, LLC v. Marilyn L. Dillon and JLJ, LLC and Marilyn L. Dillon v. PMC, LLC*
Civil Action No. 2015-CP-10-3389
TPGL File No.: 13698.101

Dear John:

I write you today on behalf of JLJ Associates, LLC ("JLJ"). I am in receipt of a correspondence from your client, Cynthia Miller, submitting an offer for the purchase of the real property which is the subject of this action ("Subject Property") to an entity called CRM Agency, LLC ("CRM"). My research shows me that CRM is a limited liability company organized and existing under the laws of the State of Georgia. I do not show that it is registered to do business in the State of South Carolina. Moreover, the business search of the Georgia Secretary of State's website indicates that it is deficient in some reporting requirements.

JLJ understandably has concerns related to this offer to purchase. As a threshold matter, CRM is clearly a single member entity related to Cynthia R. Miller, who is, in fact, a party to this action. The settlement agreement that was entered into between the parties specifically states that the parties agree to use Reid Davis of Lee & Associates as the broker to list the Property for sale. It was important to the parties and to the process to have the property evaluated and listed for sale by an independent broker to alleviate any personal interest that any of the parties would have in influencing the terms of sale in favor of one party over the other if allowed to broker the property. Ms. Miller, through CRM, is now proposing that this arrangement be changed to accommodate her own personal interests. JLJ considers it inappropriate to violate or alter the terms of the settlement agreement that was previously signed by all parties. As you recall, multiple attempts were made to get Ms. Miller to cooperate in listing the property with the

TPGL 7619611v1

John E. Romanosky, Jr., Esquire

March 10, 2017

Page 2

agreed broker. She simply refused to provide the information requested by the broker to list the property.

I do not believe that the settlement agreement contemplates any of the parties purchasing the Subject Property at the end of the settlement period. Even if it does not so expressly state, it was clearly the parties' intent that it be listed and sold to a bona fide third-party purchaser. Consequently, JLJ does not view Ms. Miller's offer to purchase the property in keeping with the spirit of the settlement agreement.

Even if this approach was appropriate, the contract offer is far from commercially reasonable. First, we question CRM financial ability to purchase the property. No documentation or pre-qualification letter provided has been provided that would indicate that she is now in a position to obtain financing to complete a purchase of the property. Further, two of the parties, neither of which were Cynthia, were compelled to lend money as part of the settlement process to the Miller Group to maintain the Subject Property, keep it insured and pay the taxes while it was to be listed for sale. At the time of the settlement agreement, Ms. Miller represented that she was unemployed and had limited funds. On a side note, my client has since learned the insurance is lapsed and the 2016 property taxes are unpaid which begs the question of what has happened to the rent for the past six (6) months.

Second, there is no earnest money which indicates that CRM is either not offering in good faith or she has limited available cash. It is virtually unheard of for a contract to not be accompanied by an appropriate amount of earnest money. Moreover, all credible lenders will require a cash down payment in purchasing a commercial property. How can CRM expect to obtain financing when it cannot even offer a sufficient sum of earnest money?

Third, the financing contingency provides for proof of financing to be proven seven (7) days prior to closing which is absolutely unacceptable to JLJ. Fourth, the majority of the closing costs are to be borne by the Seller including a commission to be paid to Ms. Miller herself which is further evidence of her self-dealing and bad faith related to the settlement agreement. Fifth, the purchase price is well beneath that which Ms. Miller has valued the property via an appraisal she previously obtained. My understanding was she values the property well over the minimum set forth in the settlement agreement.

Therefore, JLJ expressly rejects the purchase offer for the reasons set forth above.

As you know, the settlement agreement provides for a division of the net sale proceeds by percentage ownership. It is very clear to me that this is nothing but a poorly veiled attempt by Cynthia Miller to delay the execution of the settlement order. For months, she failed to comply with the terms of the settlement agreement by failing to comply with the designated broker. Now she conveniently submits a contract offer with her being the purchaser offering to buy the

Turner | Padget

John E. Romanosky, Jr., Esquire
March 10, 2017
Page 3

property at the minimum agreed by the parties, and requests to be paid a sales/broker commission for submitting her offer. That is simply unfair and a clear attempt to circumvent the terms and the intent of the Settlement Order.

Please let me know if your clients will comply with the terms of the settlement agreement by returning the necessary Deed-in-Lieu and Title Documents to me or whether a motion to compel settlement will be necessary.

I appreciate your attention to this correspondence, and I look forward to hearing from you.

With kind regards, I am

Yours truly,

TURNER PADGET GRAHAM & LANEY P.A.


Ian D. McVey

IDM:mjs

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
COUNTY OF CHARLESTON) Civil Action No. 2015-CP-10-3389

PETER MILLER, MARY ALICE MILLER,
MARY ALICE MILLER, AS TRUSTEE
OF MARY ALICE MILLER LIVING
TRUST, MILLER GROUP PROPERTIES,
LLC, AND C-MILLER PROPERTIES,
LLC,

Plaintiffs,

vs.

MARILYN L. DILLON AND JLJ, LLC,

Defendants

and

MARILYN L. DILLON

Third-Party Plaintiff

vs.

PMC, LLC

**RESPONSE TO MOTION TO ENFORCE
SETTLEMENT ORDER**

FILED
2017 JUN 12 PM 2:25
JULIE A. WATKINS
CLERK OF COURT

NOW COME DEFENDANTS Marilyn L. Dillon ("Dillon") and JLJ Associates, LLC¹ ("JLJ")(collectively "Defendants"), by and through their undersigned counsel, who responds to Plaintiffs' Motion to Enforce Settlement Order filed on April 28, 2017 as follows:

PROCEDURAL HISTORY

This matter was commenced by the filing of a Lis Pendens, Summons and Complaint by the Plaintiffs on June 15, 2015. The Complaint alleges *inter alia* a cause of action for

¹ JLJ Associates, LLC is the correct name for Defendant JLJ, LLC. A corrective deed was issued to JLJ Associates, LLC as part of the Settlement and Deed-in-Lieu process set forth in the Consent Settlement Order.

Declaratory Judgment. Defendants filed an Answer, Counterclaim, Cross-Claim and Third-Party Complaint ("Answer") on September 17, 2015. Defendants' Answer generally denies the allegations of the Complaint, asserts various affirmative defenses and further asserts claims against Plaintiffs and PMC for foreclosure of that certain Mortgage held by Dillon. Thereafter, Plaintiffs filed their Reply, and the matter was referred to the Master-in-Equity for Charleston County.

On June 30, 2015, Defendants' filed a Motion for the Appointment of a Receiver which was denied by order filed July 7, 2016. Defendants' then moved for summary judgment by Motion filed on July 28, 2016. Mediation was held resulting in a Consent Settlement Order ("Settlement Order") being entered on September 12, 2016. Plaintiffs' filed the instant Motion to Enforce Settlement Order on April 28, 2017.

BACKGROUND

On June 1, 2006, Peter Miller, Mary Alice Miller (collectively, the "Millers"), Mary Alice Miller as Trustee of the Mary Alice Miller Living Trust ("Trust") and Miller Group Properties, LLC ("Miller Group") made, executed and delivered to Dillon a Promissory Note ("Note") in the original principal sum of Three Hundred Sixty Thousand and 00/100s (\$360,000.00) dollars. Said Note provided for payment of all sums due thereunder to be paid on May 31, 2009. **See Exhibit A.** To better secure the sums extended as evidenced by the Note, a Mortgage ("Mortgage") dated February 5, 2008 was executed and recorded on February 7, 2008 in Book S650 at page 250. **See Exhibit B.** Said Mortgage is a valid lien on certain real property located at 4213 Savannah Highway, Charleston, South Carolina and more particularly described therein ("Property").

On March 23, 2012, Miller Group made, executed and delivered to Dillon a Modified Promissory Note ("Modified Note") in the principal sum of Four Hundred Thirty-Four Thousand Fifty-Nine and 00/100s (\$434,059.00) dollars. Said Modified Note provided for interest at a rate of seven (7%) percent per annum and for monthly payments to be in the amount of Two Thousand Five Hundred Thirty-Two and 01/100s (\$2,532.01) dollars. The Modified Note had a term of one (1) year with a balloon of the unpaid balance being due on May 1, 2013. **See Exhibit C.** Concurrent with the execution of the Modified Note, a Modification of Mortgage Agreement ("Mortgage Modification") was recorded on July 11, 2012 in Book O263 at page 507. **See Exhibit D.** This Mortgage Modification memorialized the terms of the Modified Note and re-affirmed the Mortgage as security for same.

The loan as evidenced by the afore-mentioned loan documents has never been paid in full. Hence, the claim for Foreclosure asserted in the Answer.

The parties mediated this case which was a long and arduous process; however, the parties were able to come to a resolution and said resolution was memorialized in the Settlement Order attached to Plaintiffs' Motion to Enforce Settlement Order. Under the terms of the Settlement Order, each of the parties had certain obligations, most of which were the responsibility of the Plaintiffs and PMC. As will be demonstrated below, the Defendants have complied with the terms of the Settlement Order and, moreover, have acted in good faith throughout the process. It is the Plaintiffs, mostly the actions or inactions of C-Miller Properties, LLC and its sole Member, Cynthia Miller, who have acted in bad faith and have failed to comply with the terms of the Settlement Order.

ARGUMENT

1. The Real Estate Purchase Agreement does not comply with the Settlement Order.

Plaintiffs seek to compel performance of the Settlement Order, specifically, to require Defendants to execute the Real Estate Purchase Agreement attached to Plaintiffs' Motion to Enforce as Exhibit B. Under the terms of the Settlement Order, Plaintiffs were required to present (a) "a ratified contract to sell the property....for Eight Hundred Fifty Thousand and 00/100s (\$850,000.00) dollars or higher..." within One Hundred Eighty (180) days of the date of the filing of the Settlement Order or (b) an unqualified commitment letter from a reputable lender...in an amount sufficient to pay the debt owed Defendants/Third Party Plaintiffs... The plaintiffs did not provide a loan commitment or a ratified contract as stipulated by the Settlement Order. The Real Estate Purchase Agreement is signed only by C-Miller Properties, LLC and the proposed Buyer, CRM Agency, LLC.² Neither JIJ nor PMC, the other two (2) owners of the Property, signed the Agreement. As such, it is not a binding contract, and the Real Estate Purchase Agreement does not comply with the terms of the Settlement Order. See Prestwick Golf Club, Inc. v. Prestwick Limited Partnership, 331 S.C. 385, 503 S.E.2d 184 (Ct.App. 1998)("In order for a contract to be binding, there must be mutual manifestation of assent between the parties"); see also, Rose Electric, Inc. v. Cooler Erectors of Atlanta, Inc., 418 S.C. 424, 794 S.E.2d 382 (Ct.App. 2016)("A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct").

² Both of these entities are owned in their entirety by Cynthia Miller.

Further, the Real Estate Purchase Contract is not supported by valuable consideration. Section 3 thereof provides as follows: "The total purchase price for the Property is \$850,000.00. Buyer will pay no money down, 0.00 ("Earnest Money") upon the execution of this Agreement and will pay the entire \$850,000.00 of the purchase price at closing." As a result, the Real Estate Purchase Agreement lacks consideration and does not comply with the terms of the Settlement Order. See Plantation A.D., LLC v. Gerald Builders of Conway, Inc., 386 S.C. 198, 687 S.E.2d 714 (Ct. App. 2009) ("The necessary elements of a contract are an offer, acceptance and valuable consideration.").

Additionally, the Real Estate Purchase Agreement violates the terms of the Settlement Order in that Section 4 thereof provides that "either Party may unilaterally delay closing for any reason, but in no event will closing occur more than 30 day after the Closing date specified herein...." Any extension of the Closing Date pursuant to Section 4 of the Real Estate Purchase Agreement would violate the terms of the Settlement Order as it would set closing more than two hundred seventy (270) days from the filing of said Settlement Order.

Therefore, the Real Estate Purchase Agreement does not comply with the terms of the Settlement Order. As a result, Plaintiffs have failed to comply with said Settlement Agreement, and Dillon was entitled to record the Deed-in-Lieu of Foreclosure as she has now done.

2. Plaintiffs cannot compel Settlement Agreement due to their own non-performance.

Defendants would further submit that, Plaintiffs cannot seek specific performance under the Settlement Agreement because their own breaches preclude such enforcement. In South Carolina jurisprudence, settlement agreements are viewed as contracts. See Pee Dee Stores, Inc. v. Doyle, et al., 381 S.C. 234, 672 S.E.2d 799 (Ct.App. 2009). When "a contract is not performed, the party who is guilty of the first breach is generally the one upon whom all liability for the nonperformance rests." Silver v. Abstract Pools & Spas, Inc., 376 S.C. 585, 594, 658 S.E.2d 539, 543 (Ct.App.2008) (quoting Willms Trucking Co. v. JW Constr. Co., 314 S.C. 170, 178, 442 S.E.2d 197, 201 (Ct.App.1994)). Further, in order to compel specific performance, a court of equity must find that: (1) there is clear evidence of a valid agreement (2) the agreement has been partly carried into execution on one side with the approbation of the other; and (3) the party who comes to compel performance has performed his or her part, or has been and remains able and willing to perform his or her part of the contract. Ingram v. Kasey's Associates, 340 S.C. 98, 531 S.E.2d 287 (2000). The doctrine of unclean hands precludes a party from recovering in

equity if he or she acted unfairly in a matter that is the subject of the litigation to the prejudice of the other party. Id.

Since the filing of the Settlement Order, the Defendants have fulfilled their obligations thereunder while the Plaintiffs have consistently failed to honor theirs. First, the Settlement Order provided that the Property would be listed for sale with Reid Davis of Lee & Associates which never happened. As is demonstrated by the affidavits attached hereto, the Plaintiffs failed to cooperate with Mr. Davis throughout the process making a listing impracticable. See **Exhibits E & F**. In fact, the only person to cooperate fully with Mr. Davis was Joseph Dillon, the spouse of Dillon. As indicated in Mr. Davis' affidavit, multiple attempts were made by him to contact Cynthia Miller, the person with the most knowledge of the Property, to no avail. Even when a listing agreement was presented, Cynthia Miller, who as managed the Property for many years refused to execute it.

Second, the Plaintiffs failed to pay the 2016 property taxes for the Property as required under the Settlement Order. Third, the Plaintiffs did not provide the Deed-in-Lieu documents to Defendants' counsel until after the time to produce a ratified contract or *bona fide* loan commitment had passed. When provided, the documents were altered [by C-Miller] and did not contain sufficient documentation to make it possible for Dillon to obtain title insurance despite numerous requests. Fourth, Dillon complied with the terms of the Settlement Order by advancing funds pursuant to Section 9 of same.

Therefore, Defendants would respectfully submit that Plaintiffs cannot seek specific performance of the Settlement Order. First, they breached the Settlement Order first making them unable to demand performance now. Second, Plaintiffs', in particular C-Miller Properties, LLC and its sole member, failure to cooperate with the listing of the Property as required in the Settlement Order constitutes unclean hands barring specific performance. Third, while Defendants fulfilled their obligations under the Settlement Order, Plaintiffs have failed to honor theirs making specific performance inappropriate.

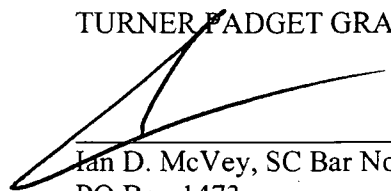
CONCLUSION

Based upon the foregoing, Defendants would respectfully submit that Plaintiffs' Motion to Enforce should be denied. As has been demonstrated, the Real Estate Purchase Agreement presented did not comply with the terms of the Settlement Order. Further, Plaintiffs' own inequitable conduct precludes them from seeking enforcement of the Settlement Order.

In addition, Defendants would submit that this motion is made in bad faith and that Defendants' should be entitled to recover their attorney's fees and costs related to responding to this motion and attending the hearing on same.

Respectfully submitted,

TURNER PADGET GRAHAM & LANEY, P.A.



Ian D. McVey, SC Bar No. 71196

PO Box 1473

Columbia, South Carolina 29202

Tel. (803)227-4267

Fax (803)400-1564

Email imcvey@turnerpadget.com

Attorneys for Marilyn L. Dillon and JLJ Associates, LLC

Columbia, South Carolina

June 9, 2017

PROMISSORY NOTE

\$360,000.00

Date: June 01, 2006

For value received, the undersigned Peter Miller, Mary Alice Miller, Mary Alice Miller as Trustee of Mary Alice Miller Living Trust, Miller Group Properties, LLC (the "Borrower"), at 4213 Savannah Highway, Ravenel, South Carolina 29470, promises to pay to the order of Marilyn L. Dillon, (the "Lender"), at 11201 Prelude Court, Silver Spring, Maryland 20901, (or at such other place as the Lender may designate in writing) the sum of \$360,000.00 with interest from June 01, 2006, on the unpaid principal at the rate of 7.00% per annum.

The unpaid principal and accrued interest shall be payable in full on May 31, 2009 (the "Due Date").

All payments on this Note shall be applied first in payment of accrued interest and any remainder in payment of principal.

If any payment obligation under this Note is not paid when due, the remaining unpaid principal balance and any accrued interest shall become due immediately at the option of the Lender.

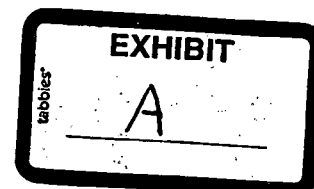
The Borrower reserves the right to prepay this Note (in whole or in part) prior to the Due Date with no prepayment penalty.

If any payment obligation under this Note is not paid when due, the Borrower promises to pay all costs of collection, including reasonable attorney fees, whether or not a lawsuit is commenced as part of the collection process.

This Note is secured by a Real Estate owned by Mary Alice Miller, as Trustee of the Mary Alice Miller Living Trust which lots and tract of land located on Highway 17 South in Ravenel, near Rantowles, Charleston County and All Buildings and Real Estate located at 4213 Savannah Highway, Ravenel, SC—See exhibit A for description of property at 4213 Savannah Highway, dated June 01, 2006. The Lender is not required to rely on the above security instrument and the assets secured therein for the payment of this Note in the case of default, but may proceed directly against the Borrower.

If any of the following events of default occur, this Note and any other obligations of the Borrower to the Lender, shall become due immediately, without demand or notice:

- 1) the failure of the Borrower to pay the principal and any accrued interest in full on or before the Due Date;



- 2) the death of the Borrower or Lender;
- 3) the filing of bankruptcy proceedings involving the Borrower as a debtor;
- 4) the application for the appointment of a receiver for the Borrower;
- 5) the making of a general assignment for the benefit of the Borrower's creditors;
- 6) the insolvency of the Borrower;
- 7) a misrepresentation by the Borrower to the Lender for the purpose of obtaining or extending credit.

In addition, the Borrower shall be in default if there is a sale, transfer, assignment, or any other disposition of any assets pledged as security for the payment of this Note, or if there is a default in any security agreement which secures this Note.

If any one or more of the provisions of this Note are determined to be unenforceable, in whole or in part, for any reason, the remaining provisions shall remain fully operative.

All payments of principal and interest on this Note shall be paid in the legal currency of the United States. The Borrower waives presentment for payment, protest, and notice of protest and nonpayment of this Note.

No renewal or extension of this Note, delay in enforcing any right of the Lender under this Note, or assignment by Lender of this Note shall affect the liability or the obligations of the Borrower. All rights of the Lender under this Note are cumulative and may be exercised concurrently or consecutively at the Lender's option.

This Note shall be construed in accordance with the laws of the State of South Carolina.

Signed this 31 day of July 2006 at Miller's Liquors
Rosemead, South Carolina

Borrower:

Peter Miller, Mary Alice Miller, Mary Alice Miller as Trustee of Mary Alice Miller Living Trust,
Miller Group Properties, LLC

By: Peter Miller Mary Alice Miller
Peter Miller, Mary Alice Miller, Mary Alice Miller as Trustee of Mary Alice Miller Living
Trust, Miller Group Properties, LLC

After Recording Return To:
G. Thomas Hill, Esquire
PO Box 369
Ravenel, SC 29470

8K S650PG250

MORTGAGE
(title not examined)

DEFINITIONS

Words used in multiple sections of this document are defined below and other words are defined herein.

- (A) "Security Instrument" means this document, which is dated January, 2008.
(B) "Borrowers" are delineated on the below referenced Promissory Note:
(C) "Mortgagors" are Miller Group Properties, LLC, and C-Miller Properties, LLC. (Note C-Miller Properties, LLC hypothecates its interest in said collateral by signing below).
Borrower is the mortgagor under this Security Instrument.
(D) "Lender" is Marilyn L. Dillon.
Lender is a Lender organized and existing under the laws of South Carolina.
Lender's address is 11201 Prelude Court, Silver Spring, MD 20901.
Lender is the mortgagee under this Security Instrument.
(E) "Note" means the promissory note signed by Borrower and dated June 1, 2006 and signed on July 31, 2006. The Note states that Borrower owes Lender THREE HUNDRED SIXTY THOUSAND AND 00/100THS Dollars (U.S.\$360,000.00) plus interest. Borrower has promised to pay this debt in regular Periodic Payments and to pay the debt in full not later than May 31, 2009.
(F) "Property" means the property that is described below under the heading "Transfer of Rights in the Property."
(G) "Loan" means the debt evidenced by the Note, plus interest, any prepayment charges and late charges due under the Note, and all sums due under this Security Instrument, plus interest.
(H) "Applicable Law" means all controlling applicable federal, state and local statutes, regulations, ordinances and administrative rules and orders (that have the effect of law) as well as all applicable final, non-appealable judicial opinions.
(I) "Successor in Interest of Borrower" means any party that has taken title to the Property, whether or not that party has assumed Borrower's obligations under the Note and/or this Security Instrument.

TRANSFER OF RIGHTS IN THE PROPERTY

See: Exhibit A --for legal description of 1.06 acres, more or less

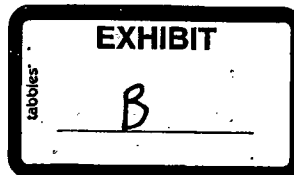
TMS:244-00-00-122

This Security Instrument secures to Lender: (i) the repayment of the Loan, and all renewals, extensions and modifications of the Note; and (ii) the performance of Borrower's covenants and agreements under this Security Instrument and the Note. For this purpose, Borrower does hereby mortgage, grant and convey to Lender and Lender's successors and assigns the following described property located in the CHARLESTON COUNTY RMC OFFICE FOR CHARLESTON COUNTY:
[Type of Recording Jurisdiction] [Name of Recording Jurisdiction]

which currently has the address of 4213 Savannah Hwy
Ravenel, South Carolina 29470 ("Property Address"):
[City] [Street] [Zip Code]

TO HAVE AND TO HOLD this property unto Lender and Lender's successors and assigns, forever, together with all the improvements now or hereafter erected on the property, and all easements, appurtenances, and fixtures now or hereafter a part of the property. All replacements and additions shall also be covered by this Security Instrument. All of the foregoing is referred to in this Security Instrument as the "Property".

MORTGAGOR COVENANTS that Borrower is lawfully seised of the estate hereby conveyed and has the right to grant and convey the Property and that the Property is unencumbered, except for encumbrances of record. Borrower warrants and will defend generally the title to the Property against all claims and demands, subject to any encumbrances of record.



THIS SECURITY INSTRUMENT combines uniform covenants for national use and non-uniform covenants with limited variations by jurisdiction to constitute a uniform security instrument covering real property.

UNIFORM COVENANTS. Borrower and Lender covenant and agree as follows:

1. **Payment of Principal, Interest, Prepayment Charges, and Late Charges.** Borrower shall pay when due the principal of, and interest on, the debt evidenced by the Note and any prepayment charges and late charges due under the Payments due under the Note and this Security Instrument shall be made in U.S. currency. However, if any check or other instrument received by Lender as payment under the Note or this Security Instrument is returned to Lender unpaid, Lender may require that any or all subsequent payments due under the Note and this Security Instrument be made in one or more of the following forms, as selected by Lender: (a) cash; (b) money order; (c) certified check, bank check, treasurer's check or cashier's check, provided any such check is drawn upon an institution whose deposits are insured by a federal agency, instrumentality, or entity; or (d) Electronic Funds Transfer.

Payments are deemed received by Lender when received at the location designated in the Note or at such other location as may be designated by Lender. Lender may return any payment or partial payment if the payment or partial payments are insufficient to bring the Loan current. Lender may accept any payment or partial payment insufficient to bring the Loan current, without waiver of any rights hereunder or prejudice to its rights to refuse such payment or Partial payments in the future, but Lender is not obligated to apply such payments at the time such payments are accepted. If each Periodic Payment is applied as of its scheduled due date, then Lender need not pay interest on unapplied funds. Lender may hold such unapplied funds until Borrower makes payment to bring the Loan current. If Borrower does not do so within a reasonable period of time, Lender shall either apply such funds or return them to Borrower. If not applied earlier, such funds will be applied to the outstanding principal balance under the Note immediately prior to foreclosure. No offset or claim which Borrower might have not or in the future against Lender shall relieve Borrower from making payments due under the Note and this Security Instrument or performing the covenants and agreements secured by this Security Instrument.

2. **Property Insurance.** Borrower shall keep the improvements now existing or hereafter erected on the Property insured against loss by fire, hazards included within the term "extended coverage," and any other hazards including, but not limited to, earthquakes and floods, for which Lender requires insurance. This insurance shall be maintained in the amounts (including deductible levels) and for the periods that Lender requires. What Lender requires pursuant to the preceding sentences can change during the term of the Loan. The insurance carrier providing the insurance shall be chosen by Borrower subject to Lender's right to disapprove Borrower's choice, which right shall not be exercised unreasonably. Lender may require Borrower to pay, in connection with this Loan, either: (a) a one-time charge for flood zone determination, certification and tracking services; or (b) a one-time charge for flood zone determination and certification services and subsequent charges each time remappings or similar changes occur which reasonably might affect such determination or certification. Borrower shall also be responsible for the payment of any fees imposed by the Federal Emergency Management Agency in connection with the review of any flood zone determination resulting from an objection by Borrower.

If Borrower fails to maintain any of the coverages described above, Lender may obtain insurance coverage, at Lender's option and Borrower's expense. Lender is under no obligation to purchase any particular type or amount of coverage. Therefore, such coverage shall cover Lender, but might or might not protect Borrower, Borrower's equity in the Property, or the contents of the Property, against any risk, hazard or liability and might provide greater or lesser coverage than was previously in effect. Borrower acknowledges that the cost of the insurance coverage so obtained might significantly exceed the cost of insurance that Borrower could have obtained. Any amounts disbursed by Lender, shall become additional debt of Borrower secured by this Security Instrument. These amounts shall bear interest at the Note rate from the date of disbursement and shall be payable, with such interest, upon notice from Lender to Borrower requesting payment.

All insurance policies required by Lender and renewals of such policies shall be subject to Lender's right to disapprove such policies, shall include a standard mortgage clause, and shall name Lender as mortgagee and/or as an additional loss payee. Lender shall have the right to hold the policies and renewal certificates. If Lender requires, Borrower shall promptly give to Lender all receipts of paid premiums and renewal notices. If Borrower obtains any form of insurance coverage, not otherwise required by Lender, for damage to, or destruction of, the Property, such policy shall include a standard mortgage clause and shall name Lender as mortgagee and/or as an additional loss payee.

In the event of loss, Borrower shall give prompt notice to the insurance carrier and Lender. Lender may make proof of loss if not made promptly by Borrower. Unless Lender and Borrower otherwise agree in writing, any insurance proceeds, whether or not the underlying insurance was required by Lender, shall be applied to restoration or repair of the Property, if the restoration or repair is economically feasible and Lender's security is not lessened. During such repair and restoration period, Lender shall have the right to hold such insurance proceeds until Lender has had an opportunity to inspect such Property to ensure the work has been completed to Lender's satisfaction, provided that such inspection shall be undertaken promptly. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. Unless an agreement is made in writing or Applicable Law requires interest to be paid on such insurance proceeds, Lender shall not be required to pay Borrower any interest or earnings on such proceeds. Fees for public adjusters, or other third parties, retained by Borrower shall not be paid out of the insurance proceeds and shall be the sole obligation of Borrower. If the restoration or repair is not economically

feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the sums secured by this Security Instrument, whether or not then due, with the excess, if any, paid to Borrower.

3. **Preservation, Maintenance and Protection of the Property; Inspections.** Borrower shall not destroy, damage or impair the Property, allow the Property to deteriorate or commit waste on the Property. Whether or not Borrower is residing in the Property, Borrower shall maintain the Property in order to prevent the Property from deteriorating or decreasing in value due to its condition. Unless it is determined pursuant to Section 5 that repair or restoration is not economically feasible, Borrower shall promptly repair the Property if damaged to avoid further deterioration or damage. If insurance or condemnation proceeds are paid in connection with damage to, or the taking of, the Property, Borrower shall be responsible for repairing or restoring the Property only if Lender has released proceeds for such purposes. Lender may disburse proceeds for the repairs and restoration in a single payment or in a series of progress payments as the work is completed. If the insurance or condemnation proceeds are not sufficient to repair or restore the Property, Borrower is not relieved of Borrower's obligation for the completion of such repair or restoration.

Lender or its agent may make reasonable entries upon and inspection of the Property. If it has reasonable cause, Lender may inspect the interior of the improvements on the Property. Lender shall give Borrower notice at the time of or prior to such and interior inspection specifying such reasonable cause.

4. **Borrower Not Released; Forbearance By Lender Not a Waiver.** Extension of the time for payment or modification of amortization of the sums secured by this Security Instrument granted by Lender to Borrower or any Successor in Interest of Borrower shall not operate to release the liability of Borrower or any Successors in Interest of Borrower. Lender shall not be required to commence proceedings against any Successor in Interest of Borrower or to refuse to extend time for payment or otherwise modify amortization of the sums secured by this Security Instrument by reason of any demand made by the original Borrower or any Successors in Interest of Borrower. Any forbearance by Lender in exercising any right to remedy including, without limitation, Lender's acceptance of payments from third persons, entities or Successors in Interest of Borrower or in amounts less than the amount then due, shall not be a waiver of or preclude the exercise of any right or remedy.

5. **Joint and Several Liability; Co-signers; Successors and Assigns Bound.** Borrower covenants and agrees that Borrower's obligations and liability shall be joint and several. However, any Borrower who co-signs this Security Instrument but does not execute the Note (a "co-signer"): (a) is co-signing this Security Instrument only to mortgage, grant and convey the co-signer's interest in the Property under the terms of this Security Instrument; (b) is not personally obligated to pay the sums secured by this Security Instrument; and (c) agrees that Lender and any other Borrower can agree to extend, modify, forbear or make any accommodations with regard to the terms of this Security Instrument or the Note without the co-signer's consent.

Successor in Interest of Borrower who assumes Borrower's obligations under this Security Instrument in writing, and is approved by Lender, shall obtain all of Borrower's rights and benefits under this Security Instrument. Borrower shall not be released from Borrower's obligations and liability under this Security Instrument unless Lender agrees to such release in writing. The covenants and agreements of this Security Instrument shall bind and benefit the successors and assigns of Lender.

6. **Loan Charges.** Lender may charge Borrower fees for services performed in connection with Borrower's default, for the purpose of protecting Lender's interest in the Property and rights under this Security Instrument, including, but not limited to, attorneys' fees, property inspection and valuation fees. In regard to any other fees, the absence of express authority in this Security Instrument to charge a specific fee to Borrower shall not be construed as a prohibition on the charging of such fee. Lender may not charge fees that are expressly prohibited by this Security Instrument or by Applicable Law.

If the Loan is subject to a law which sets maximum loan charges, and that law is finally interpreted so that the interest or other loan charges collected or to be collected in connection with the Loan exceed the permitted limits, then: (a) any such loan charge shall be reduced by the amount necessary to reduce the charge to the permitted limit; and (b) any sums already collected from Borrower which exceeded permitted limits will be refunded to Borrower. Lender may choose to make this refund by reducing the principal owed under the Note or by making a direct payment to Borrower. If a refund reduces principal, the reduction will be treated as a partial prepayment without any prepayment charge (whether or not a prepayment charge is provided for under the Note). Borrower's acceptance of any such refund made by direct payment to Borrower will constitute a waiver of any right of action Borrower might have arising out of such overcharge.

7. **Notices.** All notices given by Borrower or Lender in connection with this Security Instrument must be in writing. Any notice to Borrower in connection with this Security Instrument shall be deemed to have been given to Borrower when mailed by first class mail or when actually delivered to Borrower's notice address if sent by other means. Notice to any on Borrower shall constitute notice to all Borrowers unless Applicable Law expressly requires otherwise. The notice address shall be the Property Address unless change of address. If Lender specifies a procedure for reporting Borrower's change of address, then Borrower shall only report a change of address through that specified procedure. There may be only one designated notice address under this Security Instrument at any one time. Any notice to Lender shall be given by delivering it or by mailing it by first class mail to Lender's address stated herein unless Lender has designated another address by notice to borrower. Any notice in connection with this Security Instrument shall not be deemed to have been given to Lender until actually received by Lender. If any notice required

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by this Security Instrument is also required under Applicable Law, the Applicable Law requirement will satisfy the corresponding requirement under this Security Instrument.

8. Governing Law; Severability; Rules of Construction. This Security Instrument shall be governed by federal law and the law of the jurisdiction in which the Property is located. All rights and obligations contained in this Security Instrument are subject to any requirements and limitations of Applicable Law. Applicable Law might explicitly or implicitly allow the parties to agree by contract or it might be silent, but such silence shall not be construed as a prohibition against agreement by contract. In the event that any provision or clause of this Security Instrument or the Note conflicts with Applicable Law, such conflict shall not affect other provisions of this Security Instrument or the Note which can be given effect without the conflicting provision.

As used in this Security Instrument: (a) words of the masculine gender shall mean and include corresponding neuter words or words of the feminine gender; (b) words in the singular shall mean and include the plural and vice versa; and (c) the word "may" gives sole discretion without any obligation to take any action.

9. Release. Upon payment of all sums secured by this Security Instrument, this Security Instrument shall become null and void. Lender shall release this Security Instrument. Borrower shall pay any recordation costs. Lender may charge Borrower a fee for releasing this Security Instrument, but only if the fee is paid to a third party for services rendered and the charging of the fee is permitted under Applicable Law.

10. Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within 30 days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid any may decrease the amount of any deficiency owing in connection with the transaction. TO THE EXTENT PERMITTED BY LAW, THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY. This waiver shall not apply so long as the Property is used as a dwelling place as defined in § 12-37-250 of the South Carolina Code of Laws.

BY SIGNING BELOW, Mortgagors accept and agree to the terms and covenants contained in this Security Instrument. Signed, Sealed and delivered in the presence of:

Miller Group Properties, LLC,
By: Mary Alice Miller (Seal)
Mary Alice Miller, Member
By: Cynthia Miller (Seal)
Cynthia Miller, Member
C-Miller Properties, LLC,
By: Cynthia Miller (Seal)
Cynthia Miller, Member

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

ACKNOWLEDGMENT

SWORN TO AND ACKNOWLEDGED before me by mortgagor herein this 5th day of February, 2008.

Notary Public for South Carolina (Seal)
My Commission Expires: 2/28/08

BK S650PG254

STATE OF SOUTH CAROLINA

CHARLESTON COUNTY

ACKNOWLEDGMENT

SWORN TO AND ACKNOWLEDGED before me by mortgagor herein this 5th day of February 2008.

Notary Public for South Carolina

My Commission Expires: 2/10/8

EXHIBIT "A"

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ALL that parcel, tract and piece of land in the County of Charleston, State of South Carolina beginning Eleven Hundred Fifty (1,150') feet north of Highway 162 on Highway 17; thence for Two Hundred Ninety-Seven and Fifty-Six-Hundredths (297.56') feet in a northerly direction to a point, thence for Thirty-Six and Forty-Hundredths (36.40') feet in a northerly direction to a point, thence easterly direction for Twelve and Six Hundredths feet (12.06') to point; thence in a northerly direction for Fifteen (15') feet to a point; thence for Twenty-Five (25') feet in an easterly direction to a point; thence in a northerly direction for One Hundred Twenty-Seven and Ninety-Nine-Hundredths (127.99') feet to a point; thence in an easterly direction for Sixty Seven and Twenty Hundredths (67.20') feet to a point; thence in a southerly direction for One Hundred Eleven and Sixty Hundredths (111.66') feet to a point; thence in a southerly direction for One Hundred Fourteen (114') feet to a point; thence in a southerly direction for Two Hundred Eighty-Eight and Fourteen-Hundredths (288.14') feet to a point; thence in a westerly direction for Eighty-Two (82') feet to the beginning point.

Further being the same property bounded on the North by Wallace Creek, on the East and South by the lands of Ernst C. Seel, et al, and on the West by U. S. Highway 17 (Savannah Highway).

BEING the same premises conveyed to the ^{mortgagee} ~~grantor~~ herein by deed from Peter Miller as Trustee of the Peter Miller Living Trust dated December 31, 1999 dated August 30, 2002 and recorded in the RMC Office for Charleston County in Book U419, Page 263., and 1/2 interest in Book H610, page 775, dated December 28, 2006 and filed December 29, 2006.
TMS #: 244-00-00-122

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RECORDER'S PAGE
NOTE: This page MUST remain
with the original document



FILED
February 7, 2008
1:32:42 PM
BK S650PG250
Charlie Lybrand, Register Charleston County, SC

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Filed By:	
Hill & Hill LLC	
6209 Savannah Hwy.	
Ravenel	SC 29470

Number of Pages:

7

DESCRIPTION	AMOUNT
	\$ 12.00
Postage	

TOTAL	\$ 12.00
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DRAWER:

B - ECP

DO NOT STAMP BELOW THIS LINE

SOUTH CAROLINA
(Interest Only—Modified Promissory Note)
(1 year balloon)

\$434,059.00

March 23, 2012

FOR VALUE RECEIVED, the undersigned promise(s) to pay to the order of Marilyn L. Dillon in lawful money of the United States of America, the principal sum of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars, together with interest on unpaid principal at the rate of Seven (7%) per annum from the 1st day of March 2012, which said interest shall be payable in 12 equal installments of Two Thousand Five Hundred Thirty-two and 01/100 (\$2,532.01) Dollars first due on the 1st day of June 1, 2012 and due on the first (1st) day of each and every month, with a balloon payment due in addition to the 12th payment of interest on the 1st day of May 2013 in the amount of Two Thousand Five Hundred Thirty-two and 01/100 (\$2,532.01) Dollars and principal in the amount of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars. (NO PREPAYMENT PENALTY). The borrower will pay a "late charge" of Fifty (\$50.00) Dollars when paid more than 10 days after due date. If promisor is ever thirty (30) days late with a payment she will be in default.

If default be made in the performance or compliance with any of the covenants and conditions of this note, then in said event, said principal sum shall become at once due and payable at the option of holder thereof and be collectible without further notice. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.

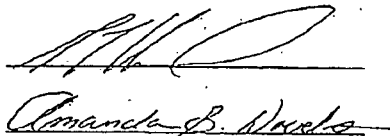
If this note be placed in the hands of an attorney for collection after the same shall for any reason become due, or if collected by legal proceedings or through the probate or bankrupt costs, or under foreclosure proceedings under the note, then all cost of collection, including the further and additional sum of ten (10%) percent, on the full amount due hereon, shall be added hereto as attorney's fees secured and collectible as the principal hereof.

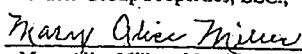
The undersigned expressly agree jointly and severally to remain and continue bound for the payment of the principal provided for by the terms of this note notwithstanding any extension or extensions of the time of, or for the payment of said principal, or any change or changes in the amount or amount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

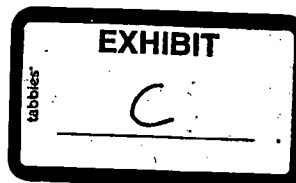
Presentment, protest, and notice are hereby waived.

It is expressly agreed and declared that this note is given for an actual loan of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars, and secured by a MORTGAGE MODIFICATION AGREEMENT of even date on the subject property bearing TMS:244-00-00-122 which shall be recorded in the RMC Office for Charleston County.

Witness the hand and seal of each of the signers hereof.


Amanda B. Woods

Miller Group Properties, LLC,
By:  (Seal)
Mary Alice Miller, Member



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

MODIFICATION OF MORTGAGE
AGREEMENT

RMC BK 0263 Pg 507 : pg 1 *

WHEREAS, Miller Group Properties, LLC executed a Note dated June 1, 2006 for a loan in the amount of Three Hundred Sixty Thousand and No/100—(\$360,000.00)—Dollars and a Mortgage securing the Note dated February 5, 2008 recorded in the RMC Office for Charleston County in Book S650 at Page 250, said Mortgage being secured by the property hereinafter described below.

FOR VALUABLE CONSIDERATION, the receipt whereof is hereby acknowledged, the undersigned owner and holder of that certain mortgage, namely, Marilyn L. Dillon hereby agrees to the terms of the modified Note, this being the Note dated simultaneously herewith from Miller Group Properties, LLC to Marilyn L. Dillon for the loan amount remaining due on the June 1, 2006 original Note (as of February 29, 2012 the amount of principal plus accrued interest and fees now due are in the amount of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars); with all parties Marilyn L. Dillon (Lender), Miller Group Properties, LLC (Borrower), [

agreeing that the modification of said Mortgage securing the original Note dated June 1, 2006 recorded in the RMC Office for Charleston County in Book S650 at Page 250, is necessary to secure as collateral, for the remaining loan amount of Four Hundred Thirty-Four Thousand Fifty-nine and 00/100 (\$434,059.00) Dollars plus interest, the following described property.

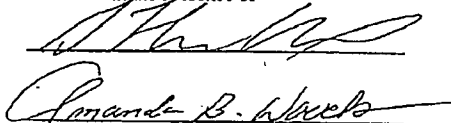
See: Exhibit A—legal description

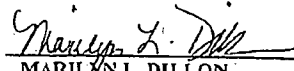
TMS #: 244-00-00-122

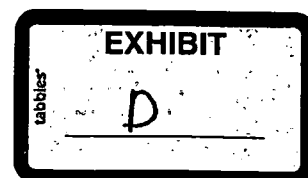
The original mortgage shall remain in full force and effect except as modified herein.

IN WITNESS WHEREOF, the mortgagee and mortgagor has caused this instrument to be duly executed this 23 day of March, 2012.

Signed, Sealed and Delivered
in the Presence of



By:  (Seal)
MARILYN L. DILLON



STATE OF SOUTH CAROLINA, ACKNOWLEDGMENT
COUNTY OF CHARLESTON,

The foregoing instrument was acknowledged by me this 23RD day of March, 2012,
by Marilyn L. Dillon, Mortgagee.

Amanda B. Woods (Seal)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: October 6, 2018

Signed, Sealed and Delivered
in the Presence of

Marilyn L. Dillon

Amanda B. Woods

Miller Group Properties, LLC.,

By: Mary Alice Miller (Seal)
Mary Alice Miller, Member

STATE OF SOUTH CAROLINA, ACKNOWLEDGMENT
COUNTY OF CHARLESTON,

The foregoing instrument was acknowledged by me this 23 day of March, 2012,
by Mary Alice Miller, Member, as the duly authorized signatories for Miller Group Properties,
LLC, Mortgagee.

Amanda B. Woods (Seal)
NOTARY PUBLIC FOR SOUTH CAROLINA
My Commission Expires: October 6, 2018

EXHIBIT A

ALL that parcel, tract and piece of land in the County of Charleston, State of South Carolina beginning Eleven Hundred Fifty (1,150') feet north of Highway 62 on Highway 17; thence for Two Hundred Ninety-Seven and Fifty-Six-Hundredths (297.56') feet in a northerly direction to a point, thence for Thirty-Six and Forty-Hundredths (36.40') feet in a northerly direction to a point, thence easterly direction for Twelve and Six Hundredths feet (12.06') to point; thence in a northerly direction for Fifteen (15') feet to a point; thence for Twenty-Five (25') feet in an easterly direction to a point; thence in a northerly direction for One Hundred Twenty-Seven and Ninety-Nine-Hundredths (127.99') feet to a point; thence in an easterly direction for Sixty Seven and Twenty Hundredths (67.20') feet to a point; thence in a southerly direction for One Hundred Eleven and Sixty Hundredths (111.66') feet to a point; thence in a southerly direction for One Hundred Fourteen (114') feet to a point; thence in a southerly direction for Two Hundred Eighty-Eight and Fourteen-Hundredths (288.14') feet to a point; thence in a westerly direction for Eighty-Two (82') feet to the beginning point.

Further being the same property bounded on the North by Wallace Creek, on the East and South by the lands of Ernest C. Seel, et al, and on the West by U. S. Highway 17 (Savannah Highway).

BEING the same premises conveyed to the grantor herein by deed from Peter Miller as Trustee of the Peter Miller Living Trust dated December 31, 1999 dated August 30, 2002 and recorded in the RMC Office for Charleston County in Book U419, Page 263.

TMS:244-00-00-122

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

HILL & HILL LLC

6209 SAVANNAH HWY.
RAVENEL SC 29470

RECORDED

Date: July 11, 2012

Time: 2:19:46 PM

Book	Page	Doc Type
0263	507	Mtg/Mod

Charlie Lybrand, Register
Charleston County, SC

MAKER:

MILLER GROUP PROPS LLC

of Sats: # of Pages: 4
of References:

RECIPIENT:

DILLON MARILYN L.

Note:

Recording Fee \$ 6.00

Extra Reference Cost \$ -

Extra Pages \$ 2.00

Postage \$ -

Chattel \$ -

TOTAL \$ 8.00

Original Book:

5650

Original Page:

250

DRAWER Drawer 1
CLERK KLH



0263
Book



507
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Recorded Date



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Original Page



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Recorded Time

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-10-3389

PETER MILLER, MARY ALICE MILLER,)
MARY ALICE MILLER, AS TRUSTEE)
OF MARY ALICE MILLER LIVING)
TRUST, MILLER GROUP PROPERTIES,)
LLC, AND C-MILLER PROPERTIES,)
LLC,)

Plaintiffs,)

vs.)

MARILYN L. DILLON AND JLJ, LLC,)

Defendants)

and)

MARILYN L. DILLON)

Third-Party Plaintiff,)

vs.)

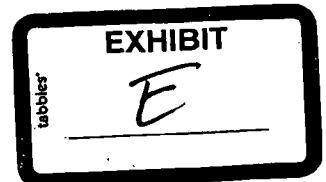
PMC, LLC)

Third-Party Defendant.)

AFFIDAVIT OF REID DAVIS

NOW COMES AFFIANT who after being duly sworn deposes and says as follows:

1. I am over the age of eighteen and competent to make this Affidavit.
2. I am a managing principal of Lee & Associates in Charleston, South Carolina.
3. Pursuant to a Consent Settlement Order entered on September 12, 2016, parties in the above-captioned matter agreed to use my services as well as Lee & Associates to broker the sale of certain real property located at 4213 Savannah Highway in Charleston County, South Carolina.



4. To that end, I made numerous efforts to acquire sufficient information so that I could come up with a value as well as list the subject property for sale. Throughout this process, the only party who was helpful was Joseph Dillon, the husband of Marilyn L. Dillon, though the information he provided me was dated.

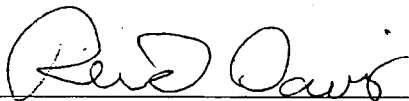
5. I made multiple attempts to get copies of the leases and rent roll information from Cynthia Miller; however, she was uncooperative.

6. It is my understanding that Cynthia Miller had been acting as the manager for the property in the years leading up to my involvement.

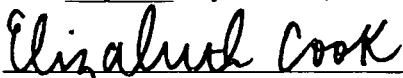
7. Eventually, I presented a proposal but no listing agreement was signed by Ms. Miller.

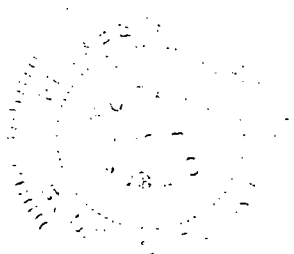
8. Because I was unable to obtain the leases and get a signed listing agreement by all parties, we were unable to move forward listing this property.

Further the Affiant sayeth naught.


Reid Davis

Personally sworn before me
This 7 day of June, 2017


Notary Public for South Carolina
My commission expires 12/14/19



STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
PETER MILLER, MARY ALICE MILLER,)
MARY ALICE MILLER, AS TRUSTEE)
OF MARY ALICE MILLER LIVING)
TRUST, MILLER GROUP PROPERTIES,)
LLC, AND C-MILLER PROPERTIES,)
LLC,)
Plaintiffs,)
vs.)
MARILYN L. DILLON AND JLJ, LLC,)
Defendants)
and)
MARILYN L. DILLON)
Third-Party Plaintiff,)
vs.)
PMC, LLC)
Third-Party Defendant.)

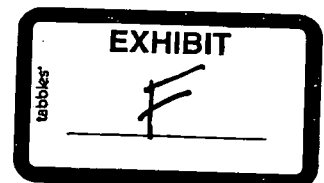
IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-10-3389

AFFIDAVIT OF JOSEPH L. DILLON

NOW COMES AFFIANT who after being duly sworn deposes and says as follows:

1. I am over the age of eighteen and competent to make this Affidavit.
2. I am a member of JLJ Associates, LLC.
3. JLJ Associates, LLC owned a forty (40%) percent interest in the real property which is the subject of this action, 4213 Savannah Highway in Charleston County, South Carolina ("Property") subject to the Mortgage held by Marilyn L. Dillon.



TPGL 7739529v1

4. JLJ Associates, LLC is a party to Consent Settlement Order filed on September 12, 2016.

5. Subsequent to the entry of the Settlement Order, I cooperated with Reid Davis, the appointed broker, to provide him with the information in my possession related to the Property.

6. However, most of the information was and is in the possession of Cynthia Miller, my sister-in-law, who has managed the Property for years.

7. Cynthia Miller had most of the necessary information in order to move forward with the Listing Agreement and was the best person to facilitate signing of the Listing Agreement by the three owners.

8. Cynthia Miller did not cooperate with Mr. Davis, the appointed broker that she and the other parties consented to in the Settlement Order, in the listing of the Property after repeated attempts to get her to provide information requested by Mr. Davis.

9. Marilyn L. Dillon and I, as members of JLJ Associates, further reviewed the Real Estate Purchase Agreement submitted by CRM Agency, LLC which is a wholly owned entity of Cynthia Miller.

10. The Real Estate Purchase Agreement was troublesome in that: a) Cynthia Miller had recently indicated that her financial/cash position was not in good standing, evidenced in part by the request to the Settlement Order that other parties to the Order lend money toward the operating cost for the property during the execution period for the Order; b) three days before the end of the Order execution period, she proposed to purchase the Property for the lowest possible value set forth in the Settlement Order; c) it provided no earnest money and provided no proof of an ability to close the transaction; and d) the purchase agreement provided for an extension that is impermissible under the Settlement Order.

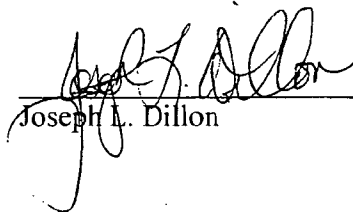
11. After our response to the Real Estate Purchase Agreement, CRM Agency, LLC provided documentation that purported to be a "pre-qualification letter"/Loan Commitment from a lender at Wells Fargo. However, the letter very clearly indicated it was not a commitment to lend but rather a summary of terms discussed; it was not on Wells Fargo letterhead; the letter states that the terms provided related to a loan for the refinance of the Property not a purchase; and that the letter was for the borrower confidential use and 'the borrower is not entitled to rely on the letter or associated discussions in any manner'.

12. Consistent with the Settlement Order, the Deed-in-Lieu of Foreclosure to Marilyn Dillon has been recorded though she is unable to get title insurance for the Property given the Plaintiffs', including Cynthia Miller, failure to execute all the necessary documents.

13. I feel JLJ Associates LLC and Marilyn L. Dillon have complied with the Settlement Order and think this attempt by Cynthia Miller is another act in bad faith and simply a delay tactic.

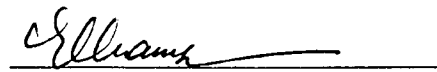
14. I would request the attorney's fees and costs incurred by Marilyn associated with the Plaintiffs' failure to comply with the Settlement Order be reimbursed.

Further the Affiant sayeth naught.



Joseph L. Dillon

Personally sworn before me
This 9th day of June, 2017



Notary Public for ~~South Carolina~~
My commission expires _____

Elham Y Khoury
Notary Public
Prince George's County
Maryland
COMMISSION EXPIRES 12/12/2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)
)
PETER MILLER, MARY ALICE MILLER,)
MARY ALICE MILLER, AS TRUSTEE)
OF MARY ALICE MILLER LIVING)
TRUST, MILLER GROUP PROPERTIES,)
LLC, AND C-MILLER PROPERTIES,)
LLC,)

Plaintiffs,)

vs.)

MARILYN L. DILLON AND JLJ, LLC,)

Defendants)

and)

MARILYN L. DILLON)

Third-Party Plaintiff,)

vs.)

PMC, LLC)

Third-Party Defendant.)

IN THE COURT OF COMMON PLEAS

Civil Action No. 2015-CP-10-3389

AFFIDAVIT OF CYNTHIA MILLER

NOW COMES AFFIANT who after being duly sworn deposes and says as follows:

1. I am over the age of eighteen and competent to make this Affidavit.
2. I am a licensed real estate agent in the State of South Carolina and a member of C-Miller Properties, LLC.
3. C-Miller Properties, LLC owns a fifty (50%) percent interest in the real property which is the subject of this action, 4213 Savannah Highway in Charleston County, South Carolina ("Property").

4. C-Miller Properties, LLC is a party to Consent Settlement Order filed on September 12, 2016.

5. I, one of the Plaintiffs, have complied with the terms of the Settlement Order and, moreover, have acted in good faith throughout the entire process.

6. Per the request of my father, because he does not want the property to be sold outside of the Miller family, I presented an offer to purchase the real property at 4213 Savannah Highway, Charleston, SC.

7. The initial Real Estate Purchase Agreement was presented to the co-owners of the subject property on March 8, 2017, within the allotted 180 days stipulated in the Consent Order. The Agreement was presented with my signature as the Buyer and as one of the Sellers, managing member of C-Miller Properties, LLC. Both co-owners were presented the contract at the same time via the same email. The last day for the contract to be ratified would have been March 11, 2017, a Saturday. The Saturday date legally extended the last date for ratification to the next business day, March 13. Petrease Clarkson, managing member of PMC, LLC had no disagreement with the contract, however was not available to sign the contract until March 13. As such, by March 13 there was a binding contract/ revised Agreement by majority rule in effect, that also included the signatures of our parents, Mr. Peter Miller and Mrs. Mary Alice Miller. See attached, the Agreement was revised to clearly respond to their objections sent March 10.

8. The defendants, Marilyn Dillon as mortgagee and as co-owner of the property, JLJ, LLC (with her husband, Joseph Dillon) on the other hand, acted in bad faith, even though it was supposed to be her desire to sell the property so that she, the lender could be paid for the loan she made to our parents. As co-owner of a property she wanted to sell, she conveniently had her attorney respond on her behalf (as the lender) on March 10, rejecting the Real Estate

Purchase Agreement rather than, in good faith, choosing to negotiate the terms of the purchase agreement.

9. Unlicensed real estate agents challenged the elements of a valid real estate contract, insinuating that the Agreement lacks consideration because Earnest Money was not offered. Legal consideration is the promise by the buyer to pay the price offered to make the purchase, \$850,000 and the consideration surrendered by the seller is the promise to give the buyer title to the property. Earnest money is not legally required, as the real estate industry presents it as a requirement for good faith money and it may serve as liquidated damages should the buyer default on the contract. As 50% co-owner of the property, as manager of the property for over 10 years, receiving no salary and as a family member offering to purchase the property, earnest money is not necessary. Mutual assent, legal consideration, legal purpose, and competent parties are the necessary elements of a valid contract.

10. As for Section 4 of the Purchase Agreement violating the terms of the Consent Order, Section 4 is minute at best and can be taken out of the contract.

11. The defendants, Marilyn Dillon and JLJ, made no effort as co-owners of the property to accept and sign the Real Estate Purchase Agreement as co-sellers so that she could be paid for the loan. Rather she swiftly rushed to foreclose (as she has done), not only on her sisters, but she chose to foreclose on her parents, who deeded us all interests in the property, free of charge - for \$5.00, love and affection.

12. Since the filing of the Consent Order, I and our parents, as Plaintiffs have fulfilled and honored every obligation ordered. Item #5 of the Settlement Order states - Reid Davis and the firm of Lee & Associates is hereby appointed as the broker to list the Property for sale as indicated by the consent of the parties. I'm being accused of nonperformance. On the date of the mediation for the Settlement Order, I and Petrease, with our parents sat in the cold

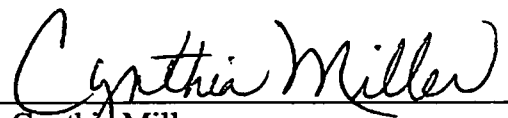
basement of the mediator's office for 10 hours (mind you, our mother was still recovering from a leg amputation just 2 months before). Our parents felt compelled to agree with and sign papers they did not understand so we could end the day. After further explanation, our father came to understand that if we listed the property for sale with any real estate agent/broker for a price and a buyer offered to pay that price, we would have to sell the property. As stated earlier, HE DOES NOT WANT THE PROPERTY SOLD OUTSIDE OF THE MILLER FAMILY. Our father and I discussed that if I were to purchase the property, we would not need to list it with an agent. Further, I would not charge a commission, (let alone 6%) and we could save \$51,000 in commission fees. Therefore, if the property was ever listed for sale, it would have been with Reid Davis. Reid Davis spoke with me once, the day he met Petrease at the Property. He never attempted to reach me after that. Reid Davis had all the information he needed – as he presented a proposal. However, he never presented a listing agreement to list the Property for sale.

13. Item #6 of the Consent Order states – Plaintiffs shall continue to manage the Property and pay the regular expenses, taxes, insurance and maintenance on the buildings during until such time as the sale or refinance contemplated herein has been consummated. I worked alongside our parents for over ~~15~~ 25 years and have managed the property for the last 10 years, since selling the businesses. During all of these years, as we experienced cash flow challenges, while having to pay 2 bank notes and other expenses, like insurance, we were never able to pay the property tax for the property on the due date. The property tax has always been paid at the end of the year, rather than the due date of Jan. 15, and it has always been paid. 2016's taxes are still within the allotted timeframe to be paid.
14. I, nor my parents, the Plaintiffs or PMC, Third-Party Defendant truly believe that Marilyn Dillon is due the amount of monies we have agreed to repay her to resolve this matter. As

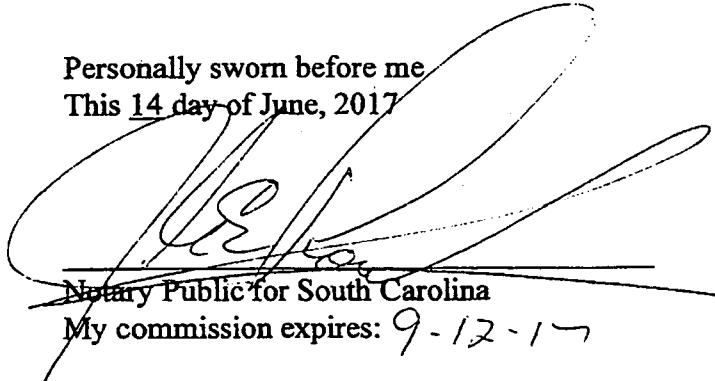
there is no way that our parents can afford to deed her 40% of a business property (which is valued at approximately \$350,000) and believe that that the value of the 40% would not be considered a partial payment on the debt owed Marilyn. She refused to sign a Mortgage Satisfaction that was presented to her. Our father is struggling to conceive how this happened and how she can believe she is owed the full amount of monies she said she lent them plus interest, without subtracting the value of the 40% of the property deeded to her. God bless her conscious and her soul.

15. I respectfully request that my Motion to Enforce be granted. As I have demonstrated, the Real Estate Purchase Agreement presented fully complies with the terms of the Consent Order. Further, I have performed every obligation of the Consent Order while honoring the wishes of our parents.

Further the Affiant sayeth naught.


Cynthia Miller

Personally sworn before me
This 14 day of June, 2017


Notary Public for South Carolina

My commission expires: 9-12-17

The Parties have read this entire Agreement and hereby agree to fully perform all the terms and conditions in good faith. By signing this Agreement each Party swears that the information it has provided is true and accurate to the best of its knowledge and belief.

BUYER

Name: CRM Agency LLC

Sign: Cynthia R. Miller Date: 3/13/2017

SELLER

Name: C-Miller Properties LLC, JUJ LLC, PMC LLC

Sign: Cynthia Miller Date: 3/13/2017
Cynthia Miller

Sign: Petrea M. Clarkson Date: 3-13-17
Petrea M. Clarkson

Sign: _____ Date: _____
Marilyn L. Dillon

Sign: Mary Alice Miller Date: 3/13/2017
Mary Alice Miller

Sign: Peter Miller Date: 3-13-2017
Peter Miller

JUJ - SELLER'S SPOUSE - SPOUSAL ACKNOWLEDGMENT

By signing below I hereby release any right of dower in the Property.

Sign: _____ Date: _____
Joseph L. Dillon

Witnesses

Witness

Witness

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT
CASE NO. 2015-CP-10-3389

PETER MILLER, MARY ALICE)
MILLER, MARY ALICE MILLER, AS)
TRUSTEE OF MARY ALICE MILLER)
LIVING TRUST, MILLER GROUP)
PROPERTIES, LLC, AND C-MILLER)
PROPERTIES, LLC)

Plaintiffs)

vs.)

MARILYN L. DILLON AND JLJ, LLC)

Defendants)

and)

MARILYN L. DILLON)

Third-Party Plaintiff)

vs.)

PMC, LLC)

Third-Party Defendant.)

NOTICE OF MOTION AND
REMEDIAL MOTION

MOTION TO AMEND ORDER
UNDER RULE 52(B) OF SCRCP

MOTION TO ALTER OR
AMEND JUDGMENT UNDER
RULE 59(E) OF SCRCP

2017 OCT -9 PM 2:34
CLERK OF COURT
BY: [Signature]

TO: HONORABLE MIKELL R. SCARBOROUGH
CHARLESTON COUNTY MASTER IN EQUITY
AND
IAN D. MCVEY, ESQUIRE
ATTORNEY FOR DEFENDANTS

The Plaintiffs above named respectfully move the Court under Rules 52 and 59
of the South Carolina Rules of Civil Procedure for an Order altering or amending the

Order of the Court denying Plaintiffs' Motion to Enforce Settlement Order, which Order is dated September 22, 2017, and which was filed with the Clerk of Court on September 27, 2017, and which was received by Plaintiffs' attorney on _____, 2017, on the following grounds:

1. The Court is in error in its finding that "The Real Estate Purchase Agreement does not comply with the Settlement Order."

Reasons: The Court bases its finding above on the fact that the Defendants did not sign the contract presented by the Plaintiffs, and therefore, there was no "ratified" contract as required by the Settlement Agreement. However, ratification of any contract presented by the Plaintiffs or third parties would require the signature of the Defendants in order to be deemed "ratified." It was, therefore, wholly within the province and unfettered discretion of the Defendants whether or not they would sign any contract at all, regardless of terms. In summarily rejecting the contract submitted by the Plaintiffs, it was, in fact, the Defendants who breached the Settlement Agreement and not the Plaintiffs.

2. The Court is in error in its finding that "Plaintiffs cannot compel Settlement Agreement due to their own non-performance."

Reasons: The Court's finding that Cynthia Miller failed to cooperate with Mr. Davis cannot support a finding of non-performance because the only requirement of the Settlement Agreement, set forth in Item No. 5 of the Agreement, was that "Reid Davis and the firm of Lee & Associates are hereby appointed as the broker to list the Property for sale as indicated by the consent of the parties." The Settlement Agreement places no duty on Cynthia Miller to cooperate with Reid Davis. In fact, the Defendants effected

a listing of the property with Reid Davis without the need of any assistance from Cynthia Miller.

The Court's finding that Plaintiffs failed to pay the 2016 property taxes for the property overlooks the fact that the Settlement Agreement (Items 8 and 9) required that the \$15,000.00 contribution from other parties to the action was to be used not only for taxes, but also for insurance, maintenance, roof repair, and matters related to underground storage tanks. No priorities for the payment of expenses were prescribed in the Settlement Agreement. Payment of the insurance associated with the property, repair of the roof and general maintenance were requirements taking precedence over the payment of property taxes, and, in fact, were obligations of the owners to the tenants occupying the property. Even if non-payment of the 2016 property taxes was deemed to be a breach of the Settlement Agreement, it was not a material breach that would give rise to the Court's finding that Plaintiffs cannot compel enforcement of the Settlement Agreement due to non-performance.

3. The Court is in error in its finding that "enforcing the Settlement Order would work on prejudice on Defendants." (emphasis added)

Reasons: The Court appears to conclude that there is prejudice to the Defendants, in large part, upon its finding that Plaintiffs openly defied the provisions of the Settlement Agreement and their failure to pay the 2016 property taxes will result in additional penalties. As set forth hereinabove, Plaintiffs believe that they have, in fact, complied with the Settlement Agreement and that non-payment of the 2016 taxes is not a material breach of the Settlement Agreement.

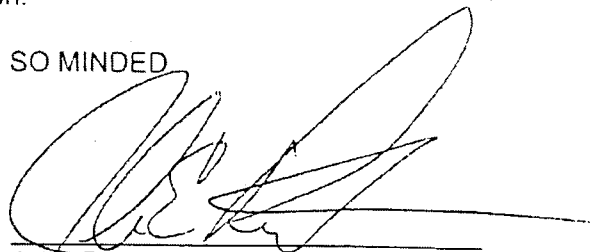
Further, the Court's finding that compelling enforcement of the Settlement Agreement would require the Court to set aside the deed in lieu of foreclosure is without merit, because there would be no need to set aside the deed in lieu of foreclosure in order to sell the property under Plaintiffs' contract of sale. The Court would simply order the Defendants or their successor LLC to execute a deed conveying the property to the purchaser under the contract.

Accordingly, the Plaintiffs respectfully request that the Court amend or alter its Order dated September 22, 2017, thereby finding that Plaintiffs have complied with the Settlement Agreement and that the same should be specifically enforced.

This Motion will be further supported by all memoranda, briefs, and other documentation to be submitted to the Court prior to the hearing.

Pursuant to Rule 11 SCRPC, counsel certifies that he has consulted with opposing counsel prior to the filing of this Motion.

PLEASE BE PRESENT TO DEFEND IF SO MINDED



John E. Romanosky, Jr.
S. C. Bar No. 4903
One Cool Blow Street, Suite 201
Charleston, South Carolina 29403
843-724-1054
john@jromanlaw.com

Attorney for Plaintiffs

Charleston, South Carolina
October 5th, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Peter Miller, et al

☒ Plaintiff

v.

Marilyn L. Dillon, Et Al

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2015-CP-10-3389

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
John E. Romanosky, Jr., Bar No. 4903
Address:
One Cool Blow Street, Suite 201
Charleston, SC 29403
phone: 843-724-1054 fax: 843-724-1061
e-mail: john@jromanlaw.com other:

Defendant's Attorney:
Bar No.
Address:
phone: fax:
e-mail: other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Notice of Motion and Remedial Motion; Motion to Amend Order Under Rule 52(B) of SCRPC; Motion to Alter or Amend Judgment Under Rule 59(E) of SCRPC
Estimated Time Needed: 15 minutes Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 5, 2017

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE: Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT
CASE NO. 2015-CP-10-3389

PETER MILLER, MARY ALICE)
MILLER, MARY ALICE MILLER, AS)
TRUSTEE OF MARY ALICE MILLER)
LIVING TRUST, MILLER GROUP)
PROPERTIES, LLC, AND C-MILLER)
PROPERTIES, LLC)

Plaintiffs)

vs.)

MARILYN L. DILLON AND JLJ, LLC)

Defendants)

and)

MARILYN L. DILLON)

Third-Party Plaintiff)

vs.)

PMC, LLC)

Third-Party Defendant.)

AMENDED

NOTICE OF MOTION AND
REMEDIAL MOTION

MOTION TO AMEND ORDER
UNDER RULE 52(B) OF SCRCP

MOTION TO ALTER OR
AMEND JUDGMENT UNDER
RULE 59(E) OF SCRCP

TO: HONORABLE MIKELL R. SCARBOROUGH
CHARLESTON COUNTY MASTER IN EQUITY
AND
IAN D. MCVEY, ESQUIRE
ATTORNEY FOR DEFENDANTS

Plaintiff, C-Miller Properties, LLC, respectfully moves the Court under Rules 52
and 59 of the South Carolina Rules of Civil Procedure for an Order altering or amending

the Order of the Court denying Plaintiffs' Motion to Enforce Settlement Order, which Order is dated September 22, 2017, and which was filed with the Clerk of Court on September 27, 2017, and which was received by Plaintiffs' attorney on October 5, 2017, on the following grounds:

1. The Court is in error in its finding that "The Real Estate Purchase Agreement does not comply with the Settlement Order."

Reasons: The Court bases its finding above on the fact that the Defendants did not sign the contract presented by the Plaintiffs, and therefore, there was no "ratified" contract as required by the Settlement Agreement. However, ratification of any contract presented by the Plaintiffs or third parties would require the signature of the Defendants in order to be deemed "ratified." It was, therefore, wholly within the province and unfettered discretion of the Defendants whether or not they would sign any contract at all, regardless of terms. In summarily rejecting the contract submitted by the Plaintiffs, it was, in fact, the Defendants who breached the Settlement Agreement and not the Plaintiffs.

2. The Court is in error in its finding that "Plaintiffs cannot compel Settlement Agreement due to their own non-performance."

Reasons: The Court's finding that Cynthia Miller failed to cooperate with Mr. Davis cannot support a finding of non-performance because the only requirement of the Settlement Agreement, set forth in Item No. 5 of the Agreement, was that "Reid Davis and the firm of Lee & Associates are hereby appointed as the broker to list the Property for sale as indicated by the consent of the parties." The Settlement Agreement places no duty on Cynthia Miller to cooperate with Reid Davis. In fact, the Defendants effected

a listing of the property with Reid Davis without the need of any assistance from Cynthia Miller.

The Court's finding that Plaintiffs failed to pay the 2016 property taxes for the property overlooks the fact that the Settlement Agreement (Items 8 and 9) required that the \$15,000.00 contribution from other parties to the action was to be used not only for taxes, but also for insurance, maintenance, roof repair, and matters related to underground storage tanks. No priorities for the payment of expenses were prescribed in the Settlement Agreement. Payment of the insurance associated with the property, repair of the roof and general maintenance were requirements taking precedence over the payment of property taxes, and, in fact, were obligations of the owners to the tenants occupying the property. Even if non-payment of the 2016 property taxes was deemed to be a breach of the Settlement Agreement, it was not a material breach that would give rise to the Court's finding that Plaintiffs cannot compel enforcement of the Settlement Agreement due to non-performance.

3. The Court is in error in its finding that "enforcing the Settlement Order would work on prejudice on Defendants." (emphasis added)

Reasons: The Court appears to conclude that there is prejudice to the Defendants, in large part, upon its finding that Plaintiffs openly defied the provisions of the Settlement Agreement and their failure to pay the 2016 property taxes will result in additional penalties. As set forth hereinabove, Plaintiffs believe that they have, in fact, complied with the Settlement Agreement and that non-payment of the 2016 taxes is not a material breach of the Settlement Agreement.

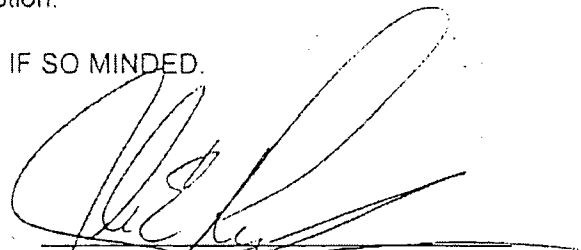
Further, the Court's finding that compelling enforcement of the Settlement Agreement would require the Court to set aside the deed in lieu of foreclosure is without merit, because there would be no need to set aside the deed in lieu of foreclosure in order to sell the property under Plaintiffs' contract of sale. The Court would simply order the Defendants or their successor LLC to execute a deed conveying the property to the purchaser under the contract.

Accordingly, the Plaintiffs respectfully request that the Court amend or alter its Order dated September 22, 2017, thereby finding that Plaintiffs have complied with the Settlement Agreement and that the same should be specifically enforced.

This Motion will be further supported by all memoranda, briefs, and other documentation to be submitted to the Court prior to the hearing.

Pursuant to Rule 11 SCRPC, counsel certifies that he has consulted with opposing counsel prior to the filing of this Motion.

PLEASE BE PRESENT TO DEFEND IF SO MINDED.



John E. Romanosky, Jr.
S. C. Bar No. 4903
One Cool Blow Street, Suite 201
Charleston, South Carolina 29403
843-724-1054
john@jromanlaw.com

Attorney for Plaintiffs

Charleston, South Carolina
October 10, 2017

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Peter Miller, et al

☒ Plaintiff

v.

Marilyn L. Dillon, Et Al

☐ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.

2015-CP-10-3389

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney:
John E. Romanosky, Jr., Bar No. 4903
Address:
One Cool Blow Street, Suite 201
Charleston, SC 29403
phone: 843-724-1054 fax: 843-724-1061
e-mail: john@jromanlaw.com other:

Defendant's Attorney:
Bar No.
Address:
phone: fax:
e-mail: other:

- ☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III)
☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III)
☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)

SECTION I: Hearing Information

Nature of Motion: Amended Notice of Motion and Remedial Motion; Motion to Amend Order Under Rule 52(B) of SCRPC; Motion to Alter or Amend Judgment Under Rule 59(E) of SCRPC

Estimated Time Needed: 15 minutes Court Reporter Needed: ☐ YES / ☒ NO

SECTION II: Motion/Order Type

- ☒ Written motion attached
☐ Form Motion/Order

I hereby move for relief or action by the court as set forth in the attached proposed order.

Signature of Attorney for ☒ Plaintiff / ☐ Defendant

October 10, 2017

Date submitted

SECTION III: Motion Fee

- ☒ PAID - AMOUNT: \$25.00
☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support
(check reason) ☐ Domestic Abuse or Abuse and Neglect
☐ Indigent Status ☐ State Agency v. Indigent Party
☐ Sexually Violent Predator Act ☐ Post-Conviction Relief
☐ Motion for Stay in Bankruptcy
☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC)
☐ Proposed order submitted at request of the court; or,
reduced to writing from motion made in open court per judge's instructions
Name of Court Reporter:
☐ Other:

JUDGE'S SECTION

- ☐ Motion Fee to be paid upon filing of the attached order.
☐ Other:

JUDGE

CODE:

Date:

CLERK'S VERIFICATION

Date Filed:

Collected by: _____

☐ MOTION FEE COLLECTED: _____

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT
CASE NO. 2015-CP-10-3389

PETER MILLER, MARY ALICE MILLER)
MARY ALICE MILLER, AS TRUSTEE)
OF MARY ALICE MILLER LIVING TRUST,)
MILLER GROUP PROPERTIES, LLC,)
AND C-MILLER PROPERTIES, LLC)

Plaintiffs)

vs.)

MARILYN L. DILLON AND JLJ, LLC)

Defendants)

And)

MARILYN L. DILLON)

Third Party Plaintiff)

Vs.)

PMC, LLC)
_____)

MEMORANDUM IN
SUPPORT OF

NOTICE OF MOTION AND
REMEDIAL MOTION

MOTION TO AMEND ORDER
UNDER RULE 52(B) OF SCRCP

MOTION TO ALTER OR
AMEND JUDGMENT UNDER
RULE 59(E) OF SCRCP

Now comes the Plaintiff, Cynthia Miller of Miller Group Properties, LLC and C-Miller Properties, LLC, by counsel, who responds with a Memorandum of Law in Support of Motion to Amend Rule 52(B) of SCRCP and Motion to Alter or Amend Judgment Under Rule 59(E) of SCRCP as follows:

1. The Court is in error in its finding that "The Real Estate Purchase Agreement does not comply with the Settlement Order."

Reasons: The Court bases it's finding above on the fact that the Defendants did not sign the contract presented by the Plaintiffs, and therefore, there was no "ratified" contract as required by the Settlement Agreement.

The Defendants were not the only owners of the property to have to sign the Purchase Agreement offer. Cynthia Miller, who had 50%, majority ownership interest, signed the Purchase Agreement. Petrease Clarkson who had 10% ownership interest accepted and approved of the Purchase Offer but was not available to sign the Agreement prior to nor when it was sent to her and the Defendants on March 8. Based on the real estate law in South Carolina, ratification requires the acceptance and signature of the Buyer and Seller. As the Buyer, Cynthia Miller submitted a Real Estate Purchase Agreement that met the terms of the Settlement Order to

purchase the property identified as TMS #244-00-00-122 for Eight Hundred Fifty Thousand and 00/100 dollars (\$850,000.00) or higher. As the Buyer, Cynthia Miller made an offer of \$850,000.00. As majority owner of the property and Seller, upon receiving the offer, Cynthia Miller accepted it and signed off on the contract, and at that point the parties were officially under contract. The Real Estate Purchase Agreement did not require the signature of the Defendants in order to be deemed "ratified." It was, therefore, wholly within the province and unfettered discretion of the Defendants whether or not they would sign any contract at all, regardless of terms. In summarily rejecting the contract submitted by the Plaintiffs, it was, in fact, the Defendants who breached the Settlement Agreement and not the Plaintiffs. The Defendants also rejected the Purchase Agreement offer acting under the guise of the lender, not the 40% owner of the property who desired to sell the property to get the loan they made paid to them (that they claimed they so badly needed.) In summarily rejecting the contract submitted by the Plaintiffs, it was, in fact, the Defendants who breached the Settlement Agreement and not the Plaintiffs, as evidenced by the Defendants who swiftly recorded the deed-in-lieu of foreclosure.

Further, the Real Estate Purchase Contract is supported by valuable and legal consideration – an offer to pay \$850,000.00 for the property. Legal consideration is the promise by the buyer to pay the price offered to make the purchase, \$850,000 and the consideration surrendered by the seller is the promise to give the buyer title to the property. Legal consideration is one of the necessary elements of a valid contract and it is included in the subject Agreement. As the Court indicated in its denial, "the necessary elements of a contract are an offer, acceptance and valuable consideration." Cynthia Miller made an offer, Cynthia Miller accepted and the valuable consideration is the \$850,000.00 to be paid for the property. Earnest money is a deposit, not consideration.

2. The Court is in error in its finding that "Plaintiffs cannot compel Settlement Agreement due to their own non-performance."

Reasons: 1) The Court's finding that Cynthia Miller failed to cooperate with Mr. Davis cannot support a finding of non-performance because the only requirement of the Settlement Agreement, set forth in Item No. 5 of the Agreement, was that "Reid Davis and the firm of Lee & Associates are hereby appointed as the broker to list the Property for sale as indicated by the consent of the parties." The Settlement Agreement places no duty on Cynthia Miller or any of the other owners to cooperate with Reid Davis. In fact, the Defendants initiated a listing of the property with Reid Davis without the need of any assistance from me.

Further, Reid Davis spoke with Cynthia Miller once, the day he met Petrease Clarkson at the property. Reid Davis apparently had all the information he needed from Joe Dillon – as Reid Davis forwarded a proposal that was provided to Cynthia Miller and Petrease Clarkson by Atty. Romanosky. Cynthia Miller was **never** provided a Real Estate Listing Agreement for execution to list the property for sale.

Mr. Davis never attempted to reach Cynthia Miller. Mr. Davis indicated, in his affidavit presented to the Court back on June 12, 2017, multiple attempts were made by him to contact Cynthia Miller regarding the property. Mr. Davis **never** ever attempted to contact Cynthia Miller and **has therefore committed perjury** to the Court.

2) The Court's finding that Plaintiffs failed to pay the 2016 property taxes for the property overlooks the fact that the Settlement Agreement (Items 8 and 9) required that the \$15,000.00

contribution from other parties to the action was to be used not only for taxes, but also for insurance, maintenance, roof repair, and matters related to underground storage tanks. No priorities for the payment of expenses were prescribed in the Settlement Agreement. Payment of the insurance associated with the property, repair of the roof and general maintenance were requirements taking precedence over the payment of property taxes, and, in fact, were obligations of the owners to the tenants occupying the property. Even if non-payment of the 2016 property taxes was deemed to be a breach of the Settlement Agreement, it was not a material breach that would give rise to the Court's finding that Plaintiffs cannot compel enforcement of the Settlement Agreement due to non-performance.

Item #6 of the Consent Order states – Plaintiffs shall continue to manage the Property and pay the regular expenses, taxes, insurance and maintenance on the buildings during until such time as the sale or refinance contemplated herein has been consummated. It does not specifically indicate whether it is referring to 2015 taxes that were unpaid at the time or the upcoming 2016 tax bill that came due shortly thereafter. Given the timing of the Settlement Agreement/Consent Order dated 9/12/16, it was deduced that it referred to the 2015 taxes that were currently due at that time. The 2015 taxes were paid in 2016.

The funds generated from items 7, 8, and 9 of the Consent Order (monthly revenue generated by the property and the \$15,000 advance from the parties) went to pay 2015 taxes and to replace a roof on one of the buildings that was required by the property's insurance carrier.

3. The Court is in error in its finding that "enforcing the Settlement Order would work on prejudice on Defendants."

Reasons: The Court appears to conclude that there is prejudice to the Defendants, in large part, upon its claim that Plaintiffs openly defied the provisions of the Settlement Agreement and their failure to pay the 2016 property taxes will result in additional penalties. As set forth hereinabove, Plaintiffs believe that they have, in fact, complied with the Settlement Agreement and that non-payment of the 2016 taxes is not a material breach of the Settlement Agreement.

As stated above, the property now in the possession of the Defendants since May, still has unpaid taxes for 2016. Therefore, denying the order to Enforce the Settlement Agreement/Consent Order has prejudiced the Plaintiffs, not the Defendants.

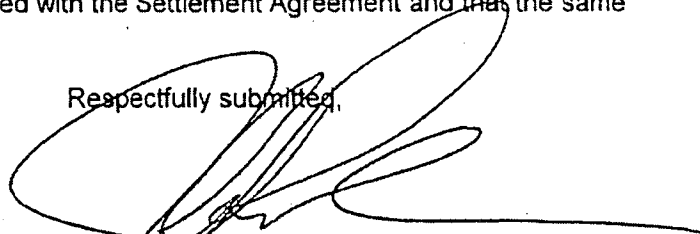
Further, since the filing of the deed in lieu of foreclosure and the Defendants taking over the management of the property, they have failed to honor the obligations of the Consent Order while the property is still in litigation. In September Cynthia Miller referred to their acting property manager, a prospective tenant who has now become a tenant on the property. They have violated item #11 of the Consent Order by entering into a lease in excess of one (1) year with a new tenant.

The Court's finding that compelling enforcement of the Settlement Agreement would require the Court to set aside the deed in lieu of foreclosure is in error because the Court could simply order the current title holder to convey the property to the Plaintiff. As the Settlement Agreement indicates, only 90 more days would be given for the transaction to take place. Therefore, granting Plaintiffs 90 days to purchase the subject property is not prejudicial to any party in this action.

CONCLUSION

Accordingly, for the reasons and rebuttals against the denial identified above, the Plaintiff respectfully requests that the Court amend or alter its Order dated September 22, 2017, thereby finding that Plaintiff has complied with the Settlement Agreement and that the same should be specifically enforced.

Respectfully submitted,



John E. Romanosky, Jr.
SC Bar No. 4903
One Cool Blow Street, Suite 201
Charleston, SC 29403
843-724-1054
john@jromanlaw.com

Attorney for Plaintiffs

Charleston, South Carolina
December 15, 2017

STATE OF SOUTH CAROLINA)
)
COUNTY OF CHARLESTON)

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL DISTRICT
CASE NO. 2015-CP-10-3389

PETER MILLER, MARY ALICE MILLER)
MARY ALICE MILLER, AS TRUSTEE)
OF MARY ALICE MILLER LIVING TRUST,)
MILLER GROUP PROPERTIES, LLC,)
AND C-MILLER PROPERTIES, LLC)

Plaintiffs)

vs.)

MARILYN L. DILLON AND JLJ, LLC)

Defendants)

And)

MARILYN L. DILLON)

Third Party Plaintiff)

Vs.)

PMC, LLC)

MEMORANDUM IN
SUPPORT OF

NOTICE OF MOTION AND
REMEDIAL MOTION

MOTION TO AMEND ORDER
UNDER RULE 52(B) OF SCRCP

MOTION TO ALTER OR
AMEND JUDGMENT UNDER
RULE 59(E) OF SCRCP

Now comes the Plaintiff, Cynthia Miller of Miller Group Properties, LLC and C-Miller Properties, LLC, by counsel, who responds with a Memorandum of Law in Support of Motion to Amend Rule 52(B) of SCRCP and Motion to Alter or Amend Judgment Under Rule 59(E) of SCRCP as follows:

1. The Court is in error in its finding that "The Real Estate Purchase Agreement does not comply with the Settlement Order."

Reasons: The Court bases it's finding above on the fact that the Defendants did not sign the contract presented by the Plaintiffs, and therefore, there was no "ratified" contract as required by the Settlement Agreement.

The Defendants were not the only owners of the property to have to sign the Purchase Agreement offer. Cynthia Miller, who had 50%, majority ownership interest, signed the Purchase Agreement. Petrease Clarkson who had 10% ownership interest accepted and approved of the Purchase Offer but was not available to sign the Agreement prior to nor when it was sent to her and the Defendants on March 8. Based on the real estate law in South Carolina, ratification requires the acceptance and signature of the Buyer and Seller. As the Buyer, Cynthia Miller submitted a Real Estate Purchase Agreement that met the terms of the Settlement Order to

purchase the property identified as TMS #244-00-00-122 for Eight Hundred Fifty Thousand and 00/100 dollars (\$850,000.00) or higher. As the Buyer, Cynthia Miller made an offer of \$850,000.00. As majority owner of the property and Seller, upon receiving the offer, Cynthia Miller accepted it and signed off on the contract, and at that point the parties were officially under contract. The Real Estate Purchase Agreement did not require the signature of the Defendants in order to be deemed "ratified." It was, therefore, wholly within the province and unfettered discretion of the Defendants whether or not they would sign any contract at all, regardless of terms. In summarily rejecting the contract submitted by the Plaintiffs, it was, in fact, the Defendants who breached the Settlement Agreement and not the Plaintiffs. The Defendants also rejected the Purchase Agreement offer acting under the guise of the lender, not the 40% owner of the property who desired to sell the property to get the loan they made paid to them (that they claimed they so badly needed.) In summarily rejecting the contract submitted by the Plaintiffs, it was, in fact, the Defendants who breached the Settlement Agreement and not the Plaintiffs, as evidenced by the Defendants who swiftly recorded the deed-in-lieu of foreclosure.

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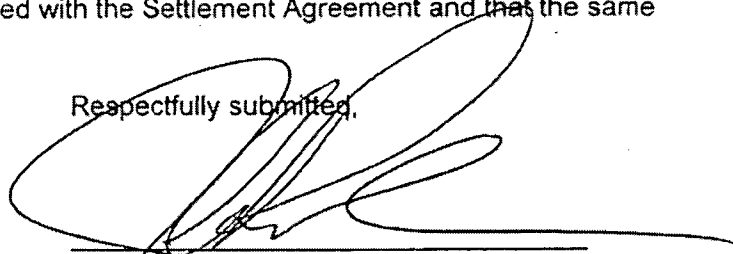
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CONCLUSION

Accordingly, for the reasons and rebuttals against the denial identified above, the Plaintiff respectfully requests that the Court amend or alter its Order dated September 22, 2017, thereby finding that Plaintiff has complied with the Settlement Agreement and that the same should be specifically enforced.

Respectfully submitted,

A large, stylized handwritten signature in black ink, likely belonging to John E. Romanosky, Jr., is written over the signature line and extends into the contact information area.

John E. Romanosky, Jr.
SC Bar No. 4903
One Cool Blow Street, Suite 201
Charleston, SC 29403
843-724-1054
john@jromanlaw.com

Attorney for Plaintiffs

Charleston, South Carolina
December 15, 2017

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)
PETER MILLER, MARY ALICE MILLER,)
MARY ALICE MILLER, AS TRUSTEE)
OF MARY ALICE MILLER LIVING)
TRUST, MILLER GROUP PROPERTIES,)
LLC, AND C-MILLER PROPERTIES,)
LLC,)
Plaintiffs,)
vs.)
MARILYN L. DILLON AND JLJ, LLC,)
Defendants)
and)
MARILYN L. DILLON)
Third-Party Plaintiff)
vs.)
PMC, LLC)

IN THE COURT OF COMMON PLEAS
Civil Action No. 2015-CP-10-3389

FILED
2017 OCT 20 AM 11:35
JULIE J. ANASTON
CLERK OF COURT

**RESPONSE IN OPPOSITION TO
PLAINTIFF C-MILLER
PROPERTIES, LLC'S AMENDED
MOTION TO AMEND ORDER
UNDER RULE 52(B), SCRCF
MOTION TO ALTER OR AMEND
JUDGMENT UNDER RULE 59(E), SCRCF**

NOW COME DEFENDANTS Marilyn L. Dillion and JLJ, LLC (collectively "Defendants"), by and through their undersigned counsel, hereby file this Response in Opposition to Plaintiff C-Miller Properties, LLC's ("Plaintiff") Amended Motion to Amend Order Under Rule 52(B,) SCRCF and Motion to Alter or Amend Judgment Under Rule 59(E), SCRCF. Defendants would respectfully submit that the Court should deny Plaintiff's Motion.

A Consent Settlement Order ("Settlement Order") was entered on September 12, 2016. Plaintiffs Peter Miller, Mary Alice Miller, Mary Alice Miller, as Trustee of Mary Alice Miller Living Trust, Miller Group Properties, LLC, and C-Miller Properties, LLC collectively filed a

Motion to Compel Settlement Order on April 28, 2017. The Court issued an Order Denying the Motion to Compel Settlement Order ("Order") on September 22, 2017. Thereafter, Plaintiff, in its individual capacity and without the other Plaintiffs bound to this Court's Order, filed the instant motion on October 10, 2017.

ARGUMENT

1. The Court did not err in finding that the Real Estate Purchase Agreement does not comply with the Settlement Order.

Plaintiff argues that Defendants breached the Settlement Order by not signing the Real Estate Purchase Agreement. The Settlement Order specifically required Plaintiff to present a ratified contract. Without the signatures of JLJ, LLC or PMC, LLC, the other two (2) owners of the Property, the Real Estate Purchase Agreement was not a binding contract and thus it did not comply with the terms of the Settlement Order. See Prestwick Golf Club, Inc. v. Prestwick Limited Partnership, 331 S.C. 385, 503 S.E.2d 184 (Ct. App. 1998) ("In order for a contract to be binding, there must be mutual manifestation of assent between the parties"); see also, Rose Electric, Inc. v. Cooler Erectors of Atlanta, Inc., 418 S.C. 424, 794 S.E.2d 382 (Ct. App. 2016) ("A contract is an obligation which arises from actual agreement of the parties manifested by words, oral or written, or by conduct"). Thus the Court was correct in finding that the Real Estate Purchase Agreement was not ratified because it was not signed by all the parties to the transaction.

Moreover, Defendants were under no such obligation to sign the Real Estate Purchase Agreement based solely on the fact that Plaintiff presented it to them. This Court's Order found that the Real Estate Purchase Agreement did not comply with the Settlement Order for additional reasons, such as lack of consideration and a provision making closing more than two hundred

seventy (270) days from the filing of the Settlement Order. Therefore, Defendants did not breach the Settlement Order by not signing a non-compliant agreement.

2. The Court did not err in finding that “Plaintiffs cannot compel Settlement Agreement due to their own non-performance.”

Plaintiff argues the court erred because Cynthia Miller (“Miller”) was under no obligation to cooperate with Reid Davis. The Settlement Order required the Property to be listed with Mr. Davis and each Plaintiff was required to abide by the Settlement Order. Therefore, Miller, by way of her ownership of C-Miller Properties, LLC, was thus required to cooperate with Mr. Davis. However, Miller failed to cooperate throughout the process making a listing impracticable.

Additionally, good faith and fair dealing required Miller to cooperate. Settlement agreements are viewed as contracts and every contract contains an implied covenant of good faith and fair dealing. Pee Dee Stores, Inc. v. Doyle, et al., 381 S.C. 234, 672 S.E.2d 799 (Ct. App. 2009); Williams v. Riedman, 339 S.C. 251, 267, 529 S.E.2d 28, 36 (Ct. App. 2000) (citing Commercial Credit Corp. v. Nelson Motors, Inc., 247 S.C. 360, 366–67, 147 S.E.2d 481, 484 (1966)). As a result, Miller had a duty under the Settlement Order to cooperate with Mr. Davis. Thus, the Court was correct in finding that her non-performance was a basis for refusing to compel the Settlement Order.

In addition, Plaintiff argues it did perform in accordance with the Settlement Order even though it did not pay the 2016 property taxes or, in the alternative, that the non-payment of taxes was not a material breach. The basis of this argument is that the Settlement Order did not contain a priority of payments provision. However, Plaintiff failed to make this argument prior to the instant motion. See Hickman v. Hickman, 301 S.C. 455, 456–57, 392 S.E.2d 481, 482 (Ct. App. 1990) (“A party cannot use Rule 59(e) to present to the court an issue the party could have

raised prior to judgment but did not.). Hence, Plaintiff cannot use this motion as a vehicle for bringing before the Court a new argument that was not advanced earlier.

Even if Plaintiff had properly raised this argument, it is without merit as Plaintiff was obligated to pay the property taxes and failed to do so. The Settlement Order clearly states in paragraph 6 that "Plaintiffs shall continue to manage the Property and pay the regular expenses, taxes, insurance and maintenance on the buildings during until such time as the sale or refinance contemplated herein has been consummated." Accordingly, Plaintiff was not relieved of its obligation to pay the property taxes when the amounts required to be contributed by some of the parties were exhausted. Further, the Settlement Order did not need to prescribe a priority of payments because it expressly required Plaintiff to pay the taxes on the property. As a result, the Court did not err in finding Plaintiff could not compel performance of the Settlement Order due to Plaintiff's failure to pay the 2016 property taxes.

3. The Court did not err in finding that "enforcing the Settlement Order would work a prejudice on Defendants."

Plaintiff argues that the Court was incorrect in finding a prejudice to Defendants because it did in fact comply with the Settlement Order. As discussed above and in the Court's Order, Plaintiff did not comply with the Settlement Order. Plaintiff's failure to pay the 2016 property taxes has caused Marilyn L. Dillon ("Dillon") to experience hardships. Additionally, the non-payment of the 2016 property taxes being categorized as a material or non-material breach is irrelevant. The Court's finding was based on its equitable power and Plaintiff's request to compel performance of the Settlement Order can not be granted when Plaintiff acted in an inequitable manner that caused a hardship to Dillon. Thus, the Court did not err in finding that enforcing the Settlement Order would work a prejudice on Defendants.

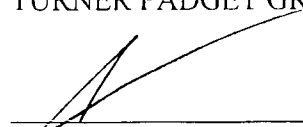
Plaintiff also contends the Court's finding that it would have to set aside the Deed-in-Lieu of Foreclosure is without merit. The Deed-in-Lieu of Foreclosure was recorded prior to the Motion to Enforce Settlement along with certain corrective deeds to clear up title issues. Thereafter, Dillon conveyed the property conveyed into an LLC. Any order compelling enforcement of the Settlement Agreement would require this Court to either set aside those transfers or to re-write the parties Settlement Agreement since any contract required by the Settlement Order would need to be between the parties to this action. Abel v. S.C. Dept. of Health and Environmental Control, 419 S.C. 434, 441, 798 S.E.2d 445, 448 (Ct. App. 2017) ("Courts are without authority to alter a contract by construction or to make new contracts for the parties."). As a result, the Court did not err in its finding.

CONCLUSION

Based on the foregoing, Defendants respectfully request that the Court deny Plaintiff's Amended Motion to Amend Order Under Rule 52(b) of SCRPC and Motion to Alter or Amend Judgment Under Rule 59(E), SCRPC. As has been demonstrated, Plaintiff did not comply with the Settlement Order and any order requiring performance of the Settlement Order would work a prejudice on Defendants.

Respectfully submitted,

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Columbia, South Carolina
October 18, 2017

Attorneys for Marilyn L. Dillon and JLJ Associates, LLC

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON

4 Peter Miller, Mary Alice Miller,
5 Mary Alice Miller, as Trustee of
6 Mary Alice Miller Living Trust,
7 Miller Group Properties, LLC,
8 and C-Miller Properties, LLC,
9 Plaintiffs,

10 vs. CASE NO. 2015-CP-10-3389

11 Marilyn L. Dillon and JLJ, LLC,
12 Defendants,

13 and

14 Marilyn L. Dillon,
15 Third-Party Plaintiff,

16 vs.

17 PMC, LLC,
18 Defendants.

19
20
21 Hearing before the Honorable Mikell R.
22 Scarborough, reported by Christine A. Smith, Court
23 Reporter and Notary Public, at 10:12 a.m. on
24 June 14, 2017 at 100 Broad Street, Charleston,
25 South Carolina.

Christine A. Smith, Court Reporter

Master-in-Equity

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P R O C E E D I N G S

1
2
3 THE COURT: So we are here for the case of
4 Peter Miller, et al versus Marilyn Dillon and
5 JLJ, LLC, and then there's a third-party action
6 between Marilyn Dillon and PMC, LLC. The case number
7 is 2015-CP-10-3389.

8 Mr. John Romanosky is here for the Plaintiff?

9 MR. ROMANOSKY: Yes, sir.

10 THE COURT: And Mr. Ian McVey?

11 MR. McVEY: Good afternoon, Your Honor.

12 THE COURT: Very good. You-all have sent me
13 some documents to read? I've read a few of them. I
14 think this is your motion; is it not?

15 MR. ROMANOSKY: It's my motion, Your Honor.
16 Yes, sir.

17 THE COURT: All right.

18 MR. McVEY: Your Honor, if I may, and
19 Mr. Romanosky and I discussed this prior to -- I
20 believe Mr. Romanosky intends to introduce the
21 affidavit of Ms. Cynthia Miller. I received it this
22 morning as I was driving down here. That in and of
23 itself is not problematic. Obviously, parties are
24 always entitled to file a reply affidavit.

25 However, Your Honor -- first, it is

1 unnotarized, and therefore cannot be considered sworn
2 testimony. Second, various matters are set forth in
3 the affidavit about what happened in the confidential
4 mediations that are not admissible pursuant to the
5 ADR rules. What we're here about today is the four
6 corners of this settlement award.

7 THE COURT: Motion to Enforce a Settlement?

8 MR. McVEY: Plain and simple. And there's
9 also a lot of issues that, quite frankly, were
10 resolved by virtue of the settlement award and
11 therefore, Your Honor, I object to its admission on
12 the grounds that I just stated.

13 THE COURT: Okay.

14 MR. ROMANOSKY: Your Honor, my response is
15 simply this: I got Ian's affidavits Monday morning,
16 yesterday morning. What's today? Wednesday?

17 THE COURT: Today is Wednesday.

18 MR. ROMANOSKY: Monday morning. I met with
19 Ms. Miller -- got her in on Tuesday, and worked on
20 her affidavit Tuesday night, and I now have it
21 notarized. I sent you an unnotarized one because she
22 was -- I couldn't get her to the office in time, so I
23 have a notarized affidavit that I'm prepared to hand
24 up, number one.

25 Number two, I appreciate Ian's objection based

1 on confidential information at the mediation session.
2 This is the courtroom. This is the Court. I believe
3 the Judge can discern what's confidential and what
4 isn't, and what's relevant and what isn't. So it's
5 not like this has been disclosed out in the public in
6 violation of any mediation. It's in reply,
7 Your Honor. It's in reply to the affidavits.

8 MR. McVEY: Your Honor, if I may,
9 Mr. Romanosky is right. He's entitled to submit a
10 reply affidavit. Obviously the notary issue has been
11 cured. However, my objection based upon
12 confidentiality of the mediation has not to do with
13 the fact that this is in the Court or may get into
14 the public domain.

15 Under the ADR rules this Court cannot consider
16 anything that happened during the mediation. All it
17 can consider is what is on the face of this consent
18 order and what is contained in the affidavits that
19 were probably -- there's obviously information in
20 those affidavits that this Court can consider. I
21 don't have any problem with that, but I would ask the
22 Court to note my objection for purposes of the record
23 and to take into consideration the fact that there
24 are, quite frankly, matters in there that just are
25 not appropriate to this Court's review.

1 THE COURT: So as to the objection, provided
2 it's now sworn testimony, it would admissible for
3 that purpose. Your objection lies upon -- to the
4 extent that it goes outside the four corners of the
5 settlement document is objectionable and should not
6 be considered by the Court; is that fair to say?

7 MR. McVEY: And really matters that took place
8 prior to the settlement; that's correct.

9 MR. ROMANOSKY: And matters that have actually
10 been settled or resolved.

11 MR. McVEY: That's right.

12 MR. ROMANOSKY: I agree with that.

13 THE COURT: All right.

14 MR. ROMANOSKY: May I hand it up?

15 THE COURT: Objections are noted, and the
16 Court will consider accordingly.

17 MR. ROMANOSKY: Thank you, Your Honor.

18 THE COURT: Thank you, Mr. Romanosky. Very
19 good.

20 MR. McVEY: Shall I proceed, Your Honor?

21 THE COURT: Rule 56, you've got it. Primary
22 Rule, 56. All right. You May proceed. Thank you,
23 Mr. Romanosky.

24 MR. ROMANOSKY: Briefly, as an overview, you
25 have before you today the Miller family. Mr. and

1 Ms. Miller and the three daughters.

2 THE COURT: We have everybody here?

3 MR. ROMANOSKY: Everybody's here.

4 THE COURT: Welcome to the Family Court of
5 Real Estate. Glad to have you.

6 MR. ROMANOSKY: Your Honor, the matter arose
7 out of a mortgage. Ms. Dillon loaned some money to
8 her parents and some other family members over a long
9 period of time. There were some disputes about
10 whether the mortgage was valid, whether it was
11 invalid, whether it was paid, you know, all the
12 typical mortgage and foreclosure issues that arise.

13 Actually, an action was initiated by my
14 clients to determine really what's the status of this
15 mortgage? Is it valid? Isn't it valid? As I said
16 to them, expect a counterclaim for foreclosure. It's
17 coming. Of course it came.

18 THE COURT: So the DJ action is really what
19 started it?

20 MR. ROMANOSKY: The DJ action started the
21 case. It was a mortgage foreclosure counterclaim,
22 and ended up in mediation and settled. It settled
23 along the terms of a group settlement agreement that
24 you have in front of you that is attached to our
25 motion. Per that settlement agreement, the

1 Plaintiffs, Ms. Miller -- the Millers -- were given a
2 period of time to either produce a contract to
3 purchase the property that the Dillons had the
4 mortgage on, or to produce a commitment letter from a
5 lender that would allow the property to be refinanced
6 and pay the Dillons their mortgage and everybody
7 would go on about their business.

8 There are some other collateral matters in the
9 settlement agreement, and Ian will give you a whole
10 lot of reasons as to why he doesn't think my relief
11 should be granted. I am going to let him deal with
12 that with you.

13 I think it's really a simple matter. The
14 Plaintiffs had until March 11th to produce either a
15 settlement agreement -- this is a ratified contract,
16 or a commitment letter to refinance, one or the
17 other. The deadline date to do that was March 11th,
18 which was a Saturday.

19 March 8th, Ms. Miller presented a contract to
20 Ms. Dillon, her sister, to purchase the property at
21 the price prescribed in the settlement agreement,
22 \$850,000, by e-mail. I believe that was on March
23 8th. On March 10th I got a letter from Ian. It's
24 attached to my motion. It's fairly length and gives
25 you -- told us all sorts of reasons of why we're not

1 going to deal with this contract. Basically it was
2 summarily rejected. There were no negotiations back
3 and forth, not an opportunity to try to negotiate
4 some terms, to work something out, but simply, you
5 know, Sorry. We're not going to honor it. We're not
6 going to sign it.

7 I know Ian's going to tell you, Judge, the
8 contract was never ratified. Well, to the extent
9 that the Millers refused to sign it, of course it
10 wasn't ratified. It was totally within their power
11 of whether to ratify it or not. They could have
12 taken any contract that came in and said, I'm not
13 going to sign it. We wouldn't have had a ratified
14 contract, and my clients would have lost their
15 opportunity to purchase.

16 So a contract came in within the period of
17 time, and was summarily rejected by the Defendants
18 without any opportunity of renegotiating. I think
19 the Millers deserve an opportunity to keep this
20 property in their side of the family. So all we're
21 asking for is an opportunity per the contract for
22 Ms. Miller and company to purchase this property at
23 the agreed price, pay the Dillons out. There's
24 plenty of money to pay them out what they're owed,
25 and move on with life with the Miller family.

1 There's no harm or prejudice to the Dillons for the
2 Court to allow this. It will either happen and
3 they'll get paid and there will be some money left
4 over that everybody will split, or it won't and they
5 will end up with the property and they can do with it
6 what they want.

7 Anticipating a little bit of what Ian's going
8 to say, it took another day to get the signature of
9 Patrice on the contract that Ms. Miller submitted.
10 It was a Saturday. The deadline was a Saturday. I
11 told her, We need to get another signature. It
12 didn't come until Monday. I know he was going to
13 make an issue of that. Your Honor, in substance they
14 lived up to the term of the agreement. We simply
15 want an opportunity to try to purchase the property.
16 If it doesn't work then we're out of here and the
17 Dillons have it, and that's the end of the case.

18 THE COURT: Okay. Mr. McVey?

19 MR. McVEY: Thank you, Your Honor. Your
20 Honor, if you've had a chance to read my response, I
21 kind of set forth the history of how we got here,
22 just a basic background. Again, the issues that were
23 settled were settled.

24 THE COURT: I have read it. You can go ahead.

25 MR. McVEY: This has been a debt that has been

1 due and owing since 2006, Your Honor. As of the time
2 we filed the foreclosure complaint, \$543,958.65 was
3 owed. Interest is clicking off at 7 percent, and my
4 client has spent tens of thousands in attorney's fees
5 to get where we are today. Throughout the course --
6 well, first of all, Your Honor, the contract says it
7 needs to be ratified.

8 The contract was presented on the 8th. It was
9 not ratified. It was signed by the CRM Agency, which
10 is a wholly-owned entity of Ms. Cynthia Miller and
11 signed by C. Miller Properties, likewise a
12 wholly-owned entity of Cynthia Miller. It was not
13 signed by PMC, LLC who is a 10 percent owner of the
14 property, nor was it signed by JLJ, which is a
15 40 percent owner of the property.

16 Admittedly, my clients, Joe and Marilyn
17 Dillon, are the members of JLJ, no question about
18 that. However, it was not signed. On March 13th
19 there's a contract that has now been presented that
20 my clients do not recall receiving, but a contract on
21 March 13th that is signed by PMC, C. Miller, and
22 that's it. It's also, of course, signed by CRM
23 Agency as well. There may be some other signatures
24 on it.

25 Again, that is signed as of March 13th, which

1 is past the deadline under the terms of the contract.
2 Assuming for purposes of argument that this is really
3 a bona fide offer, which my clients don't believe it
4 to be, the contract has a lot of problems, not the
5 least of which is it is accompanied by zero earnest
6 money and provides for a financing contingency that
7 only has to be satisfied seven days prior to closing.
8 If it doesn't get satisfied, poof. It's gone.
9 There's no earnest money. There's nothing to keep my
10 clients -- there's nothing to compensate my clients
11 for their continued delay on the remedy that was
12 negotiated between the parties under the settlement
13 agreement, which is the Deed in Lieu of Foreclosure.
14 Nor was an unqualified loan presented within that
15 time period.

16 Now, when I wrote back to Mr. Romanosky
17 pointing out the reasons we were rejecting the
18 contract, I pointed out to him that there was very
19 little faith in CRM Agency's ability to close here.
20 We received at that time what was purported to be a
21 loan commitment, however, the document that was
22 presented to us said, This is not a loan commitment.
23 This is essentially -- nor is it a loan approval.
24 This is essentially a summary of a conversation we
25 had related to terms if, when, et cetera.

1 There was no belief whatsoever that this was,
2 in fact, a bona fide contract or anything further
3 than just a further delay tactic. Now, this is a
4 terrible situation because it's a family scenario.
5 Family scenarios are always tough. My client
6 obviously loves her parents and hates that it has
7 come to this, but at the end of the day this
8 situation needs to end. It needs to be brought to a
9 conclusion.

10 At this point they have recorded the deed in
11 lieu of foreclosure despite the fact that it's got
12 some problems because, by way of example, the
13 estoppel affidavit that is required whenever you do a
14 deed in lieu -- it was marked through by C. Miller
15 Properties in various capacities so we can't get
16 title insurance on it. The settlement agreement
17 provides for contemporaneous affidavits and any
18 further documentation to be executed by parties.
19 I've provided that to Mr. Romanosky. His clients
20 haven't signed it. I'm sure that's no fault of
21 Mr. Romanosky's. I would have never think that of
22 him, but his clients haven't signed that.

23 I can't issue title insurance on this because
24 I don't have that. Further, throughout the
25 settlement process Ms. Miller did not cooperate. The

1 whole point here of the settlement was to list this
2 with an independent broker and have the broker go out
3 and get the best price that the broker could. In
4 order to do that the broker had to have all the
5 information he could have about the property. The
6 only person who cooperated with him -- excuse me,
7 that's not fair -- I believe Ms. Clarkson also had a
8 meeting with Mr. Davis -- was Mr. Joseph Dillon, and
9 he gave them the information the best he has.

10 My clients have not been managing the property
11 throughout any of this. Ms. Miller, she had all of
12 that information. As you can see from the affidavit
13 from Mr. Davis, he never received any information.
14 Ultimately, the listing was never -- no listing
15 agreement was ever signed with the property to get
16 marketed. I think Mr. Romanosky --

17 THE COURT: If memory serves me right, he
18 looked into it but never got the information that he
19 was looking for?

20 MR. McVEY: That's correct. He really gave us
21 his best guess as to the number. That was all he
22 could do based on the information or lack of
23 information that he had. That's as far as it got.
24 Now, I think Mr. Romanosky would acknowledge that I
25 contacted him on multiple occasions and told him that

1 his client was not cooperating in this process, and I
2 asked him to encourage her to do so. That never
3 happened.

4 Your Honor, even if this is a bona fide
5 contact they were entitled to try -- the CRM Agency
6 was entitled to try and perform on -- you can't
7 specifically perform if you haven't performed
8 yourself. You can't. That's basic contract law. If
9 you breached it first or if you don't have clean
10 hands, you're not entitled to ask for specific
11 performance from the Court.

12 More importantly, Your Honor, this has been
13 going on now for 11 years. It's time for an end. My
14 clients have recorded the Deed in Lieu of
15 Foreclosure. We're not just talking about giving CRM
16 Agency a chance to perform. CRM Agency, who is not a
17 party to this agreement -- you're talking about
18 setting aside title. That's a much bigger deal than
19 simply just enforcing a settlement agreement.

20 I think if you balance the equities here,
21 which you're being asked for specific performance
22 here which requires you to balance the equities, and
23 you're being asked to review this agreement, and the
24 agreement I think is very straightforward.

25 I don't think specific performance is anywhere

1 close to appropriate. It didn't comply with the
2 contract by providing a ratified contract within 180
3 days. The contract itself, even if it had been
4 ratified, could have closed over the 270 days that
5 were called for in the contract. It's not a bona
6 fide offer and the parties simply did not do what
7 they said they were going to do. The Plaintiffs
8 didn't do what they said they were going to do in
9 this agreement.

10 All my clients want is closure to this, Your
11 Honor. All they want to do -- they have a recorded
12 deed in lieu. They just want to move on, plain and
13 simple.

14 THE COURT: When was the deed in lieu filed?

15 MR. McVEY: It was recorded, I believe, in
16 April. It was recorded about -- that's another thing
17 I pointed out. I don't think this is really
18 anybody's fault. The deed in lieu, I was supposed to
19 hold it the whole time. I got it after the time had
20 run. Now, Mr. Romanosky did give it to me, and I
21 appreciate that.

22 THE COURT: After the 180 days?

23 MR. McVEY: After the 180 days, Your Honor, it
24 was provided to me, the originals. I have been sent
25 scanned copies. It took months to get it, and I

1 understand there were some logistical problems for
2 that. However, Your Honor, at this point the deed in
3 lieu has been recorded. It's just time for the
4 parties to move on and try to put back together their
5 family relationship if they can.

6 THE COURT: What about the -- you're still
7 looking for the estoppel affidavit. Was that
8 included in your settlement agreement that that would
9 be provided?

10 MR. McVEY: They were going to execute -- let
11 me direct Your Honor if I can. Look to the actual
12 motion that was filed -- Paragraph 15, The parties
13 shall execute such documents as are reasonably
14 requested to effectuate the deed in lieu including
15 any corrected deeds and affidavits as may be required
16 by a title insurance carrier. The documents that I
17 got via scan initially, one of the estoppel
18 affidavits, the one signed by C. Miller Properties,
19 had struck through the provision specifically related
20 to, I think this is fair value and a fair trade.
21 There's a particular reference/warranty that I am
22 paraphrasing right now.

23 When that came to my attention I pointed it
24 out to Mr. Romanosky. I asked him to get everybody
25 in to re-execute everything. He said, I'll try, but

1 I don't think it's going to happen, and it didn't
2 happen. In order for me to get title insurance right
3 now I still need contemporaneous affidavits so that I
4 can get Chicago Title to issue a title policy, the
5 form affidavits, et cetera, and I can't get those.
6 I've provided them to the Plaintiffs. They haven't
7 signed them or sent them back.

8 At this point, my clients aren't worried about
9 any of that. We just want to leave things as they
10 are, which is that the deed in lieu's been recorded.
11 They've performed under the agreement. Let's move
12 on.

13 THE COURT: So Mr. Romanosky's argument is
14 that there's been no harm or prejudice. Tell me what
15 that is, Mr. McVey.

16 MR. McVEY: I'm sorry, Your Honor. Would you
17 repeat your question?

18 THE COURT: What's the harm or prejudice to
19 your client?

20 MR. McVEY: Well, for one, you have to set
21 aside title. Two, my clients have been without any
22 of the funds that they lent since August of 2006.
23 Your Honor, interest is ticking away at 7 percent.
24 They've got some \$30,000 in attorney's fees in this.
25 This is done. The action was filed in August of

1 2015. We're now two years past that. The deed in
2 lieu is finally recorded. Most of what's in
3 Ms. Miller's affidavit really is contesting
4 everything that we said.

5 Your Honor, the harm and the prejudice at this
6 point is, my client bargained and negotiated in good
7 faith at a mediation and came up with a settlement
8 order, and they've performed under it. The other
9 side has not. They were entitled to the remedy which
10 is to realize on their collateral. Nobody's going to
11 get a deficiency judgment against their mother. I
12 mean, nobody wants to do that. They just want the
13 property and to move on. Thank you.

14 THE COURT: All right, Mr. McVey.
15 Mr. Romanosky?

16 MR. ROMANOSKY: Well, Your Honor, just
17 briefly. The fact that the deed in lieu of
18 foreclosure has been recorded is not an obstacle
19 here. If the Court were to rule in our favor, they
20 would simply do what they would have done had they
21 not recorded the deed in lieu of foreclosure. They
22 would have deeded their 40 percent interest in their
23 property to Ms. Miller, so they have to sign a deed
24 no matter what. So that's just a nonissue.

25 What I challenge Ian on is his ability to

1 obtain title insurance. All off the proper
2 affidavits were, estoppel affidavits were signed.
3 Ms. Miller did a line through a sentence in her
4 estoppel affidavit dealing with -- I just don't
5 recall what it was, but it was -- he could get a
6 title policy on it. I mean, I could get a title
7 policy on it.

8 THE COURT: Affidavit of what? True
9 consideration?

10 MR. McVEY: No, Your Honor. It was the
11 estoppel affidavit. It's agreeing that this is a
12 fair and adequate exchange. Just for the record, I
13 called my title insurance company, and they won't
14 issue a policy.

15 MR. ROMANOSKY: There are several companies,
16 but be that as it may --

17 THE COURT: Mr. Romanosky might be able to
18 write it.

19 MR. ROMANOSKY: You know, I'm happy to write
20 it. I'll write it.

21 THE COURT: You don't want to do that.

22 MR. ROMANOSKY: There are all sorts of
23 reasons, as I indicated initially, as to why the
24 Dillons don't want this to happen, and it's addressed
25 in relevant portion in Ms. Miller's affidavit. So I

1 would just ask you to reconsider her affidavit in
2 your decision.

3 THE COURT: Have I been provided with these
4 affidavits that you-all are making reference to?

5 MR. ROMANOSKY: You have.

6 MR. McVEY: Mine were attached to the
7 response, yes. You have them.

8 MR. ROMANOSKY: All right. And granted, it's
9 been a while. It's been a long time. There just
10 isn't any harm in going 30 more days and giving this
11 part of the family an opportunity to try to buy out
12 the other side. I just don't see any harm. 30 days
13 is just not that big of a deal.

14 THE COURT: That begs my question because I
15 was doing the math in my head. It seems like today
16 or sometime this week would be the 90 days it was to
17 close, was it not? They had an additional 90?

18 MR. ROMANOSKY: That's right, but she has to
19 have a signed contract to take to a lender before
20 they will do an appraisal and process a loan. It's
21 just basic financing.

22 THE COURT: So the offer that was received --
23 let me go back just so I'm clear on this. The offer
24 that was received was not ratified by a JLJ. That's
25 the Defendants essentially. PMC is the Plaintiff; is

1 it not?

2 Okay. Are you local? Do you live here?

3 UNIDENTIFIED SPEAKER: Yes.

4 THE COURT: Very good. I don't know why it
5 takes so long to get these documents put together.
6 Anything further?

7 MR. McVEY: Just very briefly, Your Honor.
8 What I think Mr. Romanosky is suggesting is a remedy
9 here. I do not know that it's necessarily within
10 this Court's power. The Court's power is to enforce
11 a settlement agreement. A settlement agreement says
12 270 days from the date of filing, not 90 days from
13 the date of a ratified contract.

14 It also would again require the setting aside
15 of a deed in lieu that has already been recorded,
16 which I don't believe is contemplated under the
17 agreement now.

18 THE COURT: It's not common but I've done it
19 before.

20 MR. McVEY: Sure. I understand that,
21 Your Honor. Your Honor, I think the relief that's
22 being requested by the Plaintiff would basically
23 require this Court to rewrite the settlement
24 agreement, and I don't -- that is not, I think,
25 within this Court's purview in this scenario.

1 There's no ambiguities in the contract. The contract
2 says -- I mean, the settlement agreement says what
3 the settlement agreement says.

4 THE COURT: Attached to your affidavit or your
5 motion or response, Mr. McVey, I got the affidavits
6 of Reid Davis and Joe Dillon, but I don't see those
7 affidavits that I was specifically referencing.

8 MR. McVEY: Which affidavits? Are you talking
9 about the title affidavits, Your Honor?

10 THE COURT: Yes. Yes.

11 MR. McVEY: Your Honor, I didn't attach those.
12 I didn't think they were necessary.

13 THE COURT: All right. That's what I was
14 asking about just now.

15 MR. McVEY: I'm sorry. I misunderstood your
16 question. I think Mr. Romanosky would acknowledge
17 that there obviously was a strike through on the
18 estoppel affidavit and that I transmitted to him
19 certain title insurance required affidavits to be
20 signed that were not signed.

21 MR. ROMANOSKY: They were all signed.
22 Everything was signed. One affidavit was scratched
23 through by Ms. Miller, one line. Everything else was
24 signed.

25 THE COURT: All right. I would like for

1 you-all to get me a copy of that so I can look at it.

2 MR. McVEY: Your Honor, here is --

3 THE COURT: Have you got it?

4 MR. McVEY: No, Your Honor. I thought I did.
5 I'm sorry.

6 MR. ROMANOSKY: We can provide it.

7 MR. McVEY: Here Your Honor, actually I do. I
8 have my February 23rd letter. This is actually
9 asking them to go ahead and execute the deed in lieu
10 of foreclosure, but it has all of the necessary
11 documents. I provided those in February as we were
12 getting close to the deadline so I could have
13 contemporaneous affidavits with the deed in lieu. I
14 did provide those that were here in a letter I sent
15 Mr. Romanosky on the 23rd of this year.
16 February 23rd.

17 THE COURT: February? All right.

18 MR. McVEY: Yes, sir. Shortly before the
19 deadline ran.

20 THE COURT: And when did you get the executed
21 deed in lieu?

22 MR. McVEY: After the deadline had run, after
23 March 11th. I understand the herding cats problem.
24 I get that. I'm not throwing John under the bus by
25 any means here.

1 THE COURT: I understand that, but I'm also
2 trying -- this motion was filed in late April. When
3 was the deed in lieu? The deed in lieu was filed
4 prior to that?

5 MR. McVEY: It may have been filed prior to
6 that. I don't have that portion of the file with me,
7 Your Honor. It's obviously -- we can look it up on
8 public record.

9 MR. ROMANOSKY: I had an obligation to deliver
10 it to Ian and I didn't. I had to --

11 MR. McVEY: He absolutely did. Your Honor,
12 just for the Court's record, my clients, for
13 liability purposes, have conveyed it to a separate
14 LLC just to protect Marilyn individually from being
15 the titleholder of record in what is a commercial
16 occupied property.

17 THE COURT: Okay. All right. I'm with you.
18 This is the store up on the creek, isn't it? Isn't
19 that where this is?

20 MR. ROMANOSKY: Yes, sir.

21 THE COURT: Out there in Hollywood, I'm with
22 you. Up there by the bridge. It's got Mr. Miller's
23 name on the bridge and Mr. Miller's name on the
24 store. I know where you're talking about.

25 All right. I would still like to see that

1 affidavit. I have not read Ms. Miller's affidavit,
2 so I'll take a look at that. I want to give you-all
3 an answer. I'll do that sooner rather than later.

4 Typically, folks, what I generally do is I
5 take 30 days and ask these lawyers to submit orders
6 to me. I'm happy for you-all to do that as to what
7 you need to do, but ultimately I need to make a
8 decision as to whether it's going to be enforceable
9 or not. So my question to you coming out of this was
10 whether or not the deadline is hard and fast -- just
11 so you know. This is what I wrote down.

12 Has there been harm or prejudice to the
13 Defendants? That's what you-all are going to need to
14 show. Two, you do have a contract, so I wrote down
15 here, Contract. Four corners of the document, where
16 we go. I'll take a look at the affidavit, and I'm
17 going to tell you now for the record and when I read
18 it then I'm probably not going to consider anything
19 that's outside the terms of the contract. I've
20 already approved the settlement agreement. We signed
21 that as an order back in -- I think it was in
22 September if I'm not mistaken, coming out of this
23 settlement, the mediated settlement across the
24 street.

25 Finally I wrote down in the notes to myself,

1 is this a form over substance document? That gets
2 into the question that Mr. McVey has raised of
3 whether or not the Court has the authority to alter
4 or amend the terms of the agreement. Okay?

5 So that's what I'm looking at just so you-all
6 know where I am. Okay? I'll give you-all an answer.
7 It will be sooner than that.

8 MR. McVEY: Just so that I'm clear,
9 Your Honor, you do not want proposed orders from
10 us --

11 THE COURT: I don't. I'll give you-all an
12 answer soon. Okay?

13 MR. McVEY: Judge, to comply with your request
14 about the other affidavits, what I'll do when I get
15 back to my office is I'll scan this February 23rd
16 letter with its attachments and send it to you.

17 MR. ROMANOSKY: You're looking for the
18 executed estoppel?

19 MR. McVEY: What are you looking for? I want
20 to make sure.

21 THE COURT: I'm looking for the affidavits
22 that were signed and the ones that were stricken
23 through. That's what I want to see. I just want to
24 see them. You-all have consented to it. I just want
25 to see. Okay?

1 MR. McVEY: All right.

2 THE COURT: Thank you-all.

3 (The proceedings were concluded at 3:02 p.m.)

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1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 9th day of March, 2018 at
13 Charleston, Charleston County, South Carolina.
14
15
16

17 _____
18 Christine A. Smith
19 Notary Public
20 My Commission Expires
21 May 12, 2021
22
23
24
25

1 STATE OF SOUTH CAROLINA
2 COURT OF COMMON PLEAS
3 COUNTY OF CHARLESTON

4 Peter Miller, Mary Alice Miller,
5 Mary Alice Miller, as Trustee of
6 Mary Alice Miller Living Trust,
7 Miller Group Properties, LLC,
8 and C-Miller Properties, LLC,
9 Plaintiffs,

10 vs. CASE NO. 2015-CP-10-3389

11 Marilyn L. Dillon and JLJ, LLC,
12 Defendants,

13 and

14 Marilyn L. Dillon,
15 Third-Party Plaintiff,

16 vs.

17 PMC, LLC,
18 Defendants.

19 Hearing before the Honorable Mikell R.
20 Scarborough, reported by Christine A. Smith, Court
21 Reporter and Notary Public, at 10:12 a.m. on
22 December 18, 2017 at 100 Broad Street, Charleston,
23 South Carolina.

24 Christine A. Smith, Court Reporter

25 Master-in-Equity

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P R O C E E D I N G S

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3 THE COURT: The first matter up today is the
4 case captioned Peter Miller, and others versus
5 Marilyn Dillon, and others. Present for the
6 Plaintiffs is Mr. John Romanosky of the Charleston
7 County Bar, and for the Defendants is Mr. Ian McVey
8 from the Richland County Bar. Gentlemen, good
9 morning.

10 MR. ROMANOSKY: Good morning, Judge.

11 THE COURT: Mr. Romanosky, I know we're
12 here -- this is your Motion to Reconsider, Rule
13 59(e).

14 MR. ROMANOSKY: Yes, sir, that's correct.

15 THE COURT: You may proceed.

16 MR. ROMANOSKY: Thank you, Your Honor. By way
17 of brief background, Your Honor signed a settlement
18 agreement agreed to between these parties. In fact,
19 you insisted upon it back sometime, I think in April,
20 earlier this year. The settlement agreement
21 essentially required the Plaintiff in this case to,
22 within 270 days, provide a ratified contract for the
23 purchase of some family property out at Red Top or to
24 provide evidence of a refinance in order to pay off
25 Ms. Dillon's mortgage. There was a time frame within

1 which that was to be done, and if wasn't done within
2 the time frame then that meant we could execute a
3 quit claim deed and it would be held in escrow.

4 Of course Your Honor heard the motion, denied
5 it, and the Court's order denied the Motion to
6 Enforce the Order based on three -- essentially three
7 defenses. The contract presented by the Plaintiff
8 was not a ratified contract, number one. Number two,
9 the Plaintiff had not complied with all of the terms
10 of the settlement agreement and therefore was not
11 entitled to enforcement.

12 Your Honor placed evidence on the fact of
13 whether there would be any prejudice to either party
14 if you granted the Motion to Compel or you didn't
15 grant the Motion to Compel. So those are the three
16 reasons supporting the Court's order.

17 Your Honor, I would like to take the middle
18 one first, which was the nonperformance finding as a
19 basis for the Court's order, and Your Honor, that was
20 based on affidavits. You'll see in the record, the
21 relevant record, an affidavit from Ms. Miller; an
22 affidavit from, I believe, Joe Dillon, who is
23 Ms. Dillon's cousin; and an affidavit from Mr. Davis,
24 who was a Realtor.

25 In the reading of the Court's order, very

1 obviously one concludes that the Court adopted the
2 affidavits of Ms. Dillon's witnesses, but it occurs
3 to me that there's error there because there's no way
4 the Court could test the credibility of any witness
5 by way of affidavit.

6 MR. McVEY: Your Honor, if I may, I would just
7 like to note my objection. This is going into the
8 grounds that were set forth in a supplemental
9 memorandum that was filed on Friday. As Your Honor
10 is aware under Rule 59(e), you have to set forth your
11 grounds in the initial motion that was filed in
12 October of 2010.

13 What Mr. Romanosky is currently talking about
14 is not encompassed in the motion, the 59(e) Motion
15 that was filed, so any of these arguments were not
16 timely brought before the Court, and I would ask the
17 Court to limit the argument of the Plaintiff to what
18 has been set forth in the 59(e) that was filed.
19 Thank you, Your Honor.

20 MR. ROMANOSKY: They're the same grounds that
21 I put in the original 59(e).

22 THE COURT: I don't think I -- hold on. I've
23 got the October 9th filing on the motion, and it
24 looks like it's dated the 15th. I've not even looked
25 at that yet, but I'm following along with you.

1 MR. ROMANOSKY: Well, it's essentially the
2 same. I'm not trying to put anything new into the
3 record. I understand it's not proper. My point is
4 very simply that without the Court being able to
5 observe the testimony of the witnesses, cross-examine
6 the witnesses, that there would have been no way for
7 the Court to determine by affidavit who was
8 presenting credible evidence and who wasn't.

9 So the point there is that I think the
10 affidavit is a wash, Your Honor, and therefore, it is
11 an error for the Court to base its finding on
12 affidavits instead of testimony that came from live
13 witnesses.

14 The other big point, or the other two big
15 points, Your Honor -- and of course they're addressed
16 in our original Motion again today, is this business
17 about the contract that was, in fact, presented by
18 the Plaintiff as not being a, "ratified contract". I
19 don't see any dispute or contest here that the
20 contract was timely submitted. Granted, it was at
21 the last minute, but it was submitted on time.

22 Now, it occurs to me that in a commercial
23 setting I can't recall any time that a contract,
24 particularly of a commercial nature, is accepted
25 right on its face at the very beginning. There is

1 always some tit-for-tat back and forth.

2 Well, what happened in this case was, in fact,
3 the contract was submitted and it was submitted
4 timely but then just summarily rejected with no
5 counter, no discussion, and the fact that it was the
6 Plaintiff that submitted the contract I don't believe
7 is relevant because if a third party could have
8 submitted the contract then the Defendant could have
9 done the same thing. They could simply say, No, you
10 know, I don't like it for this reason.

11 The Court's order and Ian's order stressed the
12 need for good faith particularly in the
13 nonperformance as alleged by Ian, from the Plaintiff,
14 but it's also an obligation of good faith on the
15 Defendant to have given that contract some
16 consideration. She could have struck through
17 anything that she didn't like. She could have added
18 new matters or asked for earnest money and countered
19 and who knows? I mean, we may not be here.

20 So it was wholly within the province of the
21 Defendant as to whether or not we could even have a
22 ratified contract, and I think good faith and fair
23 dealing dictated that we at least get a counter or
24 some discussion to give my client an opportunity to
25 purchase the property. That's number two.

1 Finally, Your Honor, I think in more
2 simplistic terms, the Court made a finding that it
3 would be prejudice to the Defendant if the Court
4 order was enforced largely for financial reasons.
5 The mortgage was four years old. She hadn't been
6 paid. It was time to move on with things. This has
7 been dragged out too long when actually, in fact, to
8 enforce the settlement agreement would only increase
9 the time by 90 days. Per the settlement agreement
10 the Plaintiff had, once the contract was ratified,
11 90 days to close.

12 So it occurs to me here again, 90 days is not
13 a long enough period of time to result in any
14 prejudice, but moreover, if the contract closed
15 within the 90 days, the Defendant would have gotten
16 all of the money she loaned, all of the interest, all
17 of the payments, all of the penalties of anything
18 that she had advanced. In fact, there would have
19 been more money left over if that occurred.

20 So I believe the Court was in error in not
21 requiring the Defendant to at least make a counter or
22 to give us an opportunity to move forward, and all it
23 would have taken was 90 days. If that had happened
24 we wouldn't even be here today. Maybe it would have
25 closed. Maybe it wouldn't have.

1 For all of those reasons, we would ask the
2 Court to reconsider its order and enforce the
3 settlement.

4 THE COURT: All right. Thank you. Mr. McVey?

5 MR. McVEY: Thank you, Your Honor. Your
6 Honor, I guess I will go somewhat in the same order
7 that Mr. Romanosky did. First of all, none of the
8 credibility of witnesses -- the Court's inability to
9 question the witnesses as to the matter consented in
10 the affidavit is raised by way of the 59(e).

11 By way of procedural history, the 59(e) was
12 filed twice: First on the 9th, and the second on the
13 10th. There was an amended 59(e) filed. It is the
14 amended 59(e) that I think we're all working off of
15 here. That's -- it's fairly perfunctory, the 59(e).

16 Any of the issues related to the affidavits,
17 et cetera, and the Court's consideration thereof is
18 not raised in it. What is, in fact, raised is
19 that -- the issue of whether Cynthia Miller failed to
20 cooperate or not -- the argument that is made is that
21 the settlement agreement places no duty on Cynthia
22 Miller to cooperate with Reid Davis. That's the only
23 argument that was made.

24 However, as Your Honor is aware, every
25 contract in South Carolina does require a certain

1 amount of good faith and fair dealing on the part of
2 the parties to the contract and so therefore her
3 failure to cooperate in the listing, which it was
4 required that the property be listed with them. She
5 is, by her own admission, the manager of the property
6 and therefore the one best suited to enter into the
7 agreement of that, and by her failure to do so that
8 is, in fact, a breach of the settlement order.

9 Your Honor, the second ground that was raised
10 was the failure to pay the 2016 property taxes. The
11 settlement order very clearly says, You have to pay
12 all taxes and insurance. Those 2016 taxes were not
13 paid. The argument that is made is that the consent
14 order does not set forth what priority everything has
15 to be paid in. Of course it doesn't. The point was
16 everything had to get paid. Whether it was
17 prioritized or not doesn't really matter.

18 Therefore, a failure to pay the 2016 taxes is,
19 in fact, a breach of the settlement agreement
20 entitling my client to relief again. That's
21 nonperformance on the part of the Plaintiffs that
22 would bar any specific performance of my client to
23 sign this contract.

24 I guess we're going back to number one now,
25 which would be talking about the ratified nature of

1 the contract. The contract that was presented on
2 March 11, 2017, which was one day short of when there
3 was supposed to have been a ratified contract
4 preventing -- a ratified contract being defined as
5 the parties have all signed it. It's signed by two
6 people: C. Miller, who is one of the owners of the
7 property, and CRM Agency, who is the proposed
8 purchaser.

9 Both are single-member entities owned by
10 Ms. Cynthia Miller, therefore basically the same
11 people signed it. That does not constitute a
12 ratified contract, but the order that you entered
13 went further than that. It went past just the
14 ratified contract. It found that the contract wasn't
15 sufficient because it lacked valuable consideration
16 because there was no earnest money. What it proposed
17 was zero earnest money, \$850,000.

18 Mr. Romanosky mentioned earlier that he's
19 never seen a commercial contract that there wasn't
20 some backing for. I've never seen a commercial
21 contract that didn't have any earnest money. That's
22 just not commercially reasonable, and my clients in
23 the letter that they submitted in response to the
24 contract -- it set that forth that there is no
25 earnest money here. We can't consider this to be a

1 viable contract because of that, and that letter is
2 attached to the original motion to enforce the
3 settlement agreement.

4 Your Honor, if I can also go back to the
5 prejudice issue, it wasn't simply -- excuse me,
6 Your Honor -- I'm going back to what was actually
7 submitted. The prejudice issue really -- the
8 argument that is made under 59(e) has to do with the
9 failure to pay the 2016 property taxes. That's not
10 what the Court found.

11 What the Court found is that my client had a
12 maturity date of May of 2013, and it hadn't been paid
13 since before then. My client had waited long enough.
14 My client had foregone its right to foreclose the
15 mortgage to give another opportunity. My client time
16 and time again gave further opportunities and
17 extended further to try and come up with some sort of
18 solution. That didn't happen.

19 No contract was presented. They had a
20 ratified contract within 180 days of the entry of the
21 order. It didn't close within 270 days of the order.
22 It's not at 90 days from the date of the contract.
23 It's 270 days it had to close. That's what the
24 parties agreed. We spent a lot of time in
25 Mr. Massalon's office hammering this out. This is

1 what the parties bargained for. It didn't happen.
2 My client was entitled to record the deed in lieu of
3 foreclosure.

4 Now, they certainly -- they argued here that
5 the Court could use its equitable powers to extend
6 the contract. That's not what the courts do. That's
7 not what equitable power is for. Courts don't
8 rewrite contracts. The parties agree and the
9 parties -- the Court is bound to do what the parties
10 agree to.

11 In this situation what they're asking here, as
12 they did when they filed the Motion to Enforce a
13 Settlement was to ask the Court to set aside various
14 transfers or to just require what has now been put
15 into an LLC, an LLC who is not a party to this
16 action, to convey the property to the CRM Agency,
17 which again is not a party to this action. This
18 Court just simply doesn't, I believe, have the power
19 to do that.

20 THE COURT: The agreement was hammered out at
21 the mediation?

22 MR. McVEY: That's correct, Your Honor.
23 That's correct.

24 THE COURT: Refresh my memory on the
25 underlying mortgage. I'm trying to remember -- it

1 was for a term of years and is due?

2 MR. McVEY: That's correct, Your Honor. If
3 the mortgage -- hang on. If I can draw the Court's
4 attention to the order that was filed -- this started
5 back in June of 2006. There was a promissory note
6 that was signed to the tune of \$360,000, which
7 everything was to be paid on May 31, 2009. That
8 didn't happen.

9 Excuse me. A mortgage was then recorded in
10 2008, prior to the mortgage's maturity, in favor of
11 my client. After that the note was nullified with a
12 maturity date of -- excuse me, Your Honor -- May 1,
13 2013. The mortgage modification was filed currently
14 therewith. None of that happened. My client,
15 instead of foreclosing again -- my clients -- this is
16 a family. Nobody wants to foreclose on their family
17 members. My client gets sued for determination that
18 the mortgage isn't even valid anymore. We
19 counterclaim. We resolve it by way of mediation
20 resulting in -- this isn't just that I'm here before
21 you today on a settlement agreement between the
22 parties. This is an order of the Court signed by
23 Your Honor and entered in September of 2016. At this
24 point, if you didn't comply with the terms of the
25 order I'm entitled to the remedy set forth in the

1 order.

2 THE COURT: Okay.

3 MR. McVEY: Thank you, Your Honor.

4 THE COURT: Mr. Romanosky?

5 MR. ROMANOSKY: Well, Your Honor, the only
6 thing in rebuttal is -- again, I understand they're
7 arguing about the affidavits. Nonetheless they're in
8 the record, and they're a matter for the Court to
9 consider. Again, Ms. Miller denies that she did not
10 cooperate with the broker.

11 The 2016 taxes -- or actually I believe the
12 2015 taxes because they always paid late -- this is
13 the way the family always did so there was nothing
14 unusual with that.

15 You know, the contract -- you can have a
16 contract and it doesn't actually have to have cash
17 earnest money, or they could have asked for some cash
18 earnest money.

19 THE COURT: Well, wasn't there a substantial
20 amount of forbearance in this case? Ultimately,
21 isn't that what this is all about? They have been
22 waiting for their money since -- they gave the money
23 out in 2006. They've been expecting it since May of
24 2009. On the last day that there could possibly be a
25 submission of a contract the Plaintiff essentially

1 submits their own contract in an alterego form with
2 no consideration.

3 Isn't that -- ultimately, isn't that what
4 we're talking about here?

5 MR. ROMANOSKY: Well, they -- I would take
6 issue with the fact that there was no consideration.

7 THE COURT: What was the consideration? There
8 certainly was forbearance on the part the Defendant.

9 MR. ROMANOSKY: I agree there was forbearance,
10 but it was not a forced forbearance. It was an
11 agreed forbearance. They might find that --

12 THE COURT: Without a doubt you-all had a
13 contract. I will tell you, the one thing I keep
14 getting slapped down from the Court of Appeals -- I
15 keep rewriting people's contracts, trying to help
16 them out and do the right thing.

17 MR. ROMANOSKY: Well, we're not asking you to
18 rewrite a contract. We're just asking the Court to
19 hold the Defendant to the same standard of good faith
20 and fair dealing that he had argued in his motion
21 with respect to the Plaintiff complying with the
22 agreement. All it would have taken instead of a flat
23 denial would have been to say, Put up \$10,000 earnest
24 money. Strike this. Strike that. We would have had
25 a deal and we would have been done.

1 THE COURT: Why did it take so long to get the
2 submission?

3 MR. ROMANOSKY: Well, Your Honor, I think
4 third parties -- trying to get a third party to
5 purchase the property.

6 THE COURT: Therein lies the problem. The
7 Court appointed a listing agent, or there was a
8 listing agent appointed anyway. Mr. Davis says he
9 didn't have any authority to deal with anybody
10 because he never could speak with Ms. Miller.

11 MS. MILLER: Your Honor, may I speak?

12 THE COURT: No, you may not.

13 MR. ROMANOSKY: He dealt and could deal with
14 Ms. Miller and her husband, Joe (phonetic), and he
15 did, in fact, handle it. He actually has -- as I
16 said -- this order doesn't say specifically what
17 Ms. Miller has to do or not to do with Mr. Davis. He
18 knows how to do his job conditioned upon Ms. Miller
19 doing anything. I just -- I believe that -- you
20 know, this is a family situation.

21 THE COURT: No doubt about it. They're in the
22 right place. This is the Family Court of real
23 estate.

24 MR. ROMANOSKY: It's not a good one. Your
25 Honor, it wouldn't take much just to allow an

1 opportunity for my client to purchase the property.

2 THE COURT: Ms. Miller has got something she
3 wants you to tell me. Anything you want to add?

4 MR. ROMANOSKY: I'm sorry, Your Honor?

5 THE COURT: Anything you want to add?

6 MR. ROMANOSKY: No, sir.

7 MR. McVEY: Your Honor, do you require further
8 response from me?

9 THE COURT: No.

10 MR. McVEY: Thank you, Your Honor.

11 MR. ROMANOSKY: Your Honor, one thing. I have
12 to be careful to zealously represent my client.
13 Ms. Miller wants me to remind the Court that the
14 broker never presented a listing agreement to her
15 during this period.

16 THE COURT: Okay. You know, this is a sad
17 case because it's a family case, but you know, the
18 one authority I think I tell most people I cite in
19 this courtroom is my grandmother, who was in the real
20 estate business. Rule No. 1 was: Don't do business
21 with your family. Rule No. 2 was: When you do, get
22 it in writing.

23 In this case they actually got it in writing.
24 Most of the cases that come in here, I don't have it
25 in writing. I just have two family members fighting

1 it out. I have nothing to base it upon. That's what
2 I find distinguishing and unusual about this case. I
3 took the Motion to Enforce a Settlement order under
4 advisement on the 14th of June and asked for estoppel
5 affidavits to follow and the affidavits came in. I'm
6 of the opinion that the Plaintiff has had ample
7 opportunity to satisfy the mortgage and just has not
8 done so, therefore, I'm going to deny the motion.
9 I'm going to deny it on the grounds that I've already
10 stated.

11 They were going to submit -- the Plaintiff
12 wanted to submit its own contract, the ratified
13 contract under an alterego LLC, which they had a
14 right to do. I just don't understand why they would
15 do it at the last minute and with zero consideration.
16 I don't find that to be a valid offer. I don't find
17 that to be an offer in good faith. That's ultimately
18 what I'm saying there.

19 That's just where I am on that. I'm sorry.
20 That's just the ruling that I've got. Okay?

21 MR. ROMANOSKY: Thank you, Your Honor.

22 THE COURT: Very good.

23 MR. McVEY: Your Honor, is the Court going to
24 prepare an order? Do you need something from me?

25 THE COURT: I was just going to do a Form 4

1 order denying it. If you want something more on the
2 record you can.

3 MR. McVEY: Thank you, Your Honor.

4 THE COURT: Very good. Thank you-all.

5 (The proceedings were concluded at 10:34 a.m.)
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1 State of South Carolina)
2 County of Charleston) C E R T I F I C A T E
3

4 I, Christine A. Smith, Court Reporter and
5 Notary Public for the State of South Carolina at
6 Large, do hereby certify that the foregoing
7 transcript is a true, accurate, and complete record.

8 I further certify that I am neither related to
9 nor counsel for any party to the cause pending or
10 interested in the events thereof.

11 Witness my hand, I have hereunto affixed my
12 official seal this 8th day of March, 2018 at
13 Charleston, Charleston County, South Carolina.
14
15
16
17

18 _____
19 Christine A. Smith
20 Notary Public
21 My Commission Expires
22 May 12, 2021
23
24
25

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2015-CP-10-3389
Appellate Case No. 2018-000084

RECEIVED

SEP 25 2018

SC Court of Appeals

RECEIVED

OCT 12 2018

SC Court of Appeals

Peter Miller, Mary Alice Miller, Mary Alice Miller, as Trustee of Mary Alice Miller Living Trust,
Miller Group Properties, LLC, and C-Miller Properties, LLC, ... Plaintiffs,

Of whom C-Miller Properties, LLC is the Appellant,

v.

Marilyn L. Dillon and JLJ, LLC, ... Respondents,

and

Marilyn L. Dillon, Third-Party Plaintiff, ... Respondent,

v.

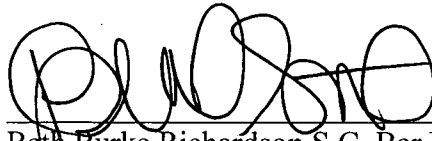
PMC, LLC, ... Third-Party Defendant.

PROOF OF SERVICE

I certify that I have served the Record on Appeal on Respondents by depositing a copy of it in the United States Mail, postage prepaid on September 25, 2018, addressed to their attorneys of record, Carmelo B. Sammataro, Esquire and Ian D. McVey, Esquire, Turner Padgett Graham & Laney, PA, PO Box 1473, Columbia, South Carolina 29202-1473.

(Signature Page Follows)

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



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September 25, 2018