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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

Appeal from Marion County
Court of Common Pleas

The Honorable W. Haigh Porter, Special Referee

Case Number 2019-CP-33-00853
Appellate Case No. 2021-00340

Avatar Partners CT, LLC, ...Respondent,

-v-

HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr. ..... Appellants.

RECORD ON APPEAL

VOLUME I of II

Magalie A. Creech (S.C. Bar 78855)
FINKEL LAW FIRM LLC
4000 Faber Place Drive, Suite 450
Post Office Box 41489
Charleston, South Carolina 29423
Telephone: (843) 577-5460
Facsimile: (866) 800-7954
Email: MCreech@FinkelLaw.com

Attorneys for Respondent

Louis H. Lang, SC Bar No. 3127
CALLISON TIGHE & ROBINSON, LLC
1812 Lincoln Street, Suite 200
Post Office Box 1390
Columbia, South Carolina 29202-1390
Telephone: 803-404-6900
Facsimile: 803-404-6902
Email: LouisLang@CallisonTighe.com

Attorneys for Appellants

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STATE OF SOUTH CAROLINA COUNTY OF MARION Avatar Partners CT, LLC, PLAINTIFF, vs. HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr., DEFENDANTS.	IN THE COURT OF COMMON PLEAS C/A NO: 2019-CP-33-00853 **ORDER AND JUDGMENT OF FORECLOSURE AND SALE** **(DEFICIENCY DEMANDED AGAINST HSGCHG INVESTMENTS, LLC F/K/A CAROLINA ENTERTAINMENT COMPLEX, LLC, PARTNERS 95, LLC, OIL BARONS, INC., AND ROBERT D. HARTMANN, SR.)**

TO: Magalie A. Creech
FINKEL LAW FIRM LLC
Attorneys for the Plaintiff

ANSWERING DEFENDANTS:
Louis H. Lang, Esquire
Attorneys for Defendants

Avatar Partners CT, LLC ("Plaintiff" or "Avatar")'s action for the foreclosure of a commercial mortgage on the property, commonly known as 1549 S HWY 501, Marion, SC 29571, owned by HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC having been tried before this Court in a non-jury proceeding, based upon a preponderance of the evidence and the arguments presented, this Court sets the following Findings of Fact and Conclusions of law, pursuant to Rule 52(a), SCRCP, and finds that entry of judgment of foreclosure and sale against Defendants is proper.

Pursuant to Rule 53 SCRCP, the above-entitled matter was referred. Any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

Pursuant to the said Order of Reference, a non-jury trial was held and was attended by counsel. The testimony was taken, which is reported herewith. From the testimony and evidence, I find, conclude and order as follows:

FINDINGS OF FACT AND CONCLUSIONS OF LAW

1. The Lis Pendens was filed on December 17, 2019.
2. The Summons and Complaint were filed on December 17, 2019.

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3. Service was made upon the Defendants named in this Report as is shown by the proof of service filed herein.

4. All of the defendants herein and/or all attorneys of record were notified of the time, date and place of the hearing in this matter.

5. According to the Answer filed on July 13, 2020, the Defendant Robert D. Hartmann, Sr. is not in the Military Service of the United States of America, as contemplated under the Servicemembers Civil Relief Act (2003), and any amendments thereto.

6. In Defendants' Answer, they admit the execution of the loan instruments that are the subject of Plaintiff's action but cite insufficient information regarding the amounts due thereunder. Defendants also allege that the subject property's value greatly exceeds the debt owed to Plaintiff, and assert two equitable defenses. First, Defendants assert that Plaintiff should be required to marshal its assets and accept the property in full satisfaction of the debt. Second, Defendants alternatively assert that if the property is to be sold at public auction, that it be sold before the companion mortgaged properties located in Connecticut. Finally, Defendants assert that if the property is to be sold at public auction, that it be divided into several tracts whose respective values Defendants allege exceed the debt amount.

7. The following facts are not in dispute and Plaintiff's Exhibits 1 through 8, identified hereinbelow, were entered without objection:

a. Plaintiff's Exhibits 1 through 8:
   i. Commercial Promissory Note
   ii. Recourse Guaranty
   iii. Commercial Mortgage
   iv. Assignment of Rents and Leases
   v. UCC Financing Statements
   vi. Assignments of Mortgage
   vii. First Modification of Mortgage
   viii. Second Note Modification Agreement

b. On or about January 22, 2015, for value received, Partners 95, LLC, Oil Barons, Inc., and HSGCHG Investments, LLC executed and delivered to Avatar Capital Finance, LLC a certain promissory note (hereinafter "Note") in the sum of $2,000,000.00, together with interest thereon pursuant to the terms of the Note.

c. To secure the payment of said Note and debt, secured thereby, and in accordance with the terms and conditions thereof, on January 22, 2015, HSGCHG Investments, LLC executed and delivered to Avatar Capital Finance, LLC, its

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successors and assigns, a mortgage (hereinafter "Mortgage") covering the following described property ("Mortgage"):

All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. by Beasly Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and other; and on the Northeast by lands of William E. Thompson

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.

TMS#: 085-00-00-001-000
Property Address: 1548 S HWY 501 Bypass (Carolina Amphitheatre) Marion, South Carolina 29571

d. Thereafter the Mortgage was recorded in the Office of the Clerk of Court for Marion County in Book 295 at Page 7 on January 23, 2015.

e. The Mortgage constitutes a first lien on the subject property.

f. Thereafter, the Mortgage was assigned as follows:

i. By assignment dated January 23, 2015 and recorded in Book 318 at Page 61 on September 16, 2015, Avatar Capital Finance, LLC assigned as to Parker Ferguson an undivided 5.00% interest, as to Steven Ganeless an undivided 3.750% interest, as to Downtime Enterprises, LLC an undivided 10.00% interest, as to Patrick Guthrie, trustee of the Guthrie Family Trust an undivided 5.00% interest, as to Marc S. Homme APLC Defined Benefit Pension Trust an undivided 2.50% interest, as to O. Michael Homme, Trustee of the Homme Family Trust an undivided 1.250% interest, as to JBH Trust dated June 24, 2009 an undivided 1.250% interest, as to William R. Horton an undivided 7.50% interest, as to MMJ Group, Inc. an undivided 17.50% interest, as to Self Directed IRA Services, Inc. FBO Mark Picking, IRA an undivided 3.750%, as to

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Paul R. Verkuil and Judith Rodin an undivided 3.750% interest, as to Jay and Elaine Hazelrigg an undivided 1.75% interest, as to Richard Kester, trustee of the Kester Family Living Trust an undivided 5.00% interest, as to Susan Lundell an undivided 2.40% interest, as to Patrick A. Waldron and Peggy Waldron an undivided 1.65% interest, as to James and Joyce Zevenbergen Living Trust dated August 18, 2014 an undivided 10.00% interest, the Ronald and Sandra Lope Living Trust dated April 12, 2013 an undivided 10.00% interest, and as to Jerry Zevenbergen an undivided 7.95% interest;

ii. By assignment dated February 19, 2016 and recorded in 334 at Page 195 on March 11, 2016, Parker Ferguson assigned an undivided 5.00% interest, Steven Ganeless assigned an undivided 3.750% interest, Downtime Enterprises, LLC assigned an undivided 10.00% interest, Patrick Guthrie, trustee of the Guthrie Family Trust assigned an undivided 5.00% interest, Marc S. Homme APLC Defined Benefit Pension Trust assigned an undivided 2.50% interest, O. Michael Homme, Trustee of the Homme Family Trust assigned an undivided 1.250% interest, JBH Trust dated June 24, 2009 assigned an undivided 1.250% interest, William R. Horton assigned an undivided 7.50% interest, MMJ Group, Inc. assigned an undivided 17.50% interest, Self Directed IRA Services, Inc. FBO Mark Picking, IRA assigned an undivided 3.750%, Paul R. Verkuil and Judith Rodin assigned an undivided 3.750% interest, Jay and Elaine Hazelrigg assigned an undivided 1.75% interest, Richard Kester, trustee of the Kester Family Living Trust assigned an undivided 5.00% interest, Susan Lundell assigned an undivided 2.40% interest, Patrick A. Waldron and Peggy Waldron assigned an undivided 1.65% interest, James and Joyce Zevenbergen Living Trust dated August 18, 2014 assigned an undivided 10.00% interest, the Ronald and Sandra Lope Living Trust dated April 12, 2013 assigned an undivided 10.00% interest, and Jerry Zevenbergen assigned an undivided 7.95% interest to Avatar Capital Finance, LLC;

iii. By assignment dated March 11, 2016 and recorded in Book 347 at Page 81 on July 19, 2016, Avatar Capital Finance, LLC assigned as to Dr. Christopher L. Barley an undivided 1.4286% interest, as to Parker

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Ferguson an undivided 4.287% interest, as to RealTrust IRA Alternatives, LLC, a WA Limited Liability Co., Fbo Michael Fotheringill IRA #22199-TR-11 an undivided 0.7143% interest, as to Steven Ganeless an undivided 2.1429% interest, as to Self Directed IRA Services, Inc. Custodian FBO Philip H. Geier Jr. IRA #201525269 an undivided 2.1429% interest, as to Patrick Guthrie Family Partnership an undivided 11.4286% interest, as to Downtime Enterprises, LLC an undivided 5.7143% interest, as to Patrick D. Guthrie, Trustee of The Guthrie Family Trust an undivided 5.7143% interest, as to Jay and Elaine Hazelrigg an undivided 1.00% interest, as to Equity Trust Company, Custodian FBO James Holobaugh, IRA an undivided 1.4286% interest, as to Marc S. Homme APLC Defined Benefit Pension Plan an undivided 2.8571% interest, as to William R. Horton an undivided 8.5714%, as to MMJ Group, Inc. an undivided 10.00% interest, as to Richard Kester, Trustee of The Kester Family Living Trust an undivided 4.2857% interest, as to The Ronald and Sandra Loper Living Trust dated April 12, 2013 an undivided 8.5714% interest, as to Equity Trust Company, Custodian FBO Richard Lundell, IRA an undivided 1.4286% interest, as to Susan M. Lundell an undivided 1.3714% interest, as to PS Funding, Inc., a Delaware Corporation an undivided 11.4286% interest, as to Self Directed IRA Services, Inc. Custodian FBO Mark Picking IRA #201102273 an undivided 2.8751% interest, as to Self Directed IRA Services, Inc. Custodian FBO Theodore B. Smith, III IRA #201525268 an undivided 0.7143% interest, as to Paul and Judy Verkuil an undivided 3.5714% interest, as to Patrick A. Waldron and Peggy C. Waldron an undivided 0.9429% interest, as to Jerry Zevenbergen an undivided 1.6857% interest, and as to James and Joyce Zevenbergen Living Trust dated August 18, 2014 an undivided 5.7142% interest;

iv. By assignment dated February 27, 2019 and recorded in Book 476 at Page 292 on November 13, 2019, Dr. Christopher L. Barley assigned an undivided 1.4286% interest, Parker Ferguson assigned an undivided 4.2857% interest, RealTrust IRA Alternatives, LLC, a WA Limited Liability Co., Fbo Michael Fotheringill IRA #22199-TR-11 assigned an undivided 0.7143% interest, Steven Ganeless assigned an undivided

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2.1429% interest, STRATA Trust Company Custodian Fbo Philip H. Geier Jr IRA #201525269 assigned an undivided 2.1429% interest, Patrick Guthrie Family Partnership assigned an undivided 11.4286% interest, Downtime Enterprises, LLC assigned an undivided 5.7143% interest, The Guthrie Family Trust assigned an undivided 5.7143% interest, Jay and Elaine Hazelrigg assigned an undivided 1.00% interest, Equity Trust Company, Custodian, FBO James Holobaugh, IRA assigned an undivided 1.4286% interest, Equity Trust Company, Custodian, FBO Marc Homme, IRA assigned an undivided 2.8571% interest, William R. Horton assigned an undivided 8.5714%, MMJ Group, Inc assigned an undivided 10.00% interest, Kester Family Living Trust assigned an undivided 4.2857% interest, The Ronald and Sandra Loper Living Trust dated April 12, 2013 assigned an undivided 8.5714% interest, Equity Trust Company, Custodian, FBO Richard Lundell, IRA assigned an undivided 1.4286% interest, Susan M. Lundell assigned an undivided 1.3714% interest, PS Funding Inc, a Delaware Corporation assigned an undivided 11.4286% interest, STRATA Trust Company Custodian FBO Mark Picking IRA #201102273 assigned an undivided 2.8571% interest, STRATA Trust Company Custodian FBO Theodore B. Smith, III, IRA #201525268 assigned an undivided 0.0000% interest, Paul R. Verkuil & Judith Rodin assigned an undivided 3.5714% interest, Patrick A Waldron & Peggy C. Waldron assigned an undivided 0.9429% interest, Jerry Zevenbergen assigned an undivided 1.6857% interest, and James and Joyce Zevenbergen Living Trust dated August 18, 2014 assigned an undivided 5.7143% interest to AVATAR PARTNERS CT, LLC, the present lienholder and Plaintiff herein.

#6
#6

g. On or about January 22, 2015, for value received, the Defendant Robert D. Hartmann, Sr. executed and delivered to Avatar Capital Finance, LLC, a Recourse Guaranty ("Guaranty"), guarantying the performance of Defendants Partners 95, LLC, Oil Barons, Inc., and HSGCHG Investments, LLC under the terms of the Note, including payment of all amounts due and owing.

h. The parties modified the terms of the Note and Mortgage which, *inter alia*, increased the unpaid principal balance to $3,500,000.00 and extended the maturity date to June 1, 2019.

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i. The underlying commercial promissory Note secured by the Mortgage that is the subject matter of this action concerns a commercial transaction. Accordingly, the Mortgage is not subject to the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program (HMP), the United States Treasury Supplemental Directive 09-01 and the Administrative Order of the South Carolina Supreme Court dated May 22, 2009 (2009-05-22-01) and thus the foregoing provisions are inapplicable. In addition, the subject property is not an owner occupied dwelling and the Administrative Order issued by the Chief Justice of the Supreme Court of South Carolina on May 2, 2011, Order 2011-05-02-01, is not applicable.

j. Pursuant to the terms of the Mortgage, any sums paid by Plaintiff for inspecting and securing the subject property, for fire and other hazard insurance, taxes and assessments for the mortgaged premises, and any costs of collection, including reasonable attorney's fees, are secured by the Mortgage.

k. According to the terms of said Mortgage, and as additional security, the mortgagor assigned all rents, issues and profits of the mortgaged premises from and after any default thereunder, and should legal proceedings be instituted pursuant to said Mortgage, the mortgagee, its successors and 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, towards the debt secured by said Mortgage.

l. No Receiver was appointed to the subject property as it has not generated any rents or profits since the commencement of this action.

m. The titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action is HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC.

8. Plaintiff's witness, Mr. Jerry Zevenbergen, testified that he has been a 50% owner and manager of Avatar Capital Finance, LLC and Avatar Partners CT, LLC from their corporate inception through present. He testified that Avatar Capital Finance, LLC originated the subject loan and has been the only servicer of the account. He also testified that Avatar Partners CT, LLC, the current lienholder and Plaintiff, is a special purpose entity that was solely created to own the loan and proceed with this foreclosure action.

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Mr. Zevenbergen testified that he has personal knowledge of the loan transaction; has access to Avatar Capital Finance, LLC's servicing records, which he reviews in the course of his duties as manager; is familiar with the subject account; that Avatar Capital Finance, LLC's records for the subject loan are normally kept by it in the course of its commercial mortgage business; that it is Avatar Capital Finance, LLC's regular practice to make its records at or near the time of the occurrence or events reflected in those records; that it is Avatar Capital Finance, LLC's regular practice for those records to be made by a person with knowledge or from information transmitted by a person with knowledge; and that he personally is involved in and oversees the accounting performed by employees of Avatar Capital Finance, LLC.

Mr. Zevenbergen further testified that had reviewed Avatar Capital Finance, LLC's servicing records for the subject loan account, that the loan matured without payment, and is in default.

9. Plaintiff's Default Letters to Defendants and its Affidavit of Attorney's Fees were entered without objection as Plaintiff's Exhibit 9 and Exhibit 13, respectively.

10. Defendants objected to the admission of Plaintiff's Statement of Account, Income and Expense Sheets, and Payoff as Exhibits 10, 11, and 12, respectively, on the grounds that the proper foundation had not been lain for their admission and that they do not constitute business records pursuant to Rule 803(6), SCRE.

11. "All evidence must be authenticated." *State v. Brown*, 424 S.C. 479, 488, 818 S.E.2d 735, 740 (2018). "The requirement of authentication or identification as a condition precedent to admissibility is satisfied by evidence sufficient to support a finding that the matter in question is what its proponent claims." Rule 901(a), SCRE. The authentication standard is not high, *Deep Keel, LLC v. Atlantic Private Equity Group., LLC*, 413 S.C. 58, 64-65, 773 S.E.2d 607, 610 (Ct. App. 2015), and "a party need not rule out any possibility the evidence is not authentic. In the realm of authentication, the law, like science, is content with probabilities." *State v. Green*, No. 5659 WL 2608756 at *2 (Ct. App. June 26, 2019).

12. With respect to Exhibit 10, Plaintiff's Statement of Account, Mr. Zevenbergen testified that it is a document generated from Avatar Capital Finance, LLC's regular accounting records. Specifically, Avatar Capital Finance, LLC uses software that is common in the mortgage industry called Mortgage Office. He explained that the information contained in Plaintiff's Statement of Account is maintained on a current basis, and was prepared at or near the time of the occurrence or events reflected in it. He further explained that Plaintiff's Statement of Account is kept in Avatar Capital Finance, LLC's regular servicing business course of dealing.

13. With respect to Exhibit 11, Plaintiff's Income and Expense Sheets, Mr. Zevenbergen testified that it is an accounting of rents received and expenses paid relative to the loan, and is segregated by the entities who are the Borrowers. He explained that this document was prepared by Avatar Capital Finance,

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LLC's accountant Carla Stadler, who is an accountant with the company with knowledge of the information that is inputted into the document. He explained that Ms. Stadler obtains knowledge of this information by receiving the rents, as she is the person who accounts and deposits, either by wire or check the monies received into Avatar Capital Finance, LLC's collection bank account. He further explained that all Ms. Stadler's activities are performed in the regular course of Avatar Capital Finance, LLC's servicing business, and that the information contained in the Income and Expense Sheets is entered near or at the time of the occurrence of the events reflected in the document.

14. With respect to Exhibit 12, Plaintiff's Payoff, Mr. Zevenbergen testified that the document was prepared by Cara Stadler in Avatar Capital Finance, LLC's, who reports to him, and that payoffs are a record maintained in the regular course of Avatar Capital Finance, LLC's loan servicing business. He testified that the information contained in the Payoff was prepared from the records that Avatar Capital Finance, LLC maintains as the servicer of the loan, and that he reviewed it with Ms. Stadler.

15. See Rule 803(6), SCRE (providing a record custodian or other qualified witness must testify the evidence to be submitted under the business records exception meets the requirements of Rule 803(6), SCRE); *Dep't of Health & Envtl. Control*, 350 S.C. at 249–50, 565 S.E.2d at 297 (requiring business records be "identified by a qualified witness who can testify regarding the mode of preparation of the record" in order to be admissible under the business records exception); *see also Deep Keel, LLC v. Atl. Private Equity Grp., LLC*, 413 S.C. 58, 73, 773 S.E.2d 607, 615 (Ct. App. 2015) ("[A] witness is qualified to testify about a business record, despite the fact he or she did not personally participate in creating the record and was not the custodian 'at or near the time' the record was made."). Rather, to be considered a "qualified witness," the witness needed only to convey information from a person with knowledge. *See id.* ("[A] person is a 'qualified witness' under the rule if the testimony conveys information from a person 'with knowledge' at the time the records were created.").

16. Defendants' objections to the admission of Exhibits 10, 11, and 12 were overruled.

17. At the close of its presentation of evidence, Plaintiff testified that the debt due and owing as of December 14, 2021 was $5,839,616.99, exclusive of outstanding attorney's fees and costs, and sought leave to supplement the record with evidence of debt amounts incurred at trial and post-trial matters including preparation of the proposed order, sale documents, and required notices.

18. Defendants argued that Plaintiff failed to establish its standing to foreclose, based on their contention that a 3.457167% interest in the Mortgage had not been assigned to Plaintiff.

19. However, Plaintiff's testimony indicates that it was its belief that all interests in the Mortgage had been assigned to Avatar Partner's CT, LLC at the time the foreclosure was commenced. If any fractional interest remained outstanding, it was due to administrative oversight and not the intent of the parties.

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Plaintiff's testimony also indicates that it would not be difficult to obtain any assignments needed to effectuate a 100% assignment of the Mortgage to Plaintiff.

20. "Generally, a party must be a real party in interest to the litigation to have standing." *Sloan v. Friends of Hunley, Inc.*, 369 S.C. 20, 28, 630 S.E.2d 474, 479 (2006). "In South Carolina, it is well established that an assignee stands in the shoes of its assignor." *Twelfth RMA Partners, L.P. v. Nat'l Safe Corp.*, 335 S.C. 635, 639, 518 S.E.2d 44, 46 (Ct. App. 1999); *see also* S.C. Code Ann. § 36-3-203(b) (Supp. 2012) (providing a transfer of an instrument vests in the transferee any rights the transferor had). "[T]he assignment of a note secured by a mortgage carries with it an assignment of the mortgage, but . . . the assignment of the mortgage alone does not carry with it an assignment of the note." *Bank of America, N.A. v. Draper*, 405 S.C. 214, 220, 746 S.E.2d 478, 481 (Ct. App. 2013) (holding a loan servicer is a real party in interest and thus has standing to foreclose); *see also Ballou v. Young*, 42 S.C. 170,176, 20 S.E. 84, 85 (1894) ("The transfer of a note carries with it a mortgage given to secure payment of such note.").

21. "A mortgage and a note are separate securities for the same debt, and a mortgagee who has a note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action." *U.S. Bank Trust Nat'l Ass'n v. Bell*, 385 S.C. 364, 374, 684 S.E.2d 199, 204 (Ct. App. 2009); *see also Lever v. Lighting Galleries, Inc.*, 374 S.C. 30, 33, 647 S.E.2d 214, 216 (2007) ("A mortgagee who has a promissory note and a mortgage to secure a debt has the option to either bring an action on the note or to pursue a foreclosure action"). This principle has long been settled by the South Carolina Supreme Court, which stated,

> The note is the principal and the mortgage is the incident that follows the note in its delivery from one person to another. When a negotiable note payable to order is indorsed generally to the payee the note and its incident pass in the commercial world by delivery.

Union Nat'l Bank of Columbia v. Cook, 110 S.C. 99, 96 S.E. 484, 486 (1918). An assignment of mortgage is not required under South Carolina law. A mortgagor lacks standing to challenge an assignment of mortgage, as it is not a party to the agreement. CITE

22. The Court concludes that at the time of trial there remained an unassigned interest in the Mortgage of 0.7142%. Plaintiff has established that it is the proper party to enforce the Note, the original of which was made available for viewing, and the Mortgage. Furthermore, the missing assignment transferring the remaining 0.7142% interest in the Mortgage was executed and sent for recording subsequent to trial.

23. The Court therefore finds that Plaintiff possesses standing to enforce the Note and foreclose the Mortgage as the owner and holder.

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DEFENDANT'S PRESENTATION OF EVIDENCE

24. Defendants offered Joe McMillan as an expert witness to testify regarding the value of the subject property.

25. Plaintiff objected to any testimony from this witness on relevance grounds.

26. Defendants sought to offer the Broker's Opinion of Value, prepared by Mr. McMillan, as Defendants Exhibit 1.

27. Plaintiff objected to the admission of the Broker's Opinion of Value on relevance grounds, and the Court reserved its ruling on same.

28. Mr. Millan opined that the based on his evaluations of the subject property, it is worth $42,080,000. On cross examination, Mr. McMillan admitted he is not a licensed South Carolina appraiser and that his opinion as to value assumes improvements to the property which have not been made. Upon questioning by the Court as to whether the cost of such improvements would exceed several million dollars, Mr. McMillan conceded these improvement costs would be "sizeable."

29. Robert D. Hartmann, Sr. testified on behalf of all the corporate defendants and himself individually. Mr. Hartmann testified that it is his belief the developed value of the subject property is well over $50,000,000.00.

30. Defendants' Exhibits 2, 3, 4, 5, 6, and 7 identified hereinbelow, were entered without objection:

a. Defendants' Exhibits 2 through 7:

i. Permanent Stormwater System Maintenance and Responsibility Agreement

ii. U.S. Army Corps of Engineers Approved Interim Jurisdictional Determination Form, Navigable Waters Protection Rule

iii. DHEC Notice of Intent for Coverage(s) of Primary Permittees under South Carolina NDPES General Permit for Stormwater Discharges from Construction Activities

iv. Letter dated August 20, 2020 from Army Corps of Engineers to The Earthworks Group re Approved Jurisdictional Determination (AJD)

v. DHEC Construction Permit Application for Waste Facilities

vi. DHEC Construction Permit Application for Wastewater Facilities

31. The Court now sustains the Plaintiff's objection to the testimony of Mr. McMillan and Defendants' Exhibit 1, because the Plaintiff possesses a statutory right of foreclosure of its mortgage and the value of the property is irrelevant to granting this relief. *See Perpetual Bldg. & Loan Ass'n of Anderson v. Braun*, 270 S.C. 338, 242 S.E.2d 407, 408 (S.C. 1978); S.C. Code Ann. §29-3-610 through §29-3-790.

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32. Further, the Court finds that Defendants' Exhibits 2 through 7 indicate that efforts have been made to improve the property; however, those efforts cannot equitably overcome the right of Plaintiff to foreclose the mortgage based on the default in payments.

33. As such, and based on the following, the Court concludes that the entry and judgment of foreclosure and sale of the subject property is appropriate.

34. The Court further finds that the debt amounts incurred in paying property taxes, insurance, and legal fees and costs in connection with the companion properties located in Connecticut are not recoverable as a matter of equity under Plaintiff's South Carolina Mortgage. These amounts remain recoverable through enforcement of the Note and the Mortgage(s) securing the Connecticut properties.

35. Finally, the Court finds that while a foreclosure sounds in equity, Defendants' equitable defenses of marshalling assets and a request to divide and sell the property as separate parcels are not supported under South Carolina law.

AS TO THE FIRST AND SECOND CAUSES OF ACTION
(Foreclosure of Mortgage, Suit on Guaranty)

36. Plaintiff in this action is the owner and holder of the Note and Mortgage it is seeking to foreclose.

37. Any notice required by the terms of the Mortgage or by state or federal statutes has been given to the applicable Defendant prior to the commencement of this action.

H12

38. Pursuant to Section 37-3-105, South Carolina Code of Laws (1976 as amended), the mortgage lien, which is the subject of this action, is a first lien on real estate and is not a *'consumer loan'* for the purposes of the South Carolina Consumer Protection Code. Any notice of right to cure has been given as required.

39. Payment due on the Note has not been made as provided for therein, and Plaintiff, as the holder thereof, has elected to require immediate payment of the entire amount due thereon and has placed the Note and Mortgage in the hands of an attorney for collection.

40. Counsel for Plaintiff filed an affidavit as to attorney's fees and costs in this case, which was not contested, and, therefore, I find as fact herein. Having considered the nature, extent and difficulty of the services rendered, the time involved in reviewing the various documents, performing the title search, preparing the pleadings, attending hearings and argument, the professional standing of counsel, the fee customarily charged for similar services, and the beneficial results obtained for Plaintiff, I find that the sum of $13,927.50 is a reasonable fee to allow under the terms of the Note and Mortgage as attorney's fees for Plaintiff's attorney for services performed and anticipated to be performed until final adjudication of the action. Plaintiff has advanced $6,722.50 to its counsel as partial payment of the attorney's fee, and this amount is included in the Payoff. I find that the sum of $3,080.99 is a reasonable fee to allow under

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the terms of the Note and Mortgage as costs. Plaintiff has advanced $1,294.34 to its counsel as partial payment of its costs of collection, and this amount is included in the Payoff.

41. Pursuant to the terms of the Note, there is regular and default interest accruing at a combined rate of 19.99%.

42. The amount due and owing on the Note, with interest at the rate provided in the Note, and other costs and expenses of collection, including an attorney's fee, secured by the Note and Mortgage, is as follows:

Principal due	$3,500,000.00
Interest from September 1, 2018 through December 14, 2020 @ 9.99%	810,993.75
Default Interest from November 1, 2018 through December 14, 2020 @ 10.00%[1]	752,498.28
Late Charges as of September 14, 2018	46,620.00
Late Charges from October 15, 2018 through July 1, 2019	26,223.75
Due in Full Fee July 1, 2019	350,000.00
Extension Fee	105,000.00
Taxes on SC Property	53,391.28
Insurance on SC Property	74,659.86
Interest on Taxes & Insurance for SC Property	30,660.11
Legal Fees in SC action (awarded and paid)	6,722.50
Legal Costs in SC action (awarded and paid)	1,294.34
Rents Received from Connecticut Properties	(379,587.18)
Reserve Balance	(40,165.82)
Attorney Fees (awarded but unpaid)	7,205.00
Costs of Collection (awarded but unpaid)	1,786.65
TOTAL DEBT secured by Note and Mortgage, including interest to date shown	**$5,387,468.34**

43. Interest for the period from December 14, 2020 as shown above at the rate of 19.99% shall be added to the Principal Balance shown above through the date this Judgment is filed. After the date of judgment, interest at the rate of 19.99% on the total judgment debt should be added to such judgment debt to comprise the amount of Plaintiff's debt secured by the Mortgage.

44. Plaintiff specifically demands a deficiency judgment against the obligor defendants HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC, Partners 95, LLC, and Oil Barons, Inc., and the guarantor defendant Robert D. Hartmann pursuant to S.C. Code Ann. § 29-3-660 (1976) for any deficiency in this action remaining after sale of the mortgaged premises. *Plaintiff reserves the right to withdraw its demand for deficiency judgment at any time prior to the foreclosure sale.*

[1] Pursuant to paragraph 7(C)(3) of the Note, the Default interest rate is calculated at 10% above regular interest rate of 9.99%. As such, the applicable interest rate is 19.99%.

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AS TO THE THIRD CAUSE OF ACTION
(Claim and Delivery on Fixtures and Personal Property)

45. Pursuant to the Mortgage, HSGCHG Investments, LLC granted a security interest in all personal property attached to the land and improvements as constitute a fixture under applicable law.

46. In addition to the mortgage encumbering the property as set forth *supra*, all personal property and fixtures contained within and subject to the above-referenced agreements provide further security for the above-referenced debt pursuant to the UCC-1 Financing Statement recorded in the Office of the Clerk of Court for Marion County on January 23, 2015 in Book 295 at Page 43, and the Amended UCC-3 recorded in the Office of the Clerk of Court for Marion County on March 9, 2015 in Book 299 at Page 5.

47. The property described in the UCC-1 Financing Statements constitute additional collateral securing the debt owed to Plaintiff.

48. The UCC-1 Financing Statements constitute a lien in the collateral described therein.

49. Defendants Partners 95, LLC, Oil Barons, Inc., and HSGCHG Investments, LLC are in default under their subject loan agreements.

50. Plaintiff or the successful purchaser at any sale pursuant to this Order is entitled to the immediate possession of all contents, personal property, and fixtures encumbered and secured by the mortgage and UCC-1 Financing Statements.

AS TO THE FOURTH CAUSE OF ACTION
(Claim and Delivery on Assignment of Leases and Rents, Appointment of Receiver)

51. As additional security, HSGCHG Investments, LLC executed an Assignment of Rents and Leases in favor of Avatar Capital Finance, LLC on January 22, 2015.

52. The Assignment of Rents and Leases was recorded in the Office of the Clerk of Court for Marion County on January 23, 2015 in Book 295 at Page 34.

53. The Assignment of Leases and Rents provides, *inter alia*, that upon or at any time after the occurrence of an event of default, the assignee is entitled to immediate possession of all rents and sums due and payable, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors and assigns, is entitled to have a Receiver appointed of the rents and profits of the mortgaged premises.

54. While the subject property is has not generated any rents or profits during the pendency of this action, Plaintiff reserves its right to have a Receiver appointed of the rents, issues and profits of the mortgage premises, 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, towards the debt secured by said mortgage.

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55. Plaintiff further reserves its right to claim and delivery on rents and profits due under the Assignment of Leases and Rents.

IT IS THEREFORE ORDERED:

1. There is due to Plaintiff under the obligations of the Note and Mortgage set forth in the Complaint the sum of **$5,387,468.34** representing the "Total Debt" due Plaintiff as set forth in the Findings of Fact, *supra,* together with interest at the rate provided therein from the date aforesaid to the date hereof.

2. The amount due in the preceding paragraph (the "Total Debt" as set forth in the Findings of Fact, *supra,* and later accrued interest) shall constitute the total judgment debt due the Plaintiff and shall bear interest hereafter at the rate of 19.99%.

3. As a deficiency judgment is demanded, the bidding will remain open for a period of thirty (30) days after the date of sale as provided by law in such cases; however, Plaintiff may waive any of its rights, including withdrawing its demand for a deficiency judgment prior to sale.

4. Plaintiff is entitled to such rents and profits in the collateral reflected in the Mortgage and Assignment of Leases and Rents.

5. Plaintiff or any successor of Plaintiff pursuant to any sale under this Order is entitled to possession of all fixtures and furnishings secured by the UCC-1 Financing Statements.

6. The Defendant liable for the aforesaid Mortgage debt shall, on or before the date of sale of the property hereinafter described, pay to Plaintiff, or Plaintiff's attorney, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action. If such debt is paid in full, then the foreclosure sale shall be cancelled.

7. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint, and the property described in the Assignment of Rents, and the property described in the UCC-1 Financing Statement(s) as hereinafter set forth, shall be sold by the Special Referee, or his agent under the direction of the Special Referee, at public auction, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on Tuesday next succeeding such holiday), on the following terms, that is to say:

A. **FOR CASH**: The Special Referee will require a deposit of 5% on the amount of the bid (in cash or equivalent), same to be applied on the purchase price only upon compliance with the bid, but in case of non-compliance within 20 days, the deposit may be forfeited without further hearing and applied to the costs and Plaintiff's debt.

B. Interest on the balance of the bid shall be paid to the day of compliance at the rate of 19.99%.

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C. The sale shall be subject to taxes and assessments, existing easements and easements and restrictions of record.

D. This Mortgage constitutes a first priority lien on the subject property.

E. Purchaser to pay for deed preparation and costs of recording the Deed, and transfer taxes.

8. If Plaintiff be the successful bidder at the said sale, for a sum not exceeding the amount of costs, disbursements and expenses and the indebtedness of Plaintiff in full, Plaintiff may pay to the Special Referee only the amount of the costs, disbursements and expenses crediting the balance of the bid on Plaintiff's indebtedness.

9. The Special Referee will, by advertisement according to law, give notice of the time, date, place of sale, and the terms thereof, which Notice of Sale is incorporated herein by reference; and will execute to the Purchaser, or Purchasers, a deed to the premises sold. Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the Purchaser, or Purchasers, should fail to comply with the terms thereof within 20 days after date of sale, then the Special Referee may advertise the said premises for sale on the next, or some other subsequent sales day, at the risk of the highest bidder, and so from time to time thereafter until a full compliance shall be secured.

10. Should Plaintiff, Plaintiff's attorney, or Plaintiff's agent fail to appear on the day of sale, the property shall not be sold, and in that event any such sale shall be null and void and of no force and effect. The property shall be re-advertised and sold at some convenient sales day thereafter when Plaintiff, Plaintiff's attorney, or Plaintiff's agent is present.

11. That the Special Referee will apply the proceeds of the sale as follows:

FIRST: To payment of the amount of the costs and expenses of this action, including any Guardian Ad Litem fee or fees of attorneys appointed under Order of Court.

NEXT: To the payment of Plaintiff, or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, so much thereof as the purchase money will pay on the same.

NEXT: Any surplus funds will be held pending further order of the Court.

12. **IT IS FURTHER ORDERED** that in the event the successful bidder is other than the Defendant(s) in possession herein, upon full compliance with the bid, and upon issuance of a Writ of Assistance by this Court, the Sheriff of Charleston County is ordered and directed to eject and remove from the premises the occupant(s) of the property sold, together with all personal property located thereon, and put the successful bidder or his assigns in full, quiet and peaceable possession of said premises without delay, and to keep said successful bidder or his assigns in such peaceable possession.

13. **IT IS FURTHER ORDERED** that, in the event the successful bidder is other than the Defendant(s) in possession herein and the occupant(s) have voluntarily vacated the premises or have been ejected from the premises leaving furnishings, fixtures and items not subject to Plaintiff's Mortgage in

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said premises, upon full compliance with the bid, Purchaser is authorized to remove therefrom all furnishings, fixtures and items not subject to the lien of Plaintiff's mortgage, which personal property, being deemed abandoned, shall be removed by Purchaser or its agents from the subject property by placing said personal property on the public street or highway or by any other means.

14. **IT IS FURTHER ORDERED** that, in addition to all parties deemed by law to have received constructive notice of the action herein, the Defendant(s) named herein and all persons whomsoever claiming under said defendant(s), be forever barred and foreclosed of all right, title, interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

15. **IT IS FURTHER ORDERED** that the Deed of conveyances made pursuant to said sale shall contain the names of only the first named Plaintiff and the first named Defendant and the Defendant(s) who was/were the titleholder(s) of the mortgaged property at the time of filing of the notice of pendency of the within action, and the name of the grantee, and the Register of Deeds is authorized to omit from the indices pertaining to such conveyance the names of all parties not contained in said Deed.

16. **IT IS FURTHER ORDERED** that the Special Referee will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, issuing a Writ of Assistance and hearing any issues involving appraisal proceedings under Section 29-3-680 *et seq.*, South Carolina Code of Laws (1976), as amended.

17. Any sale pursuant to this order is ***without*** warranty of any kind. Neither Plaintiff nor Court warrant title to any third-party purchaser. All third-party purchasers are made parties to this action and are deemed to have notice of all matters disclosed by the public record, ***including*** the status of title. *See Ex parte Keller*, 185 S.C. 283, 194 S.E. 15 (1937); *Wells Fargo Bank, NA v. Turner*, 378 S.C. 147, 662 S.E.2d 424 (Ct. App. 2008).

18. The Special Referee shall direct the Register of Deeds to release of record the Mortgage lien being foreclosed, all subordinate liens and all prior liens ordered satisfied herein, after the Order Confirming Sale and Disbursements has been executed and filed.

19. The following is a description of the premises herein ordered to be sold:

> All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. by Beasly Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and other; and on the Northeast by lands of William E. Thompson

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.

TMS#: 085-00-00-001-000
Property Address: 1548 S HWY 501 Bypass (Carolina Amphitheatre) Marion, South Carolina 29571

The sale of above described real property shall also include all contents, personal property, and fixtures encumbered and secured by the UCC-1 Financing Statements.

This being the same property conveyed to HSGCGH Investments, LLC f/k/a Carolina Entertainment Complex, LLC, a Delaware Limited Liability Corporation by deed of Wells Fargo Bank, N.A. dated December 30, 2014 and recorded in the Office of the Clerk of Court for Marion County on January 23, 2015 in Book 295 at Page 1.

#18

~~JUDGE'S SIGNATURE PAGE TO FOLLOW~~

February 8, 2021

Edward J. Porter
Special Referee

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ELECTRONICALLY FILED - 2021 Mar 01 9:31 AM - MARION - COMMON PLEAS - CASE#2019CP3300853

STATE OF SOUTH CAROLINA COUNTY OF CHARLESTON Avatar Partners CT, LLC, PLAINTIFF	FORM 4 JUDGMENT IN A CIVIL CASE C/A NO: 2019-CP-33-00853 HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr., DEFENDANTS.
Submitted by: **FINKEL LAW FIRM LLC** Magalie A. Creech (SC Bar 78855)	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:_____

ELECTRONICALLY FILED - 2021 Mar 01 9:31 AM - MARION - COMMON PLEAS - CASE#2019CP3300853

INFORMATION FOR THE PUBLIC INDEX
Complete this section below when the judgment affects title to real or personal property or in 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)
Avatar Partners CT, LLC	HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr.	

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

All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. by Beasly Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and other; and on the Northeast by lands of William E. Thompson

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.

TMS#: 085-00-00-001-000
Property Address: 1548 S HWY 501 Bypass (Carolina Amphitheatre) Marion, South Carolina 29571

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.**

Kaye N Portee Special Referee
~~Circuit Court Judge~~ _____ Judge Code 2/8/2021 Date

For Clerk of Court Office Use Only

This judgment was entered on the _____ day of _____, 2021 and a copy mailed first class or placed in the appropriate attorney's box on this _____ day of _____, 2021 to attorneys of record or to parties (when appearing pro se) as follows:

FINKEL LAW FIRM LLC
Post Office Box 41489
Charleston, SC 29423
Attorney(s) for Plaintiffs

SEE ATTACHED LIST
_____
_____
Attorney(s) for the Defendant(s)

SCRCP Form 4C (12/2011)

_____
CLERK OF COURT

Court Reporter:

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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SCRCP Form 4C (03/2013)

ELECTRONICALLY FILED - 2020 Jul 14 2:32 PM - MARION - COMMON PLEAS - CASE#2019CP3300853

STATE OF SOUTH CAROLINA COUNTY OF MARION Avatar Partners CT, LLC, PLAINTIFF, vs. HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr., DEFENDANTS.	IN THE COURT OF COMMON PLEAS C/A NO: 2019-CP-33-00853 (NON-JURY MORTGAGE FORECLOSURE) **ORDER OF REFERENCE**

The within action being for foreclosure of a mortgage, upon motion of plaintiff's counsel, it is

ORDERED that this case is referred, pursuant to Rule 53 SCRCP, to the Honorable W. Haigh Porter, as Special Referee for Marion County, who shall exercise all power and authority which a Circuit Judge sitting without a jury would have, including but not limited to, making findings of fact and conclusions of law; directing entry of final judgment; hearing any issues, including motions, after sale or judgment; issuing any and all orders, supplemental orders, and writs of assistance, and hearing any issues involving possession and/or removal of property and appraisal proceedings under Section 29-3-360, *et seq.* of the South Carolina Code, with any appeal from the final judgment being to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. Any judicial sale of the property subject of this action may be held on a day other than the regular judicial sale day.

IT IS SO ORDERED.

Electronic Signature to Follow

WE SO MOVE:

FINKEL LAW FIRM LLC

/S/ Magalie A. Creech (S.C. Bar 78855)
Post Office Box 41489
Charleston, SC 29423
Main: (843) 577-5460
Facsimile: (866) 800-7954
mcreech@finkellaw.com
Attorneys for Plaintiff

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Marion Common Pleas

Case Caption: Avatar Partners Ct, Llc VS Hsgchg Investments, Llc , defendant, et al

Case Number: 2019CP3300853

Type: Order/Referred to Master or Special Referee

So Ordered

s/Christy M. Gray, Marion County Clerk of Court, By ABS

Electronically signed on 2020-07-14 14:32:31 page 2 of 2

ELECTRONICALLY FILED - 2020 Jun 30 11:08 AM - MARION - COMMON PLEAS - CASE#2019CP330853

STATE OF SOUTH CAROLINA COUNTY OF MARION Avatar Partners CT, LLC, PLAINTIFF, vs. HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr., DEFENDANTS.	IN THE COURT OF COMMON PLEAS C/A NO: 2019-CP-33-00853 **ORDER DENYING MOTION TO DISMISS** (NON-JURY MORTGAGE FORECLOSURE)

THIS MATTER came before the Court upon the Motion to Dismiss or in the Alternative for Equitable Stay ("Motion") filed by HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC, Partners 95, LLC, Oil Barons, Inc., and Robert D. Hartmann, Sr. (together, "Defendants"). A hearing was held by videoconference on June 10, 2020, and attended by counsel for Plaintiff Avatar Partners CT, LLC and Defendants. After careful consideration of the parties' filed submissions to the Court and oral argument, the Court denies the Motion and makes the following findings:

FINDINGS OF FACT:

1. This is a commercial foreclosure action on real property in Marion County. Compl. ¶ 15.

2. Plaintiff alleges that the subject loan has matured pursuant to its terms, is in default, and that there is an unpaid principal balance of $3,500,000.00 due and owing, together with interest, escrow advances, and other fees and costs secured under the loan instruments including attorney's fees and costs. Compl. ¶ 15.

3. The loan that is the subject of this action is secured by multiple security interests, including a mortgage in Connecticut that is the subject of pending litigation.

4. The parties do not dispute the status of the pending litigation in Connecticut as set forth in Defendants' Motion.

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CONCLUSIONS OF LAW:

5. In South Carolina, dismissal under Rule 12(b)(8) ***may*** be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. See Rule 12(b)(8), SCRCP (emphasis added).

6. The rule has historic ties to a former statute permitting a defendant an opportunity to demur; a statute which our Supreme Court interpreted narrowly, stating that it "only applied when there was identity of the parties, causes of action and relief." *Capital City Ins. Co v. BP Staff, Inc.*, 283 S.C. 92,, 105-6-, 674 S.E.2d 524, 531 (Ct. App. 2009)(reversing dismissal of circuit court action for breach of contract and fraud by workers' compensation insurer due to ongoing administrative proceedings initiated by insured to review premium rate; s*ee also Cricket Cove Ventures, LLC v. Gilliland*, 390 S.C. 312 (Ct. App. 2010) (reversing 12(b)(8) dismissal where civil conspiracy claim against party in its individual capacity was neither "precisely the same" nor "substantially the same" as any claim in the first proceeding).

7. "[A]n action may be pleaded in abatement of a second suit only when between the same parties and in the *same jurisdiction* and with the same object." *Poston v. Homes Ins. Co. of N.Y.*, 191 S.C. 314, 317–18, 4 S.E.2d 261, 262 (1939) (emphasis added); *see also Logan v. Atlanta & C. Air Line R. Co.*, 82 S.C. 518, 520–21, 64 S.E. 515, 516 (1909) (stating that a pending action in the federal court against the lessee of a railroad for personal injuries is no bar to an action in the state courts against the lessor on the same cause of action because the suits are against different parties and in different jurisdictions); *Hill v. Hill,* 51 S.C. 134, 137, 28 S.E. 309, 310 (1897) (holding that the pendency of a former suit between the same parties for the same cause and relief is a ground for abatement of a subsequent suit if both suits are pending in the same jurisdiction, but that it is a well-established doctrine.

8. While there is commonality of the parties and underlying facts in the Connecticut and South Carolina actions, the claims for foreclosure and relief sought are not the same.

9. That both actions seek a judgment against the guarantors of the subject loan for any deficiency after the sale is insufficient grounds for dismissal; indeed, a deficiency cannot be determined in this action until the Marion real property is liquidated.

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10. A judgment on the debt amount would not and could not entitle the prevailing party to the remedy of foreclosure requested in the other jurisdiction, or determine any deficiency to be entered against the guarantors.

11. To the extent that one court enters a final judgment on the merits regarding the debt amount, whichever is first to do so will have full preclusive effect on *res judicata* grounds in the other case - but only with respect to the issue of underling debt.

12. Furthermore, South Carolina law may provide the parties different claims and defenses than are available in Connecticut and the foreclosure of the Marion County mortgage must necessarily be adjudicated by a South Carolina court. As such, Defendants cannot show they are prejudiced by having to litigate in this forum.

13. Based upon the foregoing, the Court finds an equitable stay of the action is unwarranted. Therefore, Defendants' Motion to Dismiss or in the Alternative for Equitable Stay is **DENIED.**

IT IS SO ORDERED.

Electronic Signature to Follow

ELECTRONICALLY FILED - 2020 Jun 30 11:08 AM - MARION - COMMON PLEAS - CASE#2019CP3300853

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2019 **CP**-33-00853

Avatar Partners CT, LLC,

PLAINTIFF(S)

HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr.,

DEFENDANT(S)

Submitted by: Magalie A. Creech (SC Bar 78855)	**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. ☐ See Page 2 for additional information.

☐ **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

☐ **STAYED DUE TO BANKRUPTCY**

☐ **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 : Motion to Dismiss or Stay is DENIED.

INFORMATION FOR THE JUDGMENT 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:

ELECTRONICALLY FILED - 2020 Jun 30 11:08 AM - MARION - COMMON PLEAS - CASE#2019CP330853

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.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Circuit Court Judge	Judge Code	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:

E-Filing Note: In E-Filing counties, the date of Entry of Judgment is the same date as reflected on the Electronic File Stamp and the clerk's entering of the date of judgment above is not required in those counties. The clerk will mail a copy of the judgement to parties who are not E-Filers or who are appearing pro se. See Rule 77(d), SCRCP.

ADDITIONAL INFORMATION REGARDING DECISION BY THE COURT AS REFERENCED ON PAGE 1.

This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered.

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Marion Common Pleas

Case Caption: Avatar Partners Ct, Llc VS Hsgchg Investments, Llc , defendant, et al

Case Number: 2019CP3300853

Type: Order/Other

So Ordered

s/Thomas A. Russo #2141

Electronically signed on 2020-06-30 10:42:56 page 6 of 6

ELECTRONICALLY FILED - 2021 Apr 08 1:09 PM - MARION - COMMON PLEAS - CASE#2019CP3300853

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

RECEIVED
Mar 31 2021
SC Court of Appeals

APPEAL FROM MARION COUNTY
Court of Common Pleas

Haigh Porter, Special Referee

Case No. 2019-CP-33-00853

HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr.,

Appellants,

v.

Avatar Partners CT, LLC,

Respondent.

NOTICE OF APPEAL

HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr., appeal the Order and Judgment of Foreclosure and Sale with (Form 4) Granting Deficiency Judgment Against them, the Order dated February 8, 2021, and entered and electronically served by the Clerk of Court for Marion County on March 1, 2021. Undersigned counsel received electronic notice of the entry of the Order on March 1, 2021.

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CALLISON TIGHE & ROBINSON, LLC

s/ Louis H. Lang
Louis H. Lang (SC Bar No. 3127)
1812 Lincoln Street, Suite 200 (29201)
Post Office Box 1390
Columbia, South Carolina 29202-1390
Tel: (803) 404-6900
Fax: (803) 404-6902
Email: LouisLang@CallisonTighe.com

Attorneys for the Appellants

March 31, 2021
Columbia, South Carolina

Other Counsel of Record:

Magalie A. Creech (S.C. Bar 78855)
FINKEL LAW FIRM LLC
Post Office Box 41489
Charleston, South Carolina 29423
Telephone: (843) 577-5460
Facsimile: (866) 800-7954
MCreech@FinkelLaw.com

ATTORNEYS FOR AVATAR PARTNERS CT, LLC

ELECTRONICALLY FILED - 2020 Jun 10 10:26 AM - MARION - COMMON PLEAS - CASE#2019CP3300853

STATE OF SOUTH CAROLINA COUNTY OF MARION	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT Case No. 2019-CP-33-00853
Avatar Partners CT, LLC, Plaintiff, vs. HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr., Defendants.	**DEFENDANTS' SUPPLEMENTAL REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS UNDER RULE 12(B)(8), SCRCP OR, ALTERNATIVELY, FOR AN EQUITABLE STAY**

Defendants, HSGCHG Investments, LLC, f/k/a Carolina Entertainment Complex, LLC, Partners 95, LLC, Oil Barons, Inc., and Robert D. Hartmann, Sr. (Defendants), respectfully submit the following Supplemental Reply to the Plaintiff's Response to their Motion to Dismiss or for an Equitable Stay.

A. Supplement to Argument in Reply.

1. ***Branch Banking & Trust v. Brown, et al.*, 2013 W.L. 2099488 (May 14, 2013 D.S.C.)**

The case Plaintiff argued, but did not cite in its Response, *Branch Banking & Trust v. Brown, et al.*, 2013 W.L. 2099488 (May 14, 2013 D.S.C.), is easily distinguishable based on both the law it addresses and its facts.

Regarding the law, *BB&T* deals principally with applying the abstention doctrine in federal court. The motion before this Court does not concern federal jurisprudence about whether a federal

court should exercise its limited jurisdiction over a matter in which there is a parallel state court case, but on Rule 12(b)(8), SCRCP. While the defendants in *BB&T* sought the alternative remedy of a stay of the federal court action, in denying that alternative relief request, the district court cited *Moses H. Cone Mem'l. Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 28 (1983) for the proposition that, "a stay is as much a refusal to exercise federal jurisdiction as a dismissal." The jurisprudence regarding whether a federal court should exercise its limited jurisdiction in many contexts, including the existence of one or more related state court cases, is radically different from the decision of a state trial level court to either dismiss a case under a state court procedural rule such as Rule 12(b)(8), SCRCP, or grant an equitable stay.

Factually, the *BB&T* case is also significantly different from this case. BB&T filed its first lawsuit in federal court, seeking to collect on personal guarantees signed by defendants, Henry A. Brown, III, and J. David Brown. The Browns answered, asserting counterclaims against BB&T, and joined defendants, Transco, Inc., and H2D2, LLC, as third-party defendants. BB&T then filed a state court foreclosure action seeking to foreclose mortgages on property owned by H2D2, LLC, these mortgages securing payment of the notes which the Brown federal court defendants guaranteed. Transco, Inc. was also a defendant in the state court action, along with the parents of the federal court Brown defendants. However, the federal court Brown defendants were not parties to the state court action.

In *BB&T*, there was a federal court and a state court action involving different, though somewhat overlapping, parties, where BB&T sought different remedies against different parties, based on different instruments – note(s), mortgage(s) and guarantee(s).

Here, the South Carolina and Connecticut parties are identical. Both cases involve the same debt instrument, the same modification of that debt instrument and the same series of

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assignments of that debt instrument. There is no substantial difference in the causes of action asserted in the Plaintiff's South Carolina and Connecticut complaints. There is virtually no difference in the relief sought by the Plaintiff in South Carolina and Connecticut.

BB&T in inapposite. This Court should dismiss the South Carolina case under Rule 12(b)(8) or grant an equitable stay.

CALLISON TIGHE & ROBINSON, LLC

s/ Louis H. Lang
Louis H. Lang, SC Bar No. 03127
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: 803-404-6900
Email: louislang@callisontighe.com

ATTORNEYS FOR DEFENDANTS, HSGCHG INVESTMENTS, LLC f/k/a CAROLINA ENTERTAINMENT COMPLEX, LLC and ROBERT D. HARTMANN, SR.

Columbia, South Carolina
June 10, 2020

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ELECTRONICALLY FILED - 2020 Jun 08 4:15 PM - MARION - COMMON PLEAS - CASE#2019CP330853

STATE OF SOUTH CAROLINA COUNTY OF MARION	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT Case No. 2019-CP-33-00853
Avatar Partners CT, LLC, Plaintiff, vs. HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr., Defendants.	**DEFENDANTS' REPLY TO PLAINTIFF'S RESPONSE TO DEFENDANTS' MOTION TO DISMISS UNDER RULE 12(B)(8), SCRCP OR, ALTERNATIVELY, FOR AN EQUITABLE STAY**

Defendants, HSGCHG Investments, LLC, f/k/a Carolina Entertainment Complex, LLC, Partners 95, LLC, Oil Barons, Inc., and Robert D. Hartmann, Sr. (Defendants), respectfully submit the following Reply to the Plaintiff's Response to their Motion to Dismiss or for an Equitable Stay.

A. Argument in Reply.

1. Equitable Stay.

In its Response, Plaintiff expends little effort arguing against Defendants' alternative request for an Equitable Stay, saying only that "the case should not be stayed pending the outcome of the Connecticut action." (Plaintiff's Response at 3).

In further support of Defendants' alternative relief of an Equitable Stay, attached as **Exhibit "A"** is an updated "Superior Court Case Look-up" regarding the Connecticut foreclosure action. This attachment updates Exhibit "C" to the Defendants' motion which showed the state of the Connecticut lawsuit through a March 18, 2020 entry. The updated "Superior Court Case Look-

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up," which is dated June 5, 2020, shows an additional 45 docket entries, the last being on June 4, 2020.

As argued in Defendants' motion, the Connecticut Lawsuit is now over six months old. The Connecticut Lawsuit was filed nearly six months before this lawsuit. Based on the docket entries submitted previously and the attached docket entries, the parties to the Connecticut Lawsuit have engaged in discovery and extensive motion practice, including a now pending Motion for Summary Judgment regarding the counterclaims. The Connecticut Lawsuit seeks establishment of the same debt this lawsuit seeks, a deficiency judgment and a judgment on the same guaranty. Defendants respectfully submit they should not be put to the expense of litigating the same facts in two different state courts. As the Fourth Circuit Court of Appeals said in *McLaughlin v. United Virginia Bank,* 955 F.2d 930, 936 (4th Cir. 1992), when denying the defendant's abstention doctrine motion to dismiss, the remedy of an "equitable stay will help to minimize the potential for undue waste." The Fourth Circuit, on remand, left to the district court whether an equitable stay was appropriate.

The same rationale applies here. To "minimize the potential for undue waste" in litigating the same issues being litigated in the Connecticut Lawsuit, an equitable stay is appropriate here.

Finally, Plaintiff does not argue, because it cannot, that it will suffer any prejudice or harm were the Court to grant an equitable stay.

2. Rule 12(b)(8).

Regarding Defendants' Rule 12(b)(8) dismissal argument, Plaintiff asserts probably correctly, that "[t]o the extent that one court enters a final judgment on the merits regarding the debt amount, whichever is first to do so will have full preclusive effect on res judicata grounds in the other case..." (Plaintiff's Response at 2). This is one reason to dismiss, or equitably stay the

this action – why litigate the same issues in different courts? Plaintiff does not argue, because it cannot, that the issues in this case and the Connecticut Lawsuit are "substantially the same." *Capital City Ins. Co. v. BP Staff, Inc.*, 382 S.C. 92, 106, 674 S.E.2d 524, 531 (Ct. App. 2009). They are identical except for the collateral securing payment of the debt Plaintiff seeks to collect.

B. Conclusion.

For the reasons set forth above, and in Defendants' motion, Defendants respectfully request the Court dismiss this action under Rule 12(b)(8), SCRCP, or grant an equitable stay.

CALLISON TIGHE & ROBINSON, LLC

s/ Louis H. Lang
Louis H. Lang, SC Bar No. 03127
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: 803-404-6900
Email: louislang@callisontighe.com

ATTORNEYS FOR DEFENDANTS, HSGCHG INVESTMENTS, LLC f/k/a CAROLINA ENTERTAINMENT COMPLEX, LLC and ROBERT D. HARTMANN, SR.

Columbia, South Carolina
June 8, 2020

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EXHIBIT "A"

State of Connecticut Judicial Branch
Superior Court Case Look-up

Superior Court Case Look-up
Civil/Family
Housing
Small Claims

Attorney/Firm Juris Number Look-up

Case Look-up
By Party Name
By Docket Number
By Attorney/Firm Juris Number
By Property Address

Short Calendar Look-up
By Court Location
By Attorney/Firm Juris Number
Motion to Seal or Close
Calendar Notices

Court Events Look-up
By Date
By Docket Number
By Attorney/Firm Juris Number

Legal Notices

Pending Foreclosure Sales

Understanding
Display of Case Information

Contact Us

Comments

NNH-CV19-6093534-S **AVATAR PARTNERS CT, LLC v. PARTNERS 95, L.L.C. Et Al**

Prefix/Suffix: [none] **Case Type:** P00 **File Date:** 06/20/2019 **Return Date:** 07/09/2019

Case Detail | Notices | History | Scheduled Court Dates | E-Services Login | Screen Section Help

Pending Foreclosure Sales

To receive an email when there is activity on this case, click here.

Information Updated as of: 06/05/2020

Case Information

Case Type: P00 - Property - Foreclosure
Court Location: NEW HAVEN JD
Property Address: 96 FRONTAGE ROAD, EAST HAVEN, CT 06512
List Type: No List Type
Trial List Claim:
Last Action Date: 06/04/2020 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party	No Fee Party	Category
P-01 AVATAR PARTNERS CT, LLC **Attorney:** POLIVY LOWRY & CLAYTON LLC (407964) File Date: 02/05/2020 SIX CENTRAL ROW PO BOX 230294 HARTFORD, CT 061230294		Plaintiff
D-01 PARTNERS 95, L.L.C. **Attorney:** NEUBERT PEPE & MONTEITH PC (407996) File Date: 10/10/2019 195 CHURCH ST 13TH FLOOR NEW HAVEN, CT 06510		Defendant
D-02 OIL BARONS, INC. **Attorney:** NEUBERT PEPE & MONTEITH PC (407996) File Date: 10/10/2019 195 CHURCH ST 13TH FLOOR NEW HAVEN, CT 06510		Defendant
D-03 HSGCHG INVESTMENTS, LLC **Attorney:** NEUBERT PEPE & MONTEITH PC (407996) File Date: 10/10/2019 195 CHURCH ST 13TH FLOOR NEW HAVEN, CT 06510		Defendant
D-04 ROBERT D HARTMANN SR **Attorney:** NEUBERT PEPE & MONTEITH PC (407996) File Date: 10/10/2019 195 CHURCH ST 13TH FLOOR NEW HAVEN, CT 06510		Defendant

Viewing Documents on Civil, Housing and Small Claims Cases:

If there is an e in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.* For more information on what you can view in all cases, view the Electronic Access to Court Documents Quick Card.

[redacted]

- For civil cases filed prior to 2014, court orders and judicial notices that are electronic are available publicly over the internet. Orders can be viewed by selecting the link to the order from the list below. Notices can be viewed by clicking the **Notices** tab above and selecting the link.*
- Documents, court orders and judicial notices in an electronic (paperless) file can be viewed at any judicial district courthouse during normal business hours.*
- Pleadings or other documents that are not electronic (paperless) can be viewed only during normal business hours at the Clerk's Office in the Judicial District where the case is located.*
- An Affidavit of Debt is not available publicly over the internet on small claims cases filed before October 16, 2017.*

*Any documents protected by law Or by court order that are Not open to the public cannot be viewed by the public online And can only be viewed in person at the clerk's office where the file is located by those authorized by law or court order to see them.

Motions / Pleadings / Documents / Case Status

Entry No	File Date	Filed By	Description	Arguable
	06/20/2019	P	**SUMMONS**	
	06/20/2019	P	**COMPLAINT**	
	07/10/2019	D	**APPEARANCE** Appearance	
	09/05/2019	D	**APPEARANCE** Appearance	
	10/10/2019	D	**APPEARANCE** Appearance	
	10/10/2019	D	**APPEARANCE** Appearance	
	02/05/2020	P	**APPEARANCE** Appearance	
100.30	06/20/2019	P	**RETURN OF SERVICE**	No
100.31	06/20/2019	C	**FORECLOSURE MEDIATION – INELIGIBLE CASE (NO DOCUMENT)**	No
101.00	07/17/2019	P	**MOTION FOR DEFAULT -FAILURE TO APPEAR PB 17-20** *RESULT:* Granted 7/26/2019 BY THE CLERK	No
101.10	07/26/2019	C	**ORDER** *RESULT:* Granted 7/26/2019 BY THE CLERK	No
102.00	07/17/2019	P	**DEMAND FOR DISCLOSURE OF DEFENSE PB 13-19**	No
103.00	08/01/2019	P	**MOTION FOR DEFAULT FOR FAILURE TO DISCLOSE DEFENSE** *RESULT:* Granted 8/19/2019 HON JOHN CORDANI	No
103.10	08/19/2019	C	**ORDER** *RESULT:* Granted 8/19/2019 HON JOHN CORDANI	No
104.00	09/06/2019	P	**DEMAND FOR DISCLOSURE OF DEFENSE PB 13-19**	No
105.00	09/19/2019	P	**MOTION FOR DEFAULT FOR FAILURE TO DISCLOSE DEFENSE** *RESULT:* Granted 10/7/2019 HON CLAUDIA BAIO	No
105.10	10/07/2019	C	**ORDER** *RESULT:* Granted 10/7/2019 HON CLAUDIA BAIO	No
106.00	09/27/2019	P	**MOTION FOR JUDGMENT-STRICT FORECLOSURE** AND ORDER FOR POSSESSION	Yes
107.00	09/27/2019	P	**AFFIDAVIT OF DEBT**	No
108.00	09/27/2019	P	**APPRAISAL** 49 Leetes Island Road, Branford	No
109.00	09/27/2019	P	**APPRAISAL** 96 Frontage Road, East Haven, CT	No
110.00	10/10/2019	P	**FORECLOSURE WORKSHEET JD-CV-77**	No
111.00	10/10/2019	P	**AFFIDAVIT OF DEBT** Updated	No

112.00	10/10/2019	P	**OATH OF APPRAISERS** 49 Leetes Island Road, Branford	No
113.00	10/10/2019	P	**OATH OF APPRAISERS** 96 Frontage Road, East Haven	No
114.00	10/10/2019	P	**AFFIDAVIT RE: ATTORNEY/COUNSEL FEES**	No
115.00	10/10/2019	D	**MOTION TO OPEN DEFAULT** (re. Disclosure of Defense) *RESULT:* Granted 10/15/2019 HON ROBERT YOUNG	No
115.10	10/15/2019	C	**ORDER** *RESULT:* Granted 10/15/2019 HON ROBERT YOUNG	No
116.00	10/10/2019	D	**DISCLOSURE OF DEFENSE**	No
117.00	10/10/2019	D	**MOTION FOR EXTENSION OF TIME TO PLEAD**	No
117.10	10/15/2019	C	**ORDER** *RESULT:* Granted 10/15/2019 HON ROBERT YOUNG	No
118.00	10/10/2019	D	**OBJECTION TO MOTION** (Judgment of Strict Foreclosure)	No
119.00	10/10/2019	D	**CASEFLOW REQUEST (JD-CV-116)** *RESULT:* Granted 10/11/2019 HON ROBERT YOUNG	No
119.10	10/11/2019	C	**ORDER** *RESULT:* Granted 10/11/2019 HON ROBERT YOUNG	No
120.00	12/05/2019	D	**ANSWER AND SPECIAL DEFENSE AND COUNTERCLAIM**	No
121.00	02/21/2020	P	**MOTION FOR ORDER** Motion to Sever Special Defenses and Counterclaims (#120.00)	No
121.10	03/11/2020	C	**ORDER** *RESULT:* Off 3/11/2020 HON CLAUDIA BAIO	No
122.00	02/21/2020	P	**NOTICE OF SERVICE OF REQUEST FOR ADMISSION PB 13-22** Re: First Set of Requests for Admission to Defendants	No
123.00	02/25/2020	P	**NOTICE OF SERVICE OF REQUEST FOR ADMISSION PB 13-22** Notice of Second Set of Requests for Admission to Defendants	No
124.00	02/26/2020	D	**MOTION FOR EXTENSION OF TIME** (re. Motion to Sever)	No
124.10	03/11/2020	C	**ORDER** *RESULT:* Order 3/11/2020 HON CLAUDIA BAIO	No
125.00	02/26/2020	D	**MOTION FOR EXTENSION OF TIME RE DISCOVERY MOTION OR REQUEST PB CH13**	No
125.10	03/11/2020	C	**ORDER** *RESULT:* Order 3/11/2020 HON CLAUDIA BAIO	No
126.00	02/28/2020	P	**OBJECTION TO MOTION FOR EXTENSION OF TIME** Re: Motion to Sever #124.00	No
126.10	03/11/2020	C	**ORDER** *RESULT:* Order 3/11/2020 HON CLAUDIA BAIO	No
127.00	02/28/2020	P	**OBJECTION TO MOTION FOR EXTENSION OF TIME** Re: Discovery #125.00	No
127.10	03/11/2020	C	**ORDER** *RESULT:* Order 3/11/2020 HON CLAUDIA BAIO	No
128.00	02/28/2020	P	**MOTION FOR SUMMARY JUDGMENT** Re: Liability	Yes
129.00	02/28/2020	P	**AFFIDAVIT** Affidavit in Support of Motion for Summary Judgment re: Liability #128.00	No
130.00	02/28/2020	P	**MEMORANDUM IN SUPPORT OF MOTION** Memorandum of Law in Support of Motion for Summary Judgment #128.00	No
131.00	03/06/2020	P	**REQUEST TO REVISE**	No
132.00	03/11/2020	D	**MOTION FOR EXTENSION OF TIME**	No

			Requests for Admission	
133.00	03/11/2020	D	MOTION FOR EXTENSION OF TIME Motion for Summary Judgment	No
134.00	03/12/2020	P	OBJECTION TO MOTION FOR EXTENSION OF TIME Re: Second Set of Requests for Admission #132.00	No
135.00	03/12/2020	P	OBJECTION TO MOTION FOR EXTENSION OF TIME Re: Motion for Summary Judgment #133.00	No
136.00	03/18/2020	D	MOTION FOR EXTENSION OF TIME (Request to Revise)	No
137.00	03/18/2020	P	OBJECTION TO MOTION FOR EXTENSION OF TIME Re: Request to Revise #136.00	No
138.00	03/20/2020	P	NOTICE OF SERVICE OF REQUEST FOR ADMISSION PB 13-22 Re: 3rd Set of Requests for Admission to Defendants	No
139.00	03/23/2020	P	RETURN OF SERVICE Re: Petrogas Group New England, Inc. Deposition Subpoena	No
140.00	03/23/2020	P	RETURN OF SERVICE Re: Alliance Energy, LLC Deposition Subpoena	No
141.00	03/23/2020	P	RETURN OF SERVICE Re: First Hartford Corporation Deposition Subpoena	No
142.00	03/23/2020	D	MOTION FOR EXTENSION OF TIME RE DISCOVERY MOTION OR REQUEST PB CH13 (3rd set of Requests for Admission)	No
143.00	03/24/2020	P	OBJECTION TO MOTION FOR EXTENSION OF TIME Re: Third Set of Requests for Admission (#142.00)	No
144.00	03/27/2020	D	OBJECTION TO MOTION (Motion to Sever)	No
145.00	04/02/2020	P	NOTICE OF SERVICE OF REQUEST FOR ADMISSION PB 13-22 Notice of Fourth Set of Requests for Admission to Defendants	No
146.00	04/06/2020	D	MOTION FOR EXTENSION OF TIME RE DISCOVERY MOTION OR REQUEST PB CH13 (4th Requests for Admission)	No
147.00	04/07/2020	P	OBJECTION TO MOTION FOR EXTENSION OF TIME Re: Fourth Set of Requests for Admission #146.00	No
148.00	04/07/2020	P	REPLY MEMORANDUM Re: Objection to Motion to Sever #144	No
149.00	04/16/2020	P	NOTICE OF SERVICE OF REQUEST FOR ADMISSION PB 13-22 Re: 5th Set of Requests for Admisson to Defendants	No
150.00	04/28/2020	P	RETURN OF SERVICE Re: Burger King Corporation Deposition Subpoena	No
151.00	04/28/2020	P	MOTION FOR ORDER OF COMPLIANCE – PB SEC 13-14 (INTERR/PROD – 13-6/13-9) Re: First Set of Requests for Production Dated February 21, 2020	No
152.00	04/28/2020	P	NOTICE Notice of Defendants' Admission to 1st Set of Requests for Admission Dated February 21, 2020	No
153.00	04/28/2020	P	NOTICE Notice of Defendants' Admission to 2nd Set of Requests for Admission Dated February 25, 2020	No
154.00	05/06/2020	P	NOTICE OF SERVICE OF REQUEST FOR ADMISSION PB 13-22 Re: 6th Set of Requests for Admisson to Defendants	No
155.00	05/07/2020	P	MOTION FOR DEFAULT-FAILURE TO PLEAD	No
156.00	05/07/2020	D	MOTION FOR EXTENSION OF TIME RE DISCOVERY MOTION OR REQUEST PB CH13 (6th set of Requests for Admission)	No
157.00	05/07/2020	D	MOTION FOR EXTENSION OF TIME TO PLEAD (re. Request to Revise)	No
158.00	05/11/2020	P	OBJECTION TO MOTION FOR EXTENSION OF TIME	No

			Re: Sixth Set of Requests for Admission #156.00	
159.00	05/11/2020	P	**OBJECTION TO MOTION FOR EXTENSION OF TIME** Re: Motion for Extension of Time to Plead #157.00	No
160.00	05/13/2020	P	**MOTION FOR ORDER OF COMPLIANCE – PB SEC 13-14 (INTERR/PROD – 13-6/13-9)** Re: Second Set of Requests for Production Dated March 10, 2020	No
161.00	05/15/2020	D	**MOTION FOR EXTENSION OF TIME RE DISCOVERY MOTION OR REQUEST PB CH13**	No
162.00	05/15/2020	D	**OBJECTION TO MOTION FOR DEFAULT** (Docket Entry No. 155.00)	No
163.00	05/15/2020	P	**OBJECTION TO MOTION FOR EXTENSION OF TIME** Re: Second Set of Requests for Production Dated March 10, 2020 (#161.00)	No
164.00	05/15/2020	P	**MOTION FOR SUMMARY JUDGMENT** Re: Counterclaims	Yes
165.00	05/15/2020	P	**AFFIDAVIT** Affidavit of Jerry Zevenbergen in Support of Motion for Summary Judgment re: Counterclaims (#164.00)	No
166.00	05/15/2020	P	**AFFIDAVIT** Affidavit of First Hartford in Support of Motion for Summary Judgment re: Counterclaims (#164.00)	No
167.00	05/15/2020	P	**AFFIDAVIT** Affidavit of Alliance Energy in Support of Motion for Summary Judgment re: Counterclaims (#164.00)	No
168.00	05/15/2020	P	**AFFIDAVIT** Affidavit of Petrogas Group in Support of Motion for Summary Judgment re: Counterclaims (#164.00)	No
169.00	05/15/2020	P	**MEMORANDUM IN SUPPORT OF MOTION** Memorandum of Law in Support of Motion for Summary Judgment re: Counterclaims (#164.00)	No
170.00	05/18/2020	P	**REPLY** Reply re: Motion for Default for Failure to Plead	No
171.00	05/19/2020	D	**MOTION FOR EXTENSION OF TIME**	No
172.00	05/19/2020	P	**NOTICE** Supplemental Evidence Supporting Motion for Summary Judgment re: Counterclaims (#164.00)	No
173.00	05/19/2020	P	**OBJECTION TO MOTION FOR EXTENSION OF TIME** Re: Motion for Summary Judgment re: Counterclaims (#171.00)	No
174.00	05/19/2020	P	**NOTICE** Notice of Defendants' Admission to 5th Set of Requests for Admission Dated April 16, 2020	No
175.00	05/21/2020	D	**REPLY** (re. Entry No. 170.00)	No
176.00	05/26/2020	D	**OBJECTION** ! NEW (Omnibus Objection to Plaintiff's Notices of Admission)	No
177.00	05/26/2020	P	**REPLY** ! NEW Reply re: Omnibus Objection #176.00	No
178.00	05/27/2020	P	**MOTION FOR ORDER OF COMPLIANCE – PB SEC 13-14 (FAIL APPEAR DEP)** ! NEW Re: Depositions of Defendants	No
179.00	06/01/2020	D	**OBJECTION TO MOTION** ! NEW (re. Docket Entry No. 178.00)	No
180.00	06/01/2020	D	**OBJECTION TO REQUEST TO REVISE** ! NEW	No
181.00	06/01/2020	D	**MOTION FOR PROTECTIVE ORDER** ! NEW (and Attorney's Fees)	No
182.00	06/04/2020	P	**REPLY** ! NEW Reply re: Motion for Order of Compliance re: Depositions (#179.00)	No

[redacted]

Scheduled Court Dates as of 06/04/2020				
NNH-CV19-6093534-S - AVATAR PARTNERS CT, LLC v. PARTNERS 95, L.L.C. Et Al				
#	Date	Time	Event Description	Status
No Events Scheduled				

Judicial ADR events may be heard in a court that is different from the court where the case is filed. To check location information about an ADR event, select the **Notices** tab on the top of the case detail page.

Matters that appear on the Short Calendar and Family Support Magistrate Calendar are shown as scheduled court events on this page. The date displayed on this page is the date of the calendar.

All matters on a family support magistrate calendar are presumed ready to go forward.

The status of a Short Calendar matter is not displayed because it is determined by markings made by the parties as required by the calendar notices and the civil standing orders. Markings made electronically can be viewed by those who have electronic access through the Markings History link on the Civil/Family Menu in E-Services. Markings made by telephone can only be obtained through the clerk's office. If more than one motion is on a single short calendar, the calendar will be listed once on this page. You can see more information on matters appearing on Short Calendars and Family Support Magistrate Calendars by going to the Civil/Family Case Look-Up page and Short Calendars By Juris Number or By Court Location.

Periodic changes to terminology that do not affect the status of the case may be made.

This list does not constitute or replace official notice of scheduled court events.

Disclaimer: For civil and family cases statewide, case information can be seen on this website for a period of time, from one year to a maximum period of ten years, after the disposition date. If the Connecticut Practice Book Sections 7-10 and 7-11 give a shorter period of time, the case information will be displayed for the shorter period. Under the Federal Violence Against Women Act of 2005, cases for relief from physical abuse, foreign protective orders, and motions that would be likely to publicly reveal the identity or location of a protected party may not be displayed and may be available only at the courts.

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ELECTRONICALLY FILED - 2020 May 27 3:25 PM - MARION - COMMON PLEAS - CASE#2019CP330853

STATE OF SOUTH CAROLINA COUNTY OF MARION Avatar Partners CT, LLC, PLAINTIFF, vs. HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr., DEFENDANTS.	IN THE COURT OF COMMON PLEAS C/A NO: 2019-CP-33-00853 **PLAINTIFF'S RESPONSE TO MOTION TO DISMISS** (NON-JURY MORTGAGE FORECLOSURE)

Plaintiff Avatar Partners CT, LLC, by its undersigned counsel, responds to the Motion to Dismiss filed by HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC, Partners 95, LLC, Oil Barons, Inc., and Robert D. Hartmann, Sr. (together, "Defendants"). As further set forth herein, there is no basis to dismiss the instant action pursuant to Rule 12(b)(8) of the South Carolina Rules of Procedure because there is no commonality of jurisdiction between the two actions and the relief sought is not the same. Specifically, a Connecticut court does not have jurisdiction to order the foreclosure of a mortgage lien in the County of Marion, South Carolina, or the sale of real property located in the County of Marion, South Carolina. Similarly, the Court should not stay this action pending adjudication of the Connecticut action. For these reasons, Defendants' Motion should be denied.

BACKGROUND

This is a commercial foreclosure action on real property in Marion County. Compl. ¶ 15. Plaintiff alleges that the subject loan has matured pursuant to its terms, is in default, and that there is an unpaid principal balance of $3,500,000.00 due and owing, together with interest, escrow advances, and other fees and costs secured under the loan instruments including attorney's fees and costs. Compl. ¶ 15. The loan that is the subject of this action is secured by multiple security interests, including a mortgage in Connecticut that is the subject of pending litigation. Plaintiff does not dispute the procedural history as set forth in Defendants' Motion. However, Rule 12(b)(8), SCRCP is narrowly construed to avoid the drastic remedy

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of dismissal, and the case law interpreting it simply does not support a dismissal of this action as set forth below.

ARGUMENT

In South Carolina, dismissal under Rule 12(b)(8) ***may*** be proper when there is (1) another action pending, (2) between the same parties, (3) for the same claim. See Rule 12(b)(8), SCRCP (emphasis added). The rule has historic ties to a former statute permitting a defendant an opportunity to demur; a statute which our Supreme Court interpreted narrowly, stating that it "only applied when there was identity of the parties, causes of action and relief." *Capital City Ins. Co v. BP Staff, Inc.*, 283 S.C. 92,, 105-6-, 674 S.E.2d 524, 531 (Ct. App. 2009)(reversing dismissal of circuit court action for breach of contract and fraud by workers' compensation insurer due to ongoing administrative proceedings initiated by insured to review premium rate; *see also Cricket Cove Ventures, LLC v. Gilliland*, 390 S.C. 312 (Ct. App. 2010) (reversing 12(b)(8) dismissal where civil conspiracy claim against party in its individual capacity was neither "precisely the same" nor "substantially the same" as any claim in the first proceeding).

Here, while there is commonality of the parties and underlying facts, the claims for foreclosure and the relief sought are not the same. It is not enough that both actions seek a judgment against the guarantors of the subject loan for any deficiency after the sale; indeed, a deficiency cannot be determined in this action until the Marion real property is liquidated. To the extent that one court enters a final judgment on the merits regarding the debt amount, whichever is first to do so will have full preclusive effect on *res judicata* grounds in the other case - but only with respect to the issue of underling debt. Such a judgment would not and could not entitle the prevailing party to the remedy of foreclosure requested in the other jurisdiction, or determine any deficiency to be entered against the guarantors. This has long been the law in South Carolina. *See Poston v. Homes Ins. Co. of N.Y.*, 191 S.C. 314, 317–18, 4 S.E.2d 261, 262 (1939) ("[A]n action may be pleaded in abatement of a second suit only when between the same parties and in the *same jurisdiction* and with the same object.") (emphasis added); *see also Logan v. Atlanta & C. Air Line R. Co.*, 82 S.C. 518, 520–21, 64 S.E. 515, 516 (1909) (stating that a pending action in the federal court against the lessee of a railroad for personal injuries is no bar to an action in the state courts against the lessor on the

same cause of action because the suits are against different parties and in different jurisdictions); *Hill v. Hill,* 51 S.C. 134, 137, 28 S.E. 309, 310 (1897) (holding that the pendency of a former suit between the same parties for the same cause and relief is a ground for abatement of a subsequent suit if both suits are pending in the same jurisdiction, but that it is a well-established doctrine.

CONCLUSION

The Motion should be denied and the case should not be stayed pending the outcome of the Connecticut action.

FINKEL LAW FIRM LLC

Magalie A. Creech (SC Bar 78855)
P.O. Box 41489
Charleston, SC 29423
Tel.: (843) 755-7560
Fax: (866) 800-7954
mcreech@finkellaw.com
Attorneys for Plaintiff

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STATE OF SOUTH CAROLINA COUNTY OF MARION	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT Case No. 2019-CP-33-00853
Avatar Partners CT, LLC, Plaintiff, vs. HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr., Defendants.	**NOTICE OF MOTION AND MOTION OF DEFENDANTS, HSGCHG INVESTMENTS, LLC f/k/a CAROLINA ENTERTAINMENT COMPLEX, LLC, PARTNERS 95, LLC, OIL BARONS, INC., and ROBERT D. HARTMANN, SR., FOR DISMISSAL UNDER RULE 12(b)(8), SCRCP, OR ALTERNATIVELY FOR AN EQUITABLE STAY**

TO: MAGALIE A. CREECH, ESQ., COUNSEL FOR THE PLAINTIFF AND THE PLAINTIFF:

YOU WILL PLEASE TAKE NOTICE that ten (10) days after service, or as soon thereafter as counsel may be heard, Defendants, HSGCHG Investments, LLC, f/k/a Carolina Entertainment Complex, LLC, Partners 95, LLC, Oil Barons, Inc., and Robert D. Hartmann, Sr. (collectively the "Defendants") will move this Court for an order dismissing this action under Rule 12(b)(8), SCRCP or for an equitable stay.

This motion is based on the following facts and argument.

A. Facts.

Plaintiff's complaint, filed December 17, 2019, alleges that Defendants, Partners 95, Oil Barons, Inc., and HSGCHG, Investments, LLC signed and delivered a promissory note dated

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January 22, 2015, for $2,000,000.00, the payment of which was secured by a mortgage on property in Marion County, South Carolina. (Compl. ¶¶ 6 and 7). Plaintiff further alleges on the same day the $2,000,000.00 note was signed, Defendant, Robert D. Hartmann, Sr., signed and delivered a "Recourse Guaranty" agreement, guaranteeing payment of the note by Defendants, Partners 95, Oil Barons, Inc., and HSGCHG, Investments, LLC. (Compl. ¶ 19). Plaintiff seeks a declaration by the Court of the amount due under the note, foreclosure of the mortgage, a deficiency judgment against the note makers, a judgment against Robert D. Hartmann, Sr., under the "Recourse Guaranty," and recovery of certain personal property it allegedly has perfected liens against. (Compl. Prayer for Relief, ¶¶ 1, 2, and 4).

Nearly six months before this lawsuit was filed, on June 20, 2019, Plaintiff filed an action in Superior Court, New Haven Judicial District, Connecticut, naming the same Defendants as in the above captioned action (Connecticut Lawsuit). Attached as **Exhibit "A"** is a copy of the Complaint filed in the Connecticut Lawsuit.

The Connecticut Lawsuit alleges that Defendants, Partners 95, Oil Barons, Inc., and HSGCHG, Investments, LLC signed and delivered the same promissory note dated January 22, 2015, for $2,000,000.00, the payment of which was secured by a mortgage on certain property in East Haven and Branford, Connecticut. (Connecticut Lawsuit Compl. ¶¶ 6, 7 [the Connecticut Lawsuit complaint has two paragraph 7's]). The Connecticut Lawsuit Complaint further alleges on the same day the $2,000,000.00 note was signed, Defendant, Robert D. Hartmann, Sr., signed and delivered the same "Recourse Guaranty" agreement, as alleged in this lawsuit, guaranteeing payment of the note by Defendants, Partners 95, Oil Barons, Inc., and HSGCHG, Investments, LLC. (Connecticut Lawsuit Compl. ¶ 9 [the Connecticut Lawsuit Complaint has two paragraph 9's]). The Connecticut Lawsuit Complaint seeks foreclosure of the East Haven and Branford

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mortgages, a deficiency judgment against the $2,000,000.00 note makers, and a judgment against Robert D. Hartmann, Sr., under the "Recourse Guaranty." (Connecticut Lawsuit Compl. Prayer for Relief, ¶¶ 1 [the Connecticut Lawsuit Complaint has two paragraph 1's] and 2).

In response to the Connecticut Lawsuit Complaint, on December 5, 2019, the Defendants filed an Answer, asserting five "Special Defenses," and eleven Counterclaims. Attached as **Exhibit "B"** is a copy of the Defendants' Answer to the Connecticut Lawsuit.

Since the filing of Defendants' Connecticut Lawsuit Answer, there have been 22 additional docket entries in that lawsuit, the last occurring on March 18, 2020, with a hearing scheduled for March 23, 2020. Attached as **Exhibit "C"** is a copy of the "Superior Court Case Look-up" available on-line, which includes the referenced docket entries which total 58.

B. Argument.

Rule 12(b)(8), SCRCP, provides a case may be dismissed if "another action is pending between the same parties for the same claim." Our courts have interpreted Rule 12(b)(8), and its predecessor statute, narrowly, applying it only when there is an identity of the parties, causes of action and relief. *Capital City Ins. Co. v. BP Staff, Inc.,* 382 S.C. 92, 106, 674 S.E.2d 524, 531 (Ct. App. 2009) (citations omitted).

The parties to this and the Connecticut Lawsuit are identical. This lawsuit and the Connecticut Lawsuit seek enforcement of the payment provisions of the same note and guaranty. To enforce either, Plaintiff must establish the amount, if any, owed under the note and guaranty. Both lawsuits seek a deficiency judgment against the makers of the note.

The difference between the two lawsuits is the collateral – property in South Carolina and Connecticut. However, Defendants respectfully assert that the Connecticut Lawsuit is so substantially similar to the above captioned action, that under Rule 12(b)(8), this action should be

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dismissed. "[Rule 12(b)(8)] applies where the parties, subject matter and remedies are precisely the same, and ... also where they are only substantially the same." *Id., quoting Beatty v. Liberty Mut. Ins. Group,* 893 N.E.2d 1079, 1084 (Ind. App. Ct. 2008).

Alternatively, Defendants respectfully submit the Court should stay this action. "An equitable stay may be invoked if justified by circumstances which outweigh any potential harm to the party against whom it is operative. In making this determination, the court 'must weigh competing interest and maintain and even balance.'" *Marine Bros., Inc. v. Marine Midland Realty Credit Corp.,* 307 S.C. 213, 216, 414 S.E.2d 167, 169 (1992), quoting *United States Central Building Supply, Inc. v. Wilke,* 685 F.Supp. 936, 938 (D.C. Md. 1988).

The Connecticut Lawsuit was filed nearly six months before this lawsuit. Based on the docket entries, the parties to the Connecticut Lawsuit have engaged in extensive motion practice and some discovery. The Connecticut Lawsuit seeks establishment of the same debt this lawsuit seeks, a deficiency judgment and a judgment on the same guaranty at issue in this action.

Further, the same Defendants in this lawsuit have asserted, in the Connecticut Lawsuit, five "Special Defenses" (which appear comparable to our affirmative defenses) and eleven counterclaims. Defendants respectfully submit they should not be put to the expense of litigating virtually the same facts and law in two courts which are in different states separated by over seven hundred miles. Defendants also respectfully submit Plaintiff will suffer no prejudice if this case was stayed – it too will not be put to the expense of litigating the same facts and issues in different courts separated by hundreds of miles. Further, Plaintiff has filed its Lis Pendens describing what it asserts is the South Carolina property encumbered by the mortgage it alleges it holds. Plaintiff also filed this lawsuit within twenty days of filing its lis pendens, thus putting third parties on

notice of the Plaintiff's claim to an interest in the South Carolina property described in its Complaint and Lis Pendens.

C. Conclusion.

Defendants respectfully request the above captioned action be dismissed under Rule 12(b)(8), SCRCP or, alternatively, this action be stayed pending the outcome of the Connecticut Lawsuit.

CALLISON TIGHE & ROBINSON, LLC

s/ Louis H. Lang
Louis H. Lang, SC Bar No. 03127
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: 803-404-6900
Email: louislang@callisontighe.com

ATTORNEYS FOR DEFENDANTS HSGCHG INVESTMENTS, LLC f/k/a CAROLINA ENTERTAINMENT COMPLEX, LLC, PARTNERS 95, LLC, OIL BARONS, INC. and ROBERT D. HARTMANN, SR.

Columbia, South Carolina
March 20, 2020

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RETURN DATE: JULY 9, 2019	: SUPERIOR COURT
AVATAR PARTNERS CT, LLC	: J.D. OF NEW HAVEN
VS.	: AT NEW HAVEN
PARTNERS 95, L.L.C.; OIL BARONS, INC. HSGCHG INVESTMENTS, LLC AND ROBERT D. HARTMANN, SR.	: June 6, 2019

COMPLAINT

FIRST COUNT (96 Frontage Road, East Haven, CT):

1. The plaintiff, Avatar Partners CT, LLC, (hereinafter "the plaintiff"), is a Connecticut limited liability company having a principal place of business at 2389 Main Street, Suite 100, Glastonbury, Connecticut.

2. The defendant, Partners 95, L.L.C., (hereinafter "the defendant Partners 95"), is a Connecticut limited liability company having a principal place of business at 70 Platt Road, Shelton, Connecticut.

3. On information and belief, the defendant, Oil Barons, Inc. (hereinafter "the defendant Oil Barons"), is a Connecticut corporation with a principal place of business at 114 Cascade Boulevard, Milford, Connecticut.

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4. The defendant, HSGCHG Investments, LLC (hereinafter "the defendant HSGCHG") is a Delaware limited liability company with a principal place of business at 114 Cascade Boulevard, Milford, Connecticut.

5. The defendant, Robert D. Hartmann, Sr, (hereinafter "the defendant Hartmann") is an individual residing at 50 Eveningside Drive, Milford, Connecticut.

6. By their Commercial Promissory Note (hereinafter "the Note") dated January 22, 2015, the defendants Partners 95, Oils Barons, and HSGCHG jointly and severally promised to pay to the order of Avatar Capital Finance , LLC the principal sum of up to Two Million and 00/100 ($2,000,000.00) together with interest thereon

7. On January 23, 2015, as security for the payment of the Note, the defendant Partners 95 executed and delivered a certain Open-End Mortgage Deed and Security Agreement (hereinafter "the East Haven Mortgage") to and in favor of Avatar Capital Finance, LLC concerning the property commonly known as 96 Frontage Road, East Haven, Connecticut (hereinafter referred to as "the East Haven property"), and more particularly bounded and described in Schedule A which is attached hereto and made a part hereof, of which it was then the record owner. The East Haven Mortgage is conditioned for the payment of the Note according to its tenor, and the performance of certain covenants and conditions contained in the East Haven Mortgage, which mortgage

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deed was recorded on January 23, 2015 in Volume 2408 at Page 148 of the East Haven Land Records.

8. The Note and the East Haven Mortgage Deed were modified pursuant to a "First Modification to Open-End Mortgage Deed and Security Agreement" (hereinafter "the First Modification") dated and recorded March 11, 2016 in Volume 2471 and 53 of the East Haven Land Records. The purpose of the First Modification was to provide for an increase in the principal balance of the loan amount to Three Million Five Hundred Thousand and NO/100 Dollars ($3,500,000.00) and extending the maturity date to June 30, 2018. The maturity date was extended to July 1, 2019 pursuant to a Second Note Modification Agreement dated July 1, 2018.

9. On January 22, 2015, the defendant Hartmann executed and delivered to Avatar Capital Finance, LLC a certain Recourse Guaranty by which the defendant Hartmann guaranteed the prompt and complete payment of all obligations of the defendants Partners 95, Oil Barons and HSGCHG. On March 11, 2016, the defendant Hartmann also executed and delivered to Avatar Capital Finance, LLC a "First Modification of Recourse Guaranty and Guarantor's Acknowledgement and Ratification of Recourse Guaranty" whereby he acknowledged and ratified the terms of the First Modification Agreement.

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10. The defendants failed to make the monthly payment due September 1, 2018, and each month thereafter. The plaintiff exercised its option to declare the entire unpaid principal balance, advances, unpaid interest and all other amounts immediately due and payable. Upon an event of default, interest shall accrue at the default rate specified in the Note. In addition, a late charge of ten percent (10%) of the unpaid principal balance after July 1, 2019.

11. Avatar Capital Finance, LLC assigned and transferred its interest in the Note and East Haven mortgage to Parker Ferguson (an undivided 5% interest), Steven Ganeless (an undivided 3.750% interest), Downtime Enterprises LLC (an undivided 10% interest), Patrick Guthrie, Trustee (an undivided 5% interest), Marc S. Homme APLC Defined Benefit Pension Trust (an undivided 2.5% interest), O. Michael Homme, Trustee (an undivided 1.25% interest), JBH Trust dated June 24, 2009 (an undivided 1.25% interest), William R. Horton (an undivided 7.5% interest), MMJ Group Inc. (an undivided 17.5% interest), Self Directed IRA Services Inc., FBO Mark Picking, IRA (an undivided 3.75% interest), Paul R. Verkuil and Judith Rodin (an undivided 3.75% interest), Jay and Elaine Hazelrigg (an undivided 1.75% interest), Richard Kester, Trustee (an undivided 5% interest), Susan Lundell, (an undivided 2.4% interest), Patrick A. Waldron and Peggy Waldron (an undivided 1.65%), James and Joyce Zevenbergen (an undivided 10%

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interest), Ronald and Sandra Loper (an undivided 10% interest) 2013 and Jerry Zevenbergen, (an undivided 7.95% interest). Said assignment was recorded on September 2, 2015 n Volume 2441 at Page 184 of the East Haven Land Records.

12. Parker Ferguson (an undivided 5% interest), Steven Ganeless (an undivided 3.750% interest), Downtime Enterprises LLC (an undivided 10% interest), Patrick Guthrie, Trustee (an undivided 5% interest), Marc S. Homme APLC Defined Benefit Pension Trust (an undivided 2.5% interest), O. Michael Homme, Trustee (an undivided 1.25% interest), JBH Trust dated June 24, 2009 (an undivided 1.25% interest), William R. Horton (an undivided 7.5% interest), MMJ Group Inc. (an undivided 17.5% interest), Self Directed IRA Services Inc., FBO Mark Picking, IRA (an undivided 3.75% interest), Paul R. Verkuil and Judith Rodin (an undivided 3.75% interest), Jay and Elaine Hazelrigg (an undivided 1.75% interest), Richard Kester, Trustee (an undivided 5% interest), Susan Lundell, (an undivided 2.4% interest), Patrick A. Waldron and Peggy Waldron (an undivided 1.65%), James and Joyce Zevenbergen (an undivided 10% interest), Ronald and Sandra Loper (an undivided 10% interest) 2013 and Jerry Zevenbergen, (an undivided 7.95% interest) transferred their interest in the Note and East Haven mortgage

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to Avatar Capital Finance, LLC pursuant to an Assignment of Mortgage recorded on March 11, 2016 in Volume 2471 at Page 26 of the East Haven land records.

13. Avatar Capital Finance, LLC assigned and transferred its interest in the Note and East Haven mortgage to Dr. Christopher L Barley (an undivided 1.4286% interest), Parker Ferguson (an undivided 4.2857 interest), RealTrust IRA Alternatives, LLC (0.7143%), Steven Ganeless (an undivided 2.1429% interest), Self Directed IRA Services Inc. Custodian FBO Philip H. Geier, JR (an undivided 2.1429% interest), Patrick Guthrie Family Partnership (an undivided 11.4286% interest), Downtime Enterprises LLC (an undivided 5.7143% interest),), Patrick D. Guthrie, Trustee of the Guthrie Family Trust (an undivided 5.7143%), Jay and Elaine Hazelrigg (an undivided 1.0% interest) Equity Trust Company, Custodian FBO James Holobaugh IRA (an undivided 1.4286%), Marc S. Homme APLC Defined Benefit Pension Plan (an undivided 2.8571% interest), William R. Horton (an undivided 8.5714% interest), MMJ Group Inc. (an undivided 10% interest), Richard Kester, Trustee (an undivided 4.28575% interest), Ronald and Sandra Loper Living Trust dated April 12, 2013(an undivided 8.5714% interest), Equity Trust Company, Custodian FBO Richard Lundell (an undivided 1.4286%), Susan Lundell, (an undivided 1.3741% interest). PS Funding Inc, (an undivided 11.4286% interest), Self Directed IRA Services Inc. Custodian FBO Mark Picking (an undivided

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2.8751% interest); Self Directed IRA Services Inc. Custodian FBO Theodore B. Smith III (an undivided .7143% interest), Paul and Judy Verkul (an undivided 3.5714% interest), Patrick A. Waldron and Peggy C. Waldron (an undivided .9429% interest), Jerry Zevenbergen, (an undivided 1.6857% interest).and James and Joyce Zevenbergen Living Trust dated August 18, 2014 (an undivided 5.7142% interest). Said assignment was recorded on August 5, 2016 in Volume 2494 at Page 146 of the East Haven Land Records.

14. Dr. Christopher L Barley (an undivided 1.4286% interest), Parker Ferguson (an undivided 4.2857 interest), RealTrust IRA Alternatives, LLC (0.7143%), Steven Ganeless (an undivided 2.1429% interest), Self Directed IRA Services Inc. Custodian FBO Philip H. Geier, JR (an undivided 2.1429% interest), Patrick Guthrie Family Partnership (an undivided 11.4286% interest), Downtime Enterprises LLC (an undivided 5.7143% interest),), Patrick D. Guthrie, Trustee of the Guthrie Family Trust (an undivided 5.7143%), Jay and Elaine Hazelrigg (an undivided 1.0% interest) Equity Trust Company, Custodian FBO James Holobaugh IRA (an undivided 1.4286%), Marc S. Homme APLC Defined Benefit Pension Plan (an undivided 2.8571% interest), William R. Horton (an undivided 8.5714% interest), MMJ Group Inc. (an undivided 10% interest), Richard Kester, Trustee (an undivided 4.28575% interest), Ronald and

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Sandra Loper Living Trust dated April 12, 2013(an undivided 8.5714% interest), Equity Trust Company, Custodian FBO Richard Lundell (an undivided 1.4286%), Susan Lundell, (an undivided 1.3741% interest). PS Funding Inc, (an undivided 11.4286% interest), Self Directed IRA Services Inc. Custodian FBO Mark Picking (an undivided 2.8751% interest); Self Directed IRA Services Inc. Custodian FBO Theodore B. Smith III (an undivided .7143% interest), Paul and Judy Verkul (an undivided 3.5714% interest), Patrick A. Waldron and Peggy C. Waldron (an undivided .9429% interest), Jerry Zevenbergen, (an undivided 1.6857% interest).and James and Joyce Zevenbergen Living Trust dated August 18, 2014 (an undivided 5.7142% interest) transferred their interest in the Note and East Haven mortgage to the plaintiff pursuant to an assignment of mortgage recorded on April 17, 2019 in Volume 2648 at Page 207 of the East Haven Land Records.

15. The plaintiff is the owner and holder of the Note and East Haven Mortgage, and is the entity entitled to enforce the Note, the East Haven Mortgage and the Recourse Guaranty and to collect the indebtedness.

16. The defendant Partners 95 is the record owner of the premises and is in possession of the premises.

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17. The plaintiff did cause to be recorded a Lis Pendens on the Land Records of the Town of East Haven giving notice of the institution of the foreclosure action. A copy of said Lis Pendens is attached and made a part hereof as Exhibit A.

SECOND COUNT (49 Leetes Island Road, Branford, CT)

1-6. Paragraphs 1-6 of the First Count are hereby incorporated as paragraphs 1 thru 6 of the second count.

7. On January 23, 2015, as additional security for the payment of the Note, the defendant Oil Barons executed and delivered a certain Open-End Mortgage Deed and Security Agreement (hereinafter "the Branford Mortgage") to and in favor of Avatar Capital Finance, LLC concerning the property commonly known as 49 Leetes Island Road, Branford, Connecticut (hereinafter referred to as "the Branford property"), and more particularly bounded and described in Schedule A which is attached hereto and made a part hereof, of which it was then the record owner. The Branford Mortgage is conditioned for the payment of the Note according to its tenor, and the performance of certain covenants and conditions contained in the Branford Mortgage, which mortgage

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deed was recorded on January 23, 2015 in Volume 1170 at Page 1021 of the Branford Land Records. The Oil Barons also executed and delivered to Avatar Capital Finance, LLC an Assignment of Rents and Leases, which Assignment was dated January 22, 2015 and recorded January 23, 2015 in Volume 1170 at Page 1056 of the Branford land records.

8. The Note and the Branford Mortgage Deed were modified pursuant to a "First Modification to Open-End Mortgage Deed and Security Agreement" (hereinafter "the First Modification") dated and recorded March 11, 2016 in Volume 1194 and 1073 of the Branford Land Records. The purpose of the First Modification was to provide for an increase in the principal balance of the loan amount to Three Million Five Hundred Thousand and NO/100 Dollars ($3,500,000.00) and extending the maturity date to June 30, 2018. The maturity date was extended to July 1, 2019 pursuant to a Second Note Modification Agreement dated July 1, 2018.

10. The Note and the Branford Mortgage Deed were modified pursuant to a "Second Modification to Open-End Mortgage Deed and Security Agreement and Assignment of Rents and Leases" (hereinafter "the Second Modification") dated May 3, 2019 and recorded May 8, 2019 in Volume 1260 and page 469 of the Branford Land

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Records. The purpose of the Second Modification was to modify the description of the premises as set forth on Schedule B attached hereto.

9. On January 22, 2015, the defendant Hartmann executed and delivered to Avatar Capital Finance, LLC a certain Recourse Guaranty by which the defendant Hartmann guaranteed the prompt and complete payment of all obligations of the defendants Partners 95, Oil Barons and HSGCHG. On March 11, 2016, the defendant Hartmann also executed and delivered to Avatar Capital Finance, LLC a "First Modification of Recourse Guaranty and Guarantor's Acknowledgement and Ratification of Recourse Guaranty" whereby he acknowledged and ratified the terms of the First Modification Agreement.

10. The defendants failed to make the monthly payment due September 1, 2018, and each month thereafter. The plaintiff exercised its option to declare the entire unpaid principal balance, advances, unpaid interest and all other amounts immediately due and payable. Upon an event of default, interest shall accrue at the default rate specified in the Note. In addition, a late charge of ten percent (10%) of the unpaid principal balance after July 1, 2019.

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11. Avatar Capital Finance, LLC assigned and transferred its interest in the Note and Branford mortgage to Parker Ferguson (an undivided 5% interest), Steven Ganeless (an undivided 3.750% interest), Downtime Enterprises LLC (an undivided 10% interest), Patrick Guthrie, Trustee (an undivided 5% interest), Marc S. Homme APLC Defined Benefit Pension Trust (an undivided 2.5% interest), O. Michael Homme, Trustee (an undivided 1.25% interest), JBH Trust dated June 24, 2009 (an undivided 1.25% interest), William R. Horton (an undivided 7.5% interest), MMJ Group Inc. (an undivided 17.5% interest), Self Directed IRA Services Inc., FBO Mark Picking, IRA (an undivided 3.75% interest), Paul R. Verkuil and Judith Rodin (an undivided 3.75% interest), Jay and Elaine Hazelrigg (an undivided 1.75% interest), Richard Kester, Trustee (an undivided 5% interest), Susan Lundell, (an undivided 2.4% interest), Patrick A. Waldron and Peggy Waldron (an undivided 1.65%), James and Joyce Zevenbergen (an undivided 10% interest), Ronald and Sandra Loper (an undivided 10% interest) 2013 and Jerry Zevenbergen, (an undivided 7.95% interest). Said assignment was recorded on September 15, 2015 n Volume 1184 at Page 899 of the Branford Land Records.

12. Parker Ferguson (an undivided 5% interest), Steven Ganeless (an undivided 3.750% interest), Downtime Enterprises LLC (an undivided 10% interest), Patrick Guthrie, Trustee (an undivided 5% interest), Marc S. Homme APLC Defined Benefit

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Pension Trust (an undivided 2.5% interest), O. Michael Homme, Trustee (an undivided 1.25% interest), JBH Trust dated June 24, 2009 (an undivided 1.25% interest), William R. Horton (an undivided 7.5% interest), MMJ Group Inc. (an undivided 17.5% interest), Self Directed IRA Services Inc., FBO Mark Picking, IRA (an undivided 3.75% interest), Paul R. Verkuil and Judith Rodin (an undivided 3.75% interest), Jay and Elaine Hazelrigg (an undivided 1.75% interest), Richard Kester, Trustee (an undivided 5% interest), Susan Lundell, (an undivided 2.4% interest), Patrick A. Waldron and Peggy Waldron (an undivided 1.65%), James and Joyce Zevenbergen (an undivided 10% interest), Ronald and Sandra Loper (an undivided 10% interest) 2013 and Jerry Zevenbergen, (an undivided 7.95% interest) transferred their interest in the Note and Branford mortgage to Avatar Capital Finance, LLC pursuant to an Assignment of Mortgage recorded on March 11, 2016 in Volume 1194 at Page 1046 of the Branford land records.

13. Avatar Capital Finance, LLC assigned and transferred its interest in the Note and Branford mortgage to Dr. Christopher L Barley (an undivided 1.4286% interest), Parker Ferguson (an undivided 4.2857 interest), RealTrust IRA Alternatives, LLC (0.7143%), Steven Ganeless (an undivided 2.1429% interest), Self Directed IRA Services Inc. Custodian FBO Philip H. Geier, JR (an undivided 2.1429% interest), Patrick Guthrie Family Partnership (an undivided 11.4286% interest), Downtime Enterprises LLC (an

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undivided 5.7143% interest),), Patrick D. Guthrie, Trustee of the Guthrie Family Trust (an undivided 5.7143%), Jay and Elaine Hazelrigg (an undivided 1.0% interest) Equity Trust Company, Custodian FBO James Holobaugh IRA (an undivided 1.4286%), Marc S. Homme APLC Defined Benefit Pension Plan (an undivided 2.8571% interest), William R. Horton (an undivided 8.5714% interest), MMJ Group Inc. (an undivided 10% interest), Richard Kester, Trustee (an undivided 4.28575% interest), Ronald and Sandra Loper Living Trust dated April 12, 2013(an undivided 8.5714% interest), Equity Trust Company, Custodian FBO Richard Lundell (an undivided 1.4286%), Susan Lundell, (an undivided 1.3741% interest). PS Funding Inc, (an undivided 11.4286% interest), Self Directed IRA Services Inc. Custodian FBO Mark Picking (an undivided 2.8751% interest); Self Directed IRA Services Inc. Custodian FBO Theodore B. Smith III (an undivided .7143% interest), Paul and Judy Verkul (an undivided 3.5714% interest), Patrick A. Waldron and Peggy C. Waldron (an undivided .9429% interest), Jerry Zevenbergen, (an undivided 1.6857% interest).and James and Joyce Zevenbergen Living Trust dated August 18, 2014 (an undivided 5.7142% interest). Said assignment was recorded on July 18, 2016 in Volume 1202 at Page 596 of the Branford Land Records.

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14. Dr. Christopher L Barley (an undivided 1.4286% interest), Parker Ferguson (an undivided 4.2857 interest), RealTrust IRA Alternatives, LLC (0.7143%), Steven Ganeless (an undivided 2.1429% interest), Self Directed IRA Services Inc. Custodian FBO Philip H. Geier, JR (an undivided 2.1429% interest), Patrick Guthrie Family Partnership (an undivided 11.4286% interest), Downtime Enterprises LLC (an undivided 5.7143% interest),), Patrick D. Guthrie, Trustee of the Guthrie Family Trust (an undivided 5.7143%), Jay and Elaine Hazelrigg (an undivided 1.0% interest) Equity Trust Company, Custodian FBO James Holobaugh IRA (an undivided 1.4286%), Marc S. Homme APLC Defined Benefit Pension Plan (an undivided 2.8571% interest), William R. Horton (an undivided 8.5714% interest), MMJ Group Inc. (an undivided 10% interest), Richard Kester, Trustee (an undivided 4.28575% interest), Ronald and Sandra Loper Living Trust dated April 12, 2013(an undivided 8.5714% interest), Equity Trust Company, Custodian FBO Richard Lundell (an undivided 1.4286%), Susan Lundell, (an undivided 1.3741% interest). PS Funding Inc, (an undivided 11.4286% interest), Self Directed IRA Services Inc. Custodian FBO Mark Picking (an undivided 2.8751% interest); Self Directed IRA Services Inc. Custodian FBO Theodore B. Smith III (an undivided .7143% interest), Paul and Judy Verkul (an undivided 3.5714% interest), Patrick A. Waldron and Peggy C. Waldron (an undivided .9429% interest),

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Jerry Zevenbergen, (an undivided 1.6857% interest).and James and Joyce Zevenbergen Living Trust dated August 18, 2014 (an undivided 5.7142% interest) transferred their interest in the Note and Branford mortgage to the plaintiff pursuant to an assignment of mortgage recorded on April 17, 2019 in Volume 1259 at Page 91 of Branford Land Records. Reference is also made to an Assignment of Mortgage from Strata Trust Company Custodian to the plaintiff recorded May 13, 2019 in Volume 1260 at Pag3 839 of the Branford land records.

15. Avatar Capital Finance, LLC further assigned to the plaintiff its interest in the Assignment of Rents and Leases pursuant to an Assignment of Assignment of Rents and Leases recorded on May 8, 2019 in Volume 1260 at Page 451 of the Branford land records.

15. The plaintiff is the owner and holder of the Note, the Branford Mortgage and Assignment of Rents and Leases, and is the entity entitled to enforce the Note, the Branford Mortgage, Assignment of Rent and Leases and the Recourse Guaranty and to collect the indebtedness.

16. The defendant Oil Barons is the record owner of the premises and is in possession of the premises.

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17. The plaintiff did cause to be recorded a Lis Pendens on the Land Records of the Town of Branford giving notice of the institution of the foreclosure action. A copy of said Lis Pendens is attached and made a part hereof as Exhibit A.

THIRD COUNT (Liability of Guarantor):

1– 15. Paragraphs 1 through 15 of the First Court are hereby incorporated as paragraphs 1 through 15 of this the Third Count.

16. On January 22, 2015, the defendant Hartmann executed a certain Recourse Guaranty by which the defendant Hartmann guaranteed the prompt and complete payment of all obligations of the defendants Partners 95, Oil Barons and HSGCHG. On March 11, 2016, the defendant Hartmann also executed the "First Modification of Recourse Guaranty and Guarantor's Acknowledgement and Ratification of Recourse Guaranty" whereby he acknowledged and ratified the terms of the First Modification Agreement, including all costs and expenses, including reasonable attorney fees.

17. The plaintiff claims damages.

WHEREFORE, the plaintiff prays:

As to the first and second counts:

1. Foreclosure of the mortgages.

2. Immediate possession of the mortgaged premises.

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3. A deficiency judgment against the defendants, **Partners 95, L.L.C., HSGCHG Investments, LLC and Oil Barons, Inc.**

4. The appointment of a receiver to collect the rents and profits accruing from the premises.

6. Damages.

7. Interest, attorney's fees and costs of suit.

8. Such other and further equitable relief as may be required.

As to the third count:

1. Damages;

2. Attorney fees and costs pursuant to the Recourse Guaranty; and

3. Such other and further equitable relief as may be required.

Notice is hereby given to the defendant, Robert D. Hartmann, Sr, that the plaintiff intends to seek satisfaction of any judgment rendered in its favor in this action and out of any debt accruing to said defendant by reason of its personal service.

Dated at Avon, Connecticut, this 6th day of June, 2019.

THE PLAINTIFF

By _____

Robert J. Piscitelli ct 401057
Law Offices of Robert J. Piscitelli, LLC
56 East Main Street, Suite 1
P.O. Box 805
Avon, CT 06001-0805
(860) 674-2771
rpiscitelli@rjplawoffice.com

LAW OFFICES OF ROBERT J. PISCITELLI, LLC
56 EAST MAIN STREET • P.O. BOX 805 • AVON, CONNECTICUT 06001-0805 • TEL. (860) 677-6655 • FAX (860) 409-2567 • JURIS NO. 434476

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RETURN DATE: JULY 9, 2019	: SUPERIOR COURT
AVATAR PARTNERS CT, LLC	: J.D. OF NEW HAVEN
VS.	: AT NEW HAVEN
PARTNERS 95, L.L.C.; OIL BARONS, INC. HSGCHG INVESTMENTS, LLC AND ROBERT D. HARTMANN, SR.	: June 6, 2019

STATEMENT OF AMOUNT IN DEMAND

The amount in demand is in excess of Fifteen Thousand ($15,000.00) Dollars, exclusive of interest and costs.

THE PLAINTIFF

By _____

Robert J. Piscitelli ct 401057
Law Offices of Robert J. Piscitelli, LLC
56 East Main Street, Suite 1
P.O. Box 805
Avon, CT 06001-0805
(860) 674-2771
rpiscitelli@rjplawoffice.com

96 Frontage Road, East Haven

SCHEDULE "A"

LEGAL DESCRIPTION

All that certain piece or parcel of land, together with the buildings and all other improvements thereon, situated in the Town of East Haven, County of New Haven and State of Connecticut, known as and located at 96, 100-102 Frontage Road, as shown on a certain map or plan entitled "PROPERTY OF ROBERT D. HARTMANN IRREVOCABLE FAMILY TRUST AS-BUILT 96 FRONTAGE ROAD EAST HAVEN, CONNECTICUT DATE: 2/13/95 SCALE: 1" = 20' DRAWN BY: SAL CHECKED BY: LDN PROJECT NO.: 93-015 DRAWING NO. 1 OF 1", said premises being more particularly bounded and described as follows:

Commencing at a point marking the northwesterly corner of land herein described and an angle in the southerly highway line of Frontage Road, so-called, thence running S68°-37'-12"E 218.13 feet, more or less, along said highway line to a point on said highway line; thence running S21°-22'-48"W 40.00 feet, more or less, along said highway line to a point on said highway line; thence running S68°-37'-12"E 22.00 feet, more or less, along said highway line to a point on said highway line and the centerline of a brook, which point marks a corner of land herein described, said Frontage Road and a corner of land now or formerly of KDS Associates; thence running southwesterly 245 feet, more or less, along said centerline, being along said land now or formerly of KDS Associates, to a point on said centerline, which point marks a corner of land herein described, a corner of said land now or formerly of KDS Associates and land now or formerly of John & Mary R. Chernovitz; thence running northerly 12 feet, more or less, along said land now or formerly of John & Mary R. Chernovitz to a point; thence running S86°-20'-48"W 85.00 feet, more or less, in part along said land now or formerly of John & Mary R. Chernovitz and in part along land now or formerly of Dolores Mascola to a point which point marks the southwesterly corner of land herein described, said land now or formerly of Dolores Mascola and a corner of land now or formerly of Mobil Oil Corporation; thence running N21°-22'-48"E 189.50 feet, more or less, along said land now or formerly of Mobil Oil Corporation to a point on above said highway line, which point marks land herein described, a corner of said land now or formerly of Mobil Oil Corporation and Frontage Road; thence continuing N21°-22'-48"E 40.00 feet, more or less, along said highway line to the point and place of beginning.

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Schedule B- 49 Leetes Island Road

EXHIBIT "A"

LEGAL DESCRIPTION

First Piece:

All that certain piece or parcel of land, with the buildings and all other improvements thereon, situated in the Town of Branford, County of New Haven and State of Connecticut, bounded as follows:

BEGINNING at a point in the southwesterly line of Leete's Island Road being the point of intersection of the boundary between the premises herein described and land belonging to the State of Connecticut being the limited access line of the westbound entrance ramp of I-95; thence running South 64 degrees, 31 minutes, 37 seconds West along land of the State of Connecticut, 6.07 feet to a point; thence running South 63 degrees, 47 minutes, 17 seconds West along land of the State of Connecticut, 69.78 feet to a point; thence running South 80 degrees, 47 min. 47 seconds West along land of the State of Connecticut, 84.01 feet to a point; thence running South 57 degrees, 50 minutes, 12 seconds West along land of the State of Connecticut, 233.88 feet to a point; thence running Southwesterly in a curve to the right of radius 728.51 feet along land of the State of Connecticut, 35.95 feet to a point; thence running North 29 degrees, 20 minutes, 08 seconds West along land now or formerly of Frank A. Durso, 30 feet to a point; thence running North 59 degrees, 38 minutes, 21 seconds East along land now or formerly of Frank A. Durso, 25 feet to a point; thence running South 31 degrees, 23 minutes, 10 seconds East along land now or formerly of Frank A. Durso, 10 feet to a point; thence running North 58 degrees, 13 minutes, 31 seconds East along land now or formerly of Frank A. Durso, 9.61 feet to a point; thence running North 57 degrees, 50 minutes, 12 seconds East along land now or formerly of Frank A. Durso, 51.65 feet to a point; thence running North 23 degrees, 15 minutes, 31 seconds West along other land in part belonging formerly to the State of Connecticut and in part belonging now or formerly to Frank A. Durso, 169.56 feet to a point; thence running North 57 degrees, 50 minutes, 12 seconds East along land now or formerly of Frank A. Durso, 145.46 feet to a point; thence running North 70 degrees, 34 minutes, 18 seconds East along land now or formerly of Frank A. Durso, 190.50 feet to the Southwesterly line of Leete's Island Road, thence running Southeasterly along the southwesterly line of Leete's Island Road, 187.79 feet to the point and place of beginning.

Together with, in common with others, a right of way to pass and repass on foot or in vehicles over a triangular shaped piece of land bounded: East by Leetes Island Road, 50 feet; South by the northerly line of the premises above described, 75 feet; Northwest by land now or formerly of Frank A. Durso by a straight line.

Said premises are shown on a survey by Gilbert & Maloney, Architects Engineers and Land Surveyors entitled "Survey of property Connecticut Tpke & Leetes Island Road, Branford, Conn., Sun Oil Company", Scale 1" = 20' July 27, 1967 and contains 1.5 acres.

[2618971/7]

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Less and excepting therefrom the following:

Said premises are situated in the Town of Branford, County of New Haven and State of Connecticut on the southwesterly side of Present Leetes Island Road, at Present I-95 S.B. On-Ramp, containing 1,131 square feet, more or less, bounded and described as follows:

NORTHEASTERLY: by Present Leetes Island Road, 159 feet, more or less;

SOUTHEASTERLY: by Present I-95 S.B. On-Ramp, 42 feet, more or less;

WESTERLY - by remaining land of Oil Barons, Inc., 43 feet, more or less, by a line designated "TAKING LINE AND NON-ACCESS LINE", as shown on the map hereinafter referred to;

SOUTHWESTERLY: by said remaining land, 130 feet, more or less, by a line designated "TAKING LINE", as shown on said map;

NORTHWESTERLY: running to a point.

together with a full and perpetual easement to slope for the safety of the highway and remove, use or retain excavated material under, over and across portions of said remaining land within an area of 3,054 square feet, more or less, located between and opposite approximate Stations 15+00 and 16+50 right Base Line and Center Line, Present Leetes Island Road, as more particularly shown on said map.

Together with the right to enter portions of said remaining land for the purpose of constructing driveway and bituminous concrete curb, as more particularly shown on said map. Said right of entry shall terminate automatically upon completion of said work by the State.

And said premises are more particularly shown and delineated on a map entitled: "TOWN OF BRANFORD MAP SHOWING LAND ACQUIRED FROM OIL BARONS INC. BY THE STATE OF CONNECTICUT DEPARTMENT OF TRANSPORTATION I-95 INTERCHANGE 56 IMPROVEMENTS AND LEETES ISLAND ROAD SCALE: 1" = 40' APRIL 1997 TRANSPORTATION CHIEF ENGINEER - BUREAU OF ENGINEERING AND HIGHWAY OPERATIONS JAMES F. BYRNES, JR., P.E.", Last Revised 04/03/00, Sheet 1 of 1, (14-148-6).

SPECIFICALLY EXCEPTING THEREFROM all that certain piece or parcel of land situated in the Town of Branford, County of New Haven and State of Connecticut being shown and designated as "PARCEL 3 LAND TO BE ACQUIRED BY NIRMALA, LLC FROM OIL BARONS, INC. 245 S.F. 0.006 ACRES" on that certain map entitled "Property Survey Depicting Boundary Line Adjustment prepared for Oil Barons, Inc. 49 Leetes Island Road Branford Connecticut dated September 10, 2014, Scale 1" – 20'" prepared by Milone & MacBroom on file with the Branford Town Clerk's office as Map # 3990 (hereinafter referred to as the "Boundary Line Adjustment Map"), being more particularly bounded and described as follows:

Beginning at a point being the northwest corner of the parcel herein described;

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thence running North 57°-50'-12" East 12.50 feet along land now or formerly of Nirmala, LLC to a point;

thence running South 06°-32'-57" East 42.96 feet along land now or formerly of Oil Barons, Inc. to a point;

thence running North 23°-15'-31" West 39.22 feet along land now or formerly of Nirmala, LLC to the point of beginning.

Second Piece:

All those two (2) pieces or parcels of land situated in the Town of Branford, County of New Haven and State of Connecticut being shown and designated as "PARCEL 1 LAND TO BE ACQUIRED FROM NIRMALA, LLC BY OIL BARONS, INC. 11,925 S.F. 0.274 ACRES" ("PARCEL 1") and "PARCEL 2 LAND TO BE ACQUIRED FROM NIRMALA, LLC BY OIL BARONS, INC. 3,565 S.F. 0.082 ACRES" ("PARCEL 2") on the Boundary Line Adjustment Map, which map is on file in the Branford Town Clerk's Office;

PARCEL 1 being more particularly bounded and described as follows:

Beginning at a point being the northwest corner of the parcel herein described;

thence running North 83°-27'-03" East 54.66 feet to a point, thence turning and running North 82°-25'-35" East 239.50 feet, all along land now or formerly of Nirmala, LLC, to a point;

thence running along a clockwise curve, having a radius of 30.00 feet, 4.78 feet along Business Park Drive to a point;

thence running South 70°-34'-18" West 183.01 feet to a point, thence turning and running South 57°-50'-12" West 132.96 feet, all along land now or formerly of Oil Barons, Inc., to a point;

thence running North 06°-32'-57" West 96.33 feet along land now or formerly or Nirmala, LLC to the point of beginning; and

PARCEL 2 being more particularly bounded and described as follows:

Beginning at a point being the southeast corner of the parcel herein described

thence running South 57°-50'-12" West 51.65 feet to a point, thence turning and running South 58°-13'-31" West 9.61 feet to a point, thence turning and running North 31°-23'-10" West 10.00 feet, all along land now or formerly of Oil Barons, Inc., to a point;

thence running North 10°-37'-18" East 74.49 feet to a point, thence turning and running North 06°-32'-57" West 71.02 feet, all along land now or formerly of Nirmala, LLC, to a point;

thence running South 23°-15'-31" East 130.34 feet along land now or formerly of Oil Barons, Inc. to the point of beginning.

TOGETHER WITH Right of way to pass and repass in common with others by virtue of a right of way recorded October 3, 1967, in Volume 212 at Page 617 of the Town of Branford Land Records.

[2618971/7]

TOGETHER WITH access easement over that certain piece or parcel of land shown as "PARCEL 4 ACCESS EASEMENT OVER NIRMALA, LLC PROPERTY IN FAVOR OF OIL BARONS, INC. 150 S.F. 0.003 ACRES" on the Boundary Line Adjustment Map and as set forth in that certain Easement from Nirmala, LLC in favor of Oil Barons, Inc., dated May 7, 2018, and recorded in the Town of Branford Land Records May 8, 2018, in Volume 1260 at Page 461.

Received for Record at Branford, CT
On 05/08/2019 At 1:48:55 pm

Lisa Simpson

[2618971/7]

Book: 1260 Page: 469 File Number: 2019-00002267 Page: 11 of 11

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EXHIBIT A

RETURN DATE: JULY 9, 2019	: SUPERIOR COURT
AVATAR PARTNERS CT, LLC	: J.D. OF NEW HAVEN
VS.	: AT NEW HAVEN
PARTNERS 95, L.L.C.; OIL BARONS, INC. HSGCHG INVESTMENTS, LLC AND ROBERT D. HARTMANN, SR.	: June 6, 2019

LIS PENDENS

TO WHOM IT MAY CONCERN, TAKE NOTICE, that an action has this day been brought to the SUPERIOR COURT, to be held in the Judicial District of New Haven at New Haven on July 9, 2019, in which Avatar Partners CT, LLC, a Connecticut limited liability company having a principal place of business at 2389 Main Street, Suite 100, Glastonbury, Connecticut, is the plaintiff, and Partners 95, L.L.C., Oil Barons, Inc., HSGCHG Investments, LLC and Robert D. Hartmann, Sr, are the defendants.

The purpose of this action is to foreclose a Mortgage on property owned by Partners 95, L.L.C. known as 96 Frontage Road, East Haven, Connecticut recorded in the East Haven Land Records in Volume 2408 at Page 148, and to foreclose a Mortgage on property owned by Oil Barons, Inc. known as 49 Leetes Island Road, Branford, Connecticut recorded in the Branford land records in 1170 at Page 1021. The properties

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which are covered by said Mortgages are more particularly described in Schedule "A" and "B" attached hereto and incorporated herein.

Dated at Avon, Connecticut, this 6th day of June, 2019.

THE PLAINTIFF

By _____
Robert J. Piscitelli ct 401057
Law Offices of Robert J. Piscitelli, LLC
56 East Main Street, Suite 1
P.O. Box 805
Avon, CT 06001-0805
(860) 674-2771
rpiscitelli@rjplawoffice.com

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LAW OFFICES OF ROBERT J. PISCITELLI, LLC
FAX (860) 409-2567 • JURIS NO. 434476

96 Frontage Road, East Haven

SCHEDULE "A"

LEGAL DESCRIPTION

All that certain piece or parcel of land, together with the buildings and all other improvements thereon, situated in the Town of East Haven, County of New Haven and State of Connecticut, known as and located at 96, 100-102 Frontage Road, as shown on a certain Map or plan entitled "PROPERTY OF ROBERT D. HARTMANN IRREVOCABLE FAMILY TRUST AS-BUILT 96 FRONTAGE ROAD EAST HAVEN, CONNECTICUT DATE: 2/13/95 SCALE: 1" = 20' DRAWN BY: SAL CHECKED BY: LDN PROJECT NO.: 93-015 DRAWING NO. 1 OF 1", said premises being more particularly bounded and described as follows:

Commencing at a point marking the northwesterly corner of land herein described and an angle in the southerly highway line of Frontage Road, so-called, thence running S68°-37'-12"E 218.13 feet, more or less, along said highway line to a point on said highway line; thence running S21°-22'-48"W 40.00 feet, more or less, along said highway line to a point on said highway line; thence running S68°-37'-12"E 22.00 feet, more or less, along said highway line to a point on said highway line and the centerline of a brook, which point marks a corner of land herein described, said Frontage Road and a corner of land now or formerly of KDS Associates; thence running southwesterly 245 feet, more or less, along said centerline, being along said land now or formerly of KDS Associates, to a point on said centerline, which point marks a corner of land herein described, a corner of said land now or formerly of KDS Associates and land now or formerly of John & Mary R. Chernovitz; thence running northerly 12 feet, more or less, along said land now or formerly of John & Mary R. Chernovitz to a point; thence running S68°-20'-48"W 85.00 feet, more or less, in part along said land now or formerly of John & Mary R. Chernovitz and in part along land now or formerly of Dolores Mascola to a point which point marks the southwesterly corner of land herein described, said land now or formerly of Dolores Mascola and a corner of land now or formerly of Mobil Oil Corporation; thence running N21°-22'-48"E 189.50 feet, more or less, along said land now or formerly of Mobil Oil Corporation to a point on above said highway line, which point marks land herein described, a corner of said land now or formerly of Mobil Oil Corporation and Frontage Road; thence continuing N21°-22'-48"E 40.00 feet, more or less, along said highway line to the point and place of beginning.

[1310208/1]

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Schedule B - 49 Leetes Island Road

EXHIBIT "A"

LEGAL DESCRIPTION

First Piece:

All that certain piece or parcel of land, with the buildings and all other improvements thereon, situated in the Town of Branford, County of New Haven and State of Connecticut, bounded as follows:

BEGINNING at a point in the southwesterly line of Leete's Island Road being the point of intersection of the boundary between the premises herein described and land belonging to the State of Connecticut being the limited access line of the westbound entrance ramp of I-95; thence running South 64 degrees, 31 minutes, 37 seconds West along land of the State of Connecticut, 6.07 feet to a point; thence running South 63 degrees, 47 minutes, 17 seconds West along land of the State of Connecticut, 69.78 feet to a point; thence running South 80 degrees, 47 min. 47 seconds West along land of the State of Connecticut, 84.01 feet to a point; thence running South 57 degrees, 50 minutes, 12 seconds West along land of the State of Connecticut, 233.88 feet to a point; thence running Southwesterly in a curve to the right of radius 728.51 feet along land of the State of Connecticut, 35.95 feet to a point; thence running North 29 degrees, 20 minutes, 08 seconds West along land now or formerly of Frank A. Durso, 30 feet to a point; thence running North 59 degrees, 38 minutes, 21 seconds East along land now or formerly of Frank A. Durso, 25 feet to a point; thence running South 31 degrees, 23 minutes, 10 seconds East along land now or formerly of Frank A. Durso, 10 feet to a point; thence running North 58 degrees, 13 minutes, 31 seconds East along land now or formerly of Frank A. Durso, 9.61 feet to a point; thence running North 57 degrees, 50 minutes, 12 seconds East along land now or formerly of Frank A. Durso, 51.65 feet to a point; thence running North 23 degrees, 15 minutes, 31 seconds West along other land in part belonging formerly to the State of Connecticut and in part belonging now or formerly to Frank A. Durso, 169.56 feet to a point; thence running North 57 degrees, 50 minutes, 12 seconds East along land now or formerly of Frank A. Durso, 145.46 feet to a point; thence running North 70 degrees, 34 minutes, 18 seconds East along land now or formerly of Frank A. Durso, 190.50 feet to the Southwesterly line of Leete's Island Road, thence running Southeasterly along the southwesterly line of Leete's Island Road, 187.79 feet to the point and place of beginning.

Together with, in common with others, a right of way to pass and repass on foot or in vehicles over a triangular shaped piece of land bounded: East by Leetes Island Road, 50 feet; South by the northerly line of the premises above described, 75 feet; Northwest by land now or formerly of Frank A. Durso by a straight line.

Said premises are shown on a survey by Gilbert & Maloney, Architects Engineers and Land Surveyors entitled "Survey of property Connecticut Tpke & Leetes Island Road, Branford, Conn., Sun Oil Company", Scale 1" = 20' July 27, 1967 and contains 1.5 acres.

[2618971/7]

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Less and excepting therefrom the following:

Said premises are situated in the Town of Branford, County of New Haven and State of Connecticut on the southwesterly side of Present Leetes Island Road, at Present I-95 S.B. On-Ramp, containing 1,131 square feet, more or less, bounded and described as follows:

NORTHEASTERLY: by Present Leetes Island Road, 159 feet, more or less;

SOUTHEASTERLY: by Present I-95 S.B. On-Ramp, 42 feet, more or less;

WESTERLY - by remaining land of Oil Barons, Inc., 43 feet, more or less, by a line designated "TAKING LINE AND NON-ACCESS LINE", as shown on the map hereinafter referred to;

SOUTHWESTERLY: by said remaining land, 130 feet, more or less, by a line designated "TAKING LINE", as shown on said map;

NORTHWESTERLY: running to a point.

together with a full and perpetual easement to slope for the safety of the highway and remove, use or retain excavated material under, over and across portions of said remaining land within an area of 2,054 square feet, more or less, located between and opposite approximate Stations 15+00 and 16+50 right Base Line and Center Line, Present Leetes Island Road, as more particularly shown on said map.

Together with the right to enter portions of said remaining land for the purpose of constructing driveway and bituminous concrete curb, as more particularly shown on said map. Said right of entry shall terminate automatically upon completion of said work by the State.

And said premises are more particularly shown and delineated on a map entitled: "TOWN OF BRANFORD MAP SHOWING LAND ACQUIRED FROM OIL BARONS INC. BY THE STATE OF CONNECTICUT DEPARTMENT OF TRANSPORTATION I-95 INTERCHANGE 56 IMPROVEMENTS AND LEETES ISLAND ROAD SCALE: 1" = 40' APRIL 1997 TRANSPORTATION CHIEF ENGINEER - BUREAU OF ENGINEERING AND HIGHWAY OPERATIONS JAMES F. BYRNES, JR., P.E.", Last Revised 04/03/00, Sheet 1 of 1, (14-148-6).

SPECIFICALLY EXCEPTING THEREFROM all that certain piece or parcel of land situated in the Town of Branford, County of New Haven and State of Connecticut being shown and designated as "PARCEL 3 LAND TO BE ACQUIRED BY NIRMALA, LLC FROM OIL BARONS, INC. 245 S.F. 0.006 ACRES" on that certain map entitled "Property Survey Depicting Boundary Line Adjustment prepared for Oil Barons, Inc. 49 Leetes Island Road Branford Connecticut dated September 10, 2014, Scale 1" – 20"" prepared by Milone & MacBroom on file with the Branford Town Clerk's office as Map # 3990 (hereinafter referred to as the "Boundary Line Adjustment Map"), being more particularly bounded and described as follows:

Beginning at a point being the northwest corner of the parcel herein described;

thence running North 57°-50'-12" East 12.50 feet along land now or formerly of Nirmala, LLC to a point;

thence running South 06°-32'-57" East 42.96 feet along land now or formerly of Oil Barons, Inc. to a point;

thence running North 23°-15'-31" West 39.22 feet along land now or formerly of Nirmala, LLC to the point of beginning.

Second Piece:

All those two (2) pieces or parcels of land situated in the Town of Branford, County of New Haven and State of Connecticut being shown and designated as "PARCEL 1 LAND TO BE ACQUIRED FROM NIRMALA, LLC BY OIL BARONS, INC. 11,925 S.F. 0.274 ACRES" ("PARCEL 1") and "PARCEL 2 LAND TO BE ACQUIRED FROM NIRMALA, LLC BY OIL BARONS, INC. 3,565 S.F. 0.082 ACRES" ("PARCEL 2") on the Boundary Line Adjustment Map, which map is on file in the Branford Town Clerk's Office;

PARCEL 1 being more particularly bounded and described as follows:

Beginning at a point being the northwest corner of the parcel herein described;

thence running North 83°-27'-03" East 54.66 feet to a point, thence turning and running North 82°-25'-35" East 239.50 feet, all along land now or formerly of Nirmala, LLC, to a point;

thence running along a clockwise curve, having a radius of 30.00 feet, 4.78 feet along Business Park Drive to a point;

thence running South 70°-34'-18" West 183.01 feet to a point, thence turning and running South 57°-50'-12" West 132.96 feet, all along land now or formerly of Oil Barons, Inc., to a point;

thence running North 06°-32'-57" West 96.33 feet along land now or formerly or Nirmala, LLC to the point of beginning; and

PARCEL 2 being more particularly bounded and described as follows:

Beginning at a point being the southeast corner of the parcel herein described

thence running South 57°-50'-12" West 51.65 feet to a point, thence turning and running South 58°-13'-31" West 9.61 feet to a point, thence turning and running North 31°-23'-10" West 10.00 feet, all along land now or formerly of Oil Barons, Inc., to a point;

thence running North 10°-37'-18" East 74.49 feet to a point, thence turning and running North 06°-32'-57" West 71.02 feet, all along land now or formerly of Nirmala, LLC, to a point;

thence running South 23°-15'-31" East 130.34 feet along land now or formerly of Oil Barons, Inc. to the point of beginning.

TOGETHER WITH Right of way to pass and repass in common with others by virtue of a right of way recorded October 3, 1967, in Volume 212 at Page 617 of the Town of Branford Land Records.

[2618971/7]

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TOGETHER WITH access easement over that certain piece or parcel of land shown as "PARCEL 4 ACCESS EASEMENT OVER NIRMALA, LLC PROPERTY IN FAVOR OF OIL BARONS, INC. 150 S.F. 0.003 ACRES" on the Boundary Line Adjustment Map and as set forth in that certain Easement from Nirmala, LLC in favor of Oil Barons, Inc., dated May 7, 2018, and recorded in the Town of Branford Land Records May 8, 2018, in Volume 1260 at Page 461.

Received for Record at Branford, CT
On 05/08/2019 At 1:48:55 pm

Lisa Steffen

[2618971/7]

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DOCKET NO.: CV 19 6093534 S	:	SUPERIOR COURT
AVATAR PARTNERS CT, LLC	:	J.D. OF NEW HAVEN
V.	:	AT NEW HAVEN
PARTNERS 95, L.L.C., ET AL	:	DECEMBER 4, 2019

DEFENDANTS' ANSWER, SPECIAL DEFENSES AND COUNTERCLAIM

The defendants herein, Partners 95, L.L.C., Oil Barons, Inc., HSGCHG Investments, LLC, and Robert D. Hartmann, Sr. (collectively the "defendants"), hereby respond to the plaintiff's June 6, 2019 Complaint as follows:

ANSWER

FIRST COUNT:

1. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.
2. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.
3. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.
4. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.
5. The defendants do not have information or knowledge sufficient to form a belief as to the

truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

6. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

7. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

8. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

9. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

10. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

11. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of paragraph 11 of the Complaint and leave the plaintiff to its proof.

12. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

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13. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

14. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

15. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

16. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

SECOND COUNT:

1-6. The defendants' answers to Paragraphs 1 through 6 of the First Count of Plaintiff's Complaint as noted above, are hereby incorporated as answers 1 through 6 of this the Second Count.

7. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

8. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

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9. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

10. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

11. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

12. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

13. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

14. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

15. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

16. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff

to its proof.

17. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

THIRD COUNT:

1-15. The defendants' answers to Paragraphs 1 through 15 of the Second Count of Plaintiff's Complaint as noted above, are hereby incorporated as answers 1 through 15 of this the Third Count.

16. The defendants do not have information or knowledge sufficient to form a belief as to the truth or falsity of the allegations of this paragraph of the Complaint and leave the plaintiff to its proof.

17. Paragraph 17 of the Third Count of plaintiff's Complaint alleges a legal conclusion to which no response is required.

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SPECIAL DEFENSES

FIRST SPECIAL DEFENSE

The defendants are not indebted to the plaintiff herein and have not executed any instrument in favor of the plaintiff reflecting the debt claimed due and owing.

SECOND SPECIAL DEFENSE

Upon information and belief, the plaintiff is not the holder of the note which serves as the basis of the plaintiff's claims and therefore has no standing by which to pursue this claim against the defendants.

THIRD SPECIAL DEFENSE

The plaintiff failed to comply with the notice requirements of the State of Connecticut.

FOURTH SPECIAL DEFENSE

Upon information and belief, the plaintiff has miscalculated the alleged payoff, misapplied or failed to properly apply payments/credits and has charged usurious fees which invalidate the underlying debt.

FIFTH SPECIAL DEFENSE

The plaintiff has not acted in good faith and/or in a commercially reasonable manner in that it refused to allow the Defendants to sell and/or develop a portion of its real estate collateral in consideration of a paydown of the mortgage indebtedness on several different occasions.

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COUNTERCLAIM

1. At all times relevant hereto, the defendant/counterclaim-plaintiff, Robert D. Hartmann, Sr. ("Hartmann"), is an individual residing in Connecticut.

2. At all times relevant hereto, the defendant/counterclaim-plaintiff, Partners 95, L.L.C. ("Partners"), is a Connecticut limited liability company having a principal place of business at 70 Platt Road, Shelton, Connecticut.

3. At all times relevant hereto, the defendant/counterclaim-plaintiff, Oil Barons, Inc. ("Barons"), is a Connecticut corporation with a principal place of business at 114 Cascade Boulevard, Milford, Connecticut.

4. At all times relevant hereto, the defendant/counterclaim-plaintiff, HSGCHG Investments, LLC ("HSGCHG"), is a Delaware limited liability company with a principal place of business at 114 Cascade Boulevard, Milford, Connecticut.

5. At all times relevant hereto, the plaintiff/counterclaim-defendant, Avatar Partners CT, LLC ("Avatar"), is a Connecticut limited liability company having a principal place of business at 2389 Main Street, Suite 100, Glastonbury, Connecticut.

6. Defendants and Counterclaim-Plaintiffs Hartmann, Barons, Partners, and HSGCHG are hereinafter collectively referred to as the "defendants/counterclaim-plaintiffs".

7. On or about January 22, 2015, the defendants, Partners, Barons, and HSGCHG executed a Commercial Promissory Note ("the Note") in favor of Avatar Capital Finance, LLC ("Avatar Capital") in the principal sum of up to Two Million and 00/100 ($2,000,000.00) together with interest thereon.

8. The annual interest rate set forth by the Note was 8.99% per annum for the first six months and 9.99% per annum thereafter until repayment in full.

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9. As additional security for the Note, the defendant/counterclaim-plaintiff, Partners, executed and delivered a specific Open-End Mortgage Deed and Security Agreement ("the East Haven Mortgage"), on January 23, 2015, to and in favor of Avatar Capital concerning real property commonly known as 96 Frontage Road, East Haven, Connecticut, all as more particularly bounded and described in **Schedule A** which is attached hereto and made a part hereof.

10. As additional security for the Note, the defendant/counterclaim-plaintiff, Barons, executed and delivered a specific Open-End Mortgage Deed and Security Agreement ("the Branford Mortgage), on January 22, 2015, to and in favor of Avatar Capital concerning the real property commonly known as 49 Leetes Island Road, Branford, Connecticut, and more particularly bounded and described in **Schedule A** which is attached hereto and made part hereof.

11. On March 11, 2016, for the purpose of obtaining additional funds, the First Modification to the Branford Mortgage was executed by the parties increasing the amount of the Note to Three Million Five Hundred Thousand and 00/100 ($3,500,000.00) and extending the maturity date thereof to June 30, 2018.

12. Pursuant to an agreement between the defendant/counterclaim-plaintiff, Hartmann, and Avatar Capital, the latter agreed to release and discharge certain portions of mortgaged real property for good and valuable consideration from the lien and operation of the Branford Mortgage upon request by the defendants/counterclaim-plaintiffs ("Release Agreement").

13. In reliance thereon, defendants/counter-claim plaintiffs, Hartmann and Barons, entered into negotiations with Cumberland Farms, Inc. whereby Cumberland Farms, Inc. would

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purchase a portion of the Branford real estate.

14. On or about January 30, 2017, Cumberland Farms, Inc., issued a Letter of Intent for the purchase of a portion of the Branford property at a purchase price totaling Three Million One Hundred Thousand and 00/100 ($3,100,000.00). A copy of said Letter of Intent is attached hereto, marked **Exhibit 'A'**, and made a part hereof.

15. On or about March 14, 2017, Avatar Capital's Chief Executive Officer, based upon an agreement between the parties as outlined in an email of even date therewith, authorized a partial release and discharge of certain portions of the Branford property from the lien and operation of the Branford Mortgage. A copy of said electronic correspondence is attached hereto, marked **Exhibit 'B'**, and made a part hereof.

16. On or about May 25, 2017, the defendant/counterclaim-plaintiff, Barons, entered into a lease agreement with Alliance Energy, LLC ("Alliance") regarding the Branford Property. Barons and Alliance entered into a short term lease agreement with the understanding that the parties would negotiate to enter into a longer term development and lease agreement. A copy of said lease agreement is attached hereto, marked **Exhibit 'C'**, and made a part hereof.

17. On or about July, 2018, the plaintiff/counter-claim defendant, Avatar, recommended extending the maturity date of the Note to July 1, 2019. The defendants/counter-claim plaintiffs and Avatar, signed a Second Note Modification Agreement for the purpose of extending the maturity date of the Note to July 1, 2019.

18. On or about August 18, 2018, in accordance with the terms of the Release Agreement, the defendant/counterclaim-plaintiff, Hartmann, prepared and dispatched a Partial Release of Mortgage to the plaintiff/counter-claim defendant, Avatar, for execution and

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return. The Partial Release pertained to certain portions of the Branford Property. Avatar failed and refused to execute said Partial Release, despite the agreement to do so between the parties hereto.

19. On or about January 14, 2019, the defendants/counter-claim plaintiffs, Hartmann and Baron, received a letter of intent to confirm a negotiated lease between Baron and Petrogas Group New England, Inc. to first develop the Branford Property to suit their business operation and thereafter occupy and operate their business at the property.

20. As a direct and proximate result of the plaintiff/counter-claim defendant, Avatar's, refusal to sign the partial release and clear title to the Branford property, the defendant/counter-claim plaintiff was unable to secure Petrogas Group New England, Inc. as a tenant and has, since then, been unable to secure a substitute tenant for the Branford Property.

21. As a result of the plaintiff/counter-claim defendant, Avatar's, refusal to sign the partial release, the defendant/counter-claim plaintiffs have suffered substantial damages including, but not limited to, loss of present and future revenue both from the sale of said property and also from the continuing anticipated future rental income from the property.

22. As a result of the plaintiff/counter-claim defendant, Avatar's, refusal to sign the partial release, the defendant/counter-claim plaintiffs were unable to fund their business operations and negotiated deals and an immediate injection of capital was required.

23. On May 3, 2019, Avatar proposed a $50,000.00 increase to the loan all as more particularly set forth in the Second Modification of the Branford Mortgage. In consideration for the increased credit line, Avatar demanded additional collateral.

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24. Given their financial condition at the that time, as created by Avatar's actions, the defendant/counter-claim plaintiffs were not in a position to decline the additional funds.

COUNT I: TORTIOUS BREACH OF CONTRACT

1-24 Paragraphs 1-24 above are herein incorporated as Paragraphs 1-24 of this Count as if fully realleged and set forth herein.

25. Due to the failure of the plaintiff/counter-claim defendant, Avatar, to furnish a signed partial release and discharge for certain portions of real property located at 49 Leetes Island Road, Branford, Connecticut, Global Partners, LP withdrew its agreement and canceled its development deal causing the defendants/counter-claim plaintiffs substantial monetary damages.

26. The plaintiff/counter-claim defendant intentionally failed to release and discharge the Branford Property as agreed upon by both parties.

27. Said conduct constituted a willful disregard of the defendant/counter-claim plaintiffs' rights under the agreement with the apparent sole intention of causing monetary damages to defendant/counter-claim plaintiffs.

28. As a result of the plaintiff/counter-claim defendant's tortious breach of contract, the defendants/counter-claim plaintiffs sustained injuries in the form of substantial damages.

COUNT II: TORTIOUS BREACH OF CONTRACT

1-24 Paragraphs 1-24 above are herein incorporated as Paragraphs 1-24 of this Count as if fully realleged and set forth herein.

25. Due to the delay of the plaintiff/counter-claim defendant, Avatar, in furnishing a signed partial release and discharge for certain portions of real property located at 49 Leetes Island Road, Branford, Connecticut, Cumberland Farms, Inc. withdrew its agreement and

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canceled its purchase of land causing the defendants/counter-claim plaintiffs a severe monetary shortfall and substantial injury.

26. The plaintiff/counter-claim defendant intentionally failed to release and discharge certain portions of parcels, as agreed upon by both parties, which constitutes, at the very least misrepresentation, if not malicious and outrageous conduct, in light of said agreement and illustrates a willful disregard of the defendants/counter-claim plaintiffs' right under the agreement with the apparent sole intention of causing monetary damages to same.

27. As a result of the plaintiff/counter-claim defendant's tortious breach of contract, the defendants/counter-claim plaintiffs sustained injuries in the form of substantial monetary damages.

COUNT III: TORTIOUS BREACH OF CONTRACT - PETROGAS

1-24 Paragraphs 1-24 above are herein incorporated as Paragraphs 1-24 of this Count as if fully realleged and set forth herein.

25. Due to the delay of the plaintiff/counter-claim defendant, Avatar, in furnishing a signed partial release and discharge for certain portions of real property located at 49 Leetes Island Road, Branford, Connecticut, Petrogas Group New England, Inc. withdrew its agreement and canceled its plans to develop a certain portion of land causing the defendants/counter-claim plaintiffs a severe monetary shortfall and substantial injury.

26. The plaintiff/counter-claim defendant intentionally failed to release and discharge certain portions of parcels, as agreed upon by both parties, which constitutes, at the very least misrepresentation, if not malicious and outrageous conduct, in light of said agreement and illustrates a willful disregard of the defendants/counter-claim plaintiffs' rights under the agreement with the apparent sole intention of causing monetary damages to same.

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27. As a result of the plaintiff/counter-claim defendant's tortious breach of contract, the defendants/counter-claim plaintiffs sustained injuries in the form of substantial monetary damages.

COUNT IV: BREACH OF IMPLIED COVENANT OF GOOD FAITH AND FAIR DEALING

1-24 Paragraphs 1-24 above are herein incorporated as Paragraphs 1-24 of this Count as if fully realleged and set forth herein.

25. The plaintiff/counter-claim defendant violated its covenant of good faith and fair dealing as imposed by the Release Agreement in that it voluntarily and knowingly acted to injure the plaintiff's right to receive the benefits of the agreement in that it purposefully did not sign the partial release forms, as agreed upon.

26. As a result of the plaintiff/counter-claim defendant's actions, the defendants/counter-claim plaintiffs sustained injuries in the form of substantial monetary damages.

COUNT V: PROMISSORY ESTOPPEL

1-24 Paragraphs 1-24 above are herein incorporated as Paragraphs 1-24 of this Count as if fully realleged and set forth herein.

25. The Release Agreement was discussed numerous times between the plaintiff/counter-claim defendant, Avatar's representatives and/or officers, and the defendant/counter-claim plaintiff, Hartmann. Further, the Release Agreement was memorialized and acknowledged by both parties via email on or about March 14, 2017.

26. In reliance of said promised Release Agreement, the defendant/counter-claim plaintiff entered into business negotiations with Global Partners, LP, Alliance Energy, LLC, Cumberland Farms, Inc., and Petrogas Group New England, Inc. and received a signed, executed letter of intent for each entity, as outlined above and as attached hereto as

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Exhibits 'A', 'C' and 'D', respectively.

27. In reliance on said promised Release Agreement, and ultimately the failure of the plaintiff/counter-claim defendant to uphold said promise and agreement the defendants/counter-claim plaintiffs sustained injuries in the form of substantial monetary damages.

28. Plaintiff/counter-claim defendant, is estopped from asserting its claim for foreclosure of the mortgage as it its actions created the alleged default.

COUNT VI: CONNECTICUT UNFAIR TRADE PRACTICES ACT (C.G.S. §42-110a et seq.)

1-24 Paragraphs 1-24 above are herein incorporated as Paragraphs 1-24 of this Count as if fully realleged and set forth herein.

25. The defendants/counter-claim plaintiffs, Hartmann, Barons, and Partners, are "person(s)" as defined by C.G.S. §42-110a(3).

26. At all relevant times, the plaintiff/counter-claim defendant, Avatar, was engaged in trade or commerce as defined by C.G.S. §42-110a(4).

27. Avatar's acts and omissions as described above constitute an unfair act or practice, in the course of trade or commerce, within the meaning of C.G.S. §42-110b(a).

28. Avatar's unfair and deceptive acts and practices caused an ascertainable loss of property or money in Connecticut, in violation of the Connecticut unfair Trade Practices Act, C.G.S. §42-110a, et seq.

29. As a direct and proximate result of Avatar's unfair and deceptive conduct, the defendants/counter-claim plaintiffs incurred substantial damages, in an amount to be determined at trial but at a minimum in the amount of seven million dollars ($7,000,000.00), including without limitation punitive damages and attorneys' fees and

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costs.

30. Pursuant to C.G.S. §42-110g(c), the defendants/counter-claim plaintiffs have mailed a copy of this Counterclaim to the Attorney General for the State of Connecticut and the Connecticut Commissioner of Consumer Protection.

COUNT VII: NEGLIGENT MISREPRESENTATION

1-24 Paragraphs 1-24 above are herein incorporated as Paragraphs 1-24 of this Count as if fully realleged and set forth herein.

25. The defendants/counter-claim plaintiffs, Hartmann, Barons, and Partners, relied on the representation of the plaintiff/counter-claim defendant, Avatar, that the Release Agreement would be adhered to for release and discharge of certain portions of real property situated in the town of Branford, at 49 Leetes Island Road, from the lien and operation of the Branford Mortgage Deed for good and valuable consideration.

26. The plaintiff/counter-claim defendant, however, failed to honor its representation made to the defendants/counter-claim plaintiffs requesting the release of said lien upon receipt of good and valuable consideration.

27. As a result of the defendants/counter-claim plaintiffs' reliance on the plaintiff/counter-claim defendant's misrepresentation, the defendants/counter-claim plaintiffs sustained substantial injuries in the form of monetary damages.

COUNT VIII: INTENTIONAL MISREPRESENTATION

1-24 Paragraphs 1-24 above are herein incorporated as Paragraphs 1-24 of this Count as if fully realleged and set forth herein.

25. The defendants/counter-claim plaintiffs, Hartmann, Barons, and Partners, relied on the representation of the plaintiff/counter-claim defendant, Avatar, that the Release Agreement

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would be adhered to for release and discharge of certain portions of real property situated in the town of Branford, at 49 Leetes Island Road, from the lien and operation of the Branford Mortgage Deed for good and valuable consideration.

26. The plaintiff/counter-claim defendant knew that the defendant/counter-claim plaintiff needed additional funding to move forward with its negotiated business deals, as outlined above. Due to the knowledge of said business deals, Avatar knew its failure to comply with the Release Agreement would force defendants/counter-claim plaintiffs into a perilous financial situation.

27. Avatar then induced the defendants/counter-claim plaintiffs to enter a Second Modification of the Branford Mortgage for the sole purpose of securing additional property to further collateralize the previous loans to the defendants/counter-claim plaintiffs.

28. The plaintiff/counter-claim defendant, intentionally, failed to honor the representation that they made to the defendants/counter-claim plaintiffs.

29. As a result of the defendants/counter-claim plaintiffs' reliance on the plaintiff/counter-claim defendant's intentional misrepresentation, notwithstanding the borrowing of additional monies, the defendants/counter-claim plaintiffs sustained substantial injuries in the form of monetary damages as a direct and proximate result of the failure to release by the plaintiff/counter-claim defendant.

COUNT IX: BREACH OF CONTRACT

1-24 Paragraphs 1-24 above are herein incorporated as Paragraphs 1-24 of this Count as if fully realleged and set forth herein.

25. Due to the delay of the plaintiff/counter-claim defendant, Avatar, in furnishing a signed partial release and discharge for certain portions of real property located at 49 Leetes Island

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Road, Branford, Connecticut, Global Partners, LP withdrew its agreement and canceled its development deal causing the defendants/counter-claim plaintiffs a severe monetary shortfall and substantial monetary damages.

26. The plaintiff/counter-claim defendant breached the Release Agreement by failing to perform their obligations under the agreement.

27. As a result of the plaintiff/counter-claim defendant's breach of agreement, the defendants/counter-claim plaintiffs sustained injuries in the form of monetary damages.

COUNT X: BREACH OF CONTRACT

1-24 Paragraphs 1-24 above are herein incorporated as Paragraphs 1-24 of this Count as if fully realleged and set forth herein.

25. Due to the delay of the plaintiff/counter-claim defendant, Avatar, in furnishing a signed partial release and discharge for certain portions of real property located at 49 Leetes Island Road, Branford, Connecticut, Cumberland Farms, Inc. withdrew its agreement and canceled its purchase of land causing the defendants/counter-claim plaintiffs a severe monetary shortfall and substantial injury.

26. The plaintiff/counter-claim defendant breached the Release Agreement by failing to perform their obligations under the agreement.

27. As a result of the plaintiff/counter-claim defendant's breach of contract, the defendants/counter-claim plaintiffs sustained injuries in the form of monetary damages.

COUNT XI: BREACH OF CONTRACT

1-24 Paragraphs 1-24 above are herein incorporated as Paragraphs 1-24 of this Count as if fully realleged and set forth herein.

25. Due to the delay of the plaintiff/counter-claim defendant, Avatar, in furnishing a signed

partial release and discharge for certain portions of real property located at 49 Leetes Island Road, Branford, Connecticut, Petrogas Group New England, Inc. withdrew its agreement and canceled its plans to develop a certain portion of land causing the defendants/counter-claim plaintiffs a severe monetary shortfall and substantial monetary damages.

26. The plaintiff/counter-claim defendant breached the Release Agreement by failing to perform their obligations under the agreement.

27. As a result of the plaintiff/counter-claim defendant's breach of contract, the defendants/counter-claim plaintiffs sustained injuries in the form of monetary damages.

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WHEREFORE, the defendants/counter-claim plaintiffs claim:

1. Monetary damages;
2. Attorney's fees;
3. Punitive Damages as to Count VI;
4. Interest;
5. Interest pursuant to C.G.S. §37-3a (Usury charge);
6. Costs;
7. Such other relief as in law or equity this Court may deem just, including without limiting declaring the mortgage void and enforceable as a result of the violation of §37-4 of the C.G.S.

THE DEFENDANTS/COUNTER-CLAIM PLAINTIFFS

BY:___006814_____
James S. Brownstein, Esq.
Michael Iovanna, Esq.
Neubert Pepe & Monteith, PC
Their Attorney
195 Church Street, Fl 13
New Haven, CT 06510
(203) 821-2000
Juris No.: 407996

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CERTIFICATION

I certify that a copy of the above was or will immediately be mailed or delivered electronically or non-electronically on this 4th day of December, 2019, to all counsel and self-represented parties of record and that written consent for electronic delivery was received from all counsel and self-represented parties of record who were or will immediately be electronically served, as follows:

Law Offices of Robert J. Piscitelli, LLC
56 East Main Street, PO Box 805
Avon, CT 06001

_____006814_____
James S. Brownstein
Commissioner of the Superior Court

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EXHIBIT 'A'

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FIRST HARTFORD CORPORATION
149 COLONIAL ROAD
MANCHESTER, CT 06042

LETTER OF INTENT
FOR ACQUISITION OF PROPERTY

January 30, 2017

R.D. Hartmann, Sr.
Oil Barons Inc.
114 Cascade Boulevard
Milford, CT 06460

Dear Mr. Hartmann:

The purpose of this Letter Of Intent is to outline and memorialize the proposed terms and conditions which Cumberland Farms, Inc., or its nominee (the "Purchaser") would purchase from Oil Barons Inc., (the "Seller") a certain parcel of land and/or building(s) located at 49 Leetes Island Road, Branford, CT, free and clear of all tenants and occupants of the property. Upon written acceptance of this proposal by you or on behalf of the Seller, both parties shall enter into good faith negotiations to agree upon a form of Purchase and Sale Agreement mutually satisfactory to both parties.

Terms and Conditions

- Premises: The term "Premises" shall include the land and improvements located in the Town of Branford, State of Connecticut commonly known as 49 Leetes Island Road and described on Exhibit "A" (if the legal description is not available at the time of execution of this agreement the parties shall attach the description as soon as same is available) together with all rights of ingress and egress, easements benefiting the Premises, leases affecting the Premises, if any, and generally, all rights and benefits that pertain or relate to the land and improvements located thereon.

- Existing Tenants: ~~Seller represents and warrants that there are no existing tenants. In any event~~, Seller represents and warrants that Seller shall deliver the Premises at closing free and clear of all tenants or occupants.

  Purchase Price: Three Million One Hundred Thousand ($3,100,000) Dollars.

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- Deposit: The sum of Fifty Thousand ($50,000) escrow deposit shall be deposited with First American Title Insurance Company or its agent (the "Escrow Agent") as a deposit for the purchase and sale of the Premises within ten (10) days after execution of the Purchase Agreement. OK Escrow agent to be agreed upon.

  In the event Purchaser elects to terminate this agreement either prior to the expiration of the Feasibility Period or Permitting Period, or does not waive the contingencies within the Feasibility Period or the Permitting Period, then the Deposit shall be returned to Purchaser. Purchaser's liability for failure to close after satisfaction and waiver of all contingencies shall be limited to forfeiture to Seller of Deposit made by Purchaser as liquidated damages. At closing, the Deposits shall be applied to the Purchase Price as a credit to the Purchaser.

- Feasibility Period: The Purchaser shall have a period of One Hundred and twenty (120) days from the execution of the Purchase Agreement to accomplish its due diligence with respect to the Premises (the "Feasibility Period"). Purchaser shall have the right to conduct any/all necessary environmental assessments, geotechnical testing, title review, surveys, zoning, availability of utilities, engineering studies, etc. to verify and satisfy to the Purchaser's sole discretion that the Premises can be acquired, financed, and used for its intended purpose. Within five (5) days from the date hereof, Seller shall deliver to Purchaser, without charge to Purchaser, (i) all engineering and architectural data and reports, all environmental and title reports, all leases and occupancy agreements, and any other information in Seller's possession, if any, that might aid Purchaser's feasibility study of the Real Estate (the "Diligence Materials") or (ii) a letter indicating that Purchaser does not have any Diligence Materials in its possession.

  Purchaser may, at Purchaser's sole risk and expense, access the Premises, provided that Purchaser does not materially interfere with the operations of the current user(s) of the Premises, to perform preliminary due diligence activities following the execution of this Letter of Intent, including, but not limited to, boundary and topographical surveys, an environmental and geotechnical assessment, and visual site inspection. Purchaser and Seller acknowledge that the cost of such due diligence activities shall be the sole responsibility of Purchaser. It is understood that all persons entering onto the Premises pursuant hereto shall be covered by commercially reasonable general liability insurance.

  Seller shall be responsible for any remediation, removal or other environmental clean up required by law in order to meet clean up standards for unrestricted use of the Premises, as well as for the removal of any and all underground and above-ground storage tanks, pumps, lines and any other components of fuel and/or oil delivery and storage systems located on the Premises. Purchaser shall be responsible for the demolition of the existing building. Notwithstanding the above Seller's exposure will be capped at the first Fifty Thousand ($50,000) towards any/all environmental clean up required. OK

- Governmental Permits/Approvals: The Purchaser shall have a period of twelve (12) months after the expiration of the Feasibility Period (the "Permitting Period") to obtain all necessary governmental licenses, permits, and approvals to construct, or demolish the existing, or proposed structure consisting of a convenience store with self-service gasoline and other Fuel Product dispensing facilities and fast food facility in a configuration deemed appropriate by Purchaser in its sole discretion.

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- Seller represents and warrants, to the best of its knowledge and belief, that the Premises has not been used as a cemetery, that the Premises is not encumbered by any use restrictions, and that there exist no other impediments to use of the Premises for the purposes herein contemplated by Purchaser.

- Insurance: Until delivery of title at closing, Seller shall maintain in full force and effect adequate fire and extended coverage insurance. Risk of loss shall remain with the Seller until the delivery of the title. In the event of a fire or other casualty to the premises prior to the delivery of the title, Purchaser shall have the option to cancel this offer (and if so canceled, Seller shall return our deposit forthwith), or if not so canceled, accepted delivery of the title.

- Purchaser's Contingencies:

  Due Diligence/ Title: Satisfaction with respect to all due diligence matters. Free and clear marketable fee simple title insurance by First American Title Insurance Company.

  Governmental Permits/Approvals: Receipt of all federal, state and local licenses, permits and approvals, including but not limited to any approvals from the appropriate local zoning board and any building or other permits. and the expiration of all applicable appeal periods in connection therewith (hereinafter referred to as the "Approvals") necessary for the construction and operation of a convenience store with self-service gasoline and other fuel product dispensing facilities and fast food facility in a configuration deemed appropriate by Purchaser in its sole discretion.

  Seller's Work: Seller agrees as a condition of Closing that it will complete the following work:

  - Seller shall cause the disconnection of utilities prior to the Closing.
  - Purchaser shall be responsible for the removal of any/all underground tanks.
  - Seller shall deliver the site at Closing free and clear of all tenants or occupants. and fuel contract/ROFR's etc. PY

- Financing: None

- REC Approval: This Letter Of Intent is conditioned upon the approval of the terms by Purchaser's Real Estate Committee.

- Broker(s): The Proto Group and NRT Realty LLC.
  Seller shall pay all commissions due to any broker or any person claiming brokerage fees with respect to the sale of the Premises at Closing pursuant to a separate agreement.

  Purchase and Sale Agreement: Purchaser shall, after the execution hereof, cause to be prepared a Purchase Agreement, on a form chosen by Purchaser, by and between Seller and Purchaser containing the terms outlined herein and such other terms and conditions as are

customary and as may be reasonably acceptable to the parties. The Purchase Agreement when executed shall be assignable by Purchaser.

- Cooperation/ Property off the Market: Upon execution of this Letter of Intent, the Seller agrees not to market the Premises, and will not directly or indirectly participate in any discussions or negotiations regarding a lease and/or purchase of the Premises with any other party. The Seller and the Purchaser agree to mutually assist each other in obtaining all necessary governmental approvals and permits. Seller shall share with Purchaser, within five (5) days after the signing of the Purchase Agreement, all information within its possession or control relating to the Premises, including, without limitation, pertinent studies, surveys, tests, plans, title reports, environmental reports, traffic studies, appraisals.

- Closing: Closing shall take place within thirty (30) days of Purchaser obtaining all necessary governmental approvals and satisfying all contingencies, with all applicable appeal periods having expired without any appeal having been taken. Purchaser shall be entitled to extend the closing one time for a period of twenty one (21) days if necessary.

- Confidentiality: Seller hereby agrees to keep the terms of this Letter of Intent confidential and not disclose same to any other person or entity, without the prior consent of the other party. This provision shall survive the expiration or termination of this Letter of Intent.

- Expiration Date:

This Letter of Intent is only a partial list of business points that shall become part of an eventual Purchase and Sale Agreement to be prepared by Purchaser for review by Seller. This letter of intent is non-binding but intended to impose upon the parties hereto an obligation to negotiate, in good faith, a Purchase and Sale Agreement during the P&S Negotiation Period. Notwithstanding any other provision contained herein, the following obligations are binding and shall survive the termination of this Letter of Intent and Buyer shall have the right to recover any damages suffered as a result thereof: (i) any representations and warranties of Seller contained herein, (ii) Purchaser's right to access the Premises as provided in the paragraph entitled "Feasibility Period," (iii) Seller obligation to deliver "Diligence Materials" as provided for in the paragraph entitled "Feasibility Period'" (iv) the paragraph entitled "Confidentiality," and (v) the paragraph entitled "Cooperation/Property Off the Market". In the event of a conflict between this Letter of Intent and the Purchase and Sale Agreement, the terms of the Purchase and Sale Agreement shall prevail. Please review this proposal and if it meets your approval, sign and date in the space provided below. The parties acknowledge that they have not set forth herein nor agreed upon all essential terms of the subject matter of an agreed transaction, including, without limitation, warranties and representations, conditions precedent, indemnities and other anticipated terms, and that such essential terms will be the subject of further negotiations.

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Very Truly Yours,

FIRST HARTFORD CORPORATION

By: Peter Yusky

Date: 1/31/2017

Seller

Reviewed, Accepted and Agreed By:

Duly Authorized Owner

Date: 2/6/2017

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SCHEDULE A
DESCRIPTION
(CONTINUED)

Less and excepting therefrom the following:

Said premises are situated in the Town of Branford, County of New Haven and State of Connecticut on the southwesterly side of Present Leetes Island Road, at Present I-95 S.B. On-Ramp, containing 1,131 square feet, more or less, bounded and described as follows:

NORTHEASTERLY- by Present Leetes Island Road, 159 feet, more or less;

SOUTHEASTERLY- by Present I-95 S.B. On-Ramp, 42 feet, more or less;

WESTERLY - by remaining land of Oil Barons, Inc., 43 feet, more or less, by a line designated "TAKING LINE AND NON-ACCESS LINE", as shown on the map hereinafter referred to;

SOUTHWESTERLY- by said remaining land, 130 feet, more or less, by a line designated "TAKING LINE", as shown on said map;

NORTHWESTERLY- running to a point.

together with a full and perpetual easement to slope for the safety of the highway and remove, use or retain excavated material under, over and across portions of said remaining land within an area of 2,054 square feet, more or less, located between and opposite approximate Stations 15+00 and 16+50 right Base Line and Center Line, Present Leetes Island Road, as more particularly shown on said map.

Together with the right to enter portions of said remaining land for the purpose of constructing driveway and bituminous concrete curb, as more particularly shown on said map. Said right of entry shall terminate automatically upon completion of said work by the State.

And said premises are more particularly shown and delineated on a map entitled: "TOWN OF BRANFORD MAP SHOWING LAND ACQUIRED FROM OIL BARONS INC. BY THE STATE OF CONNECTICUT DEPARTMENT OF TRANSPORTATION I-95 INTERCHANGE 56 IMPROVEMENTS AND LEETES ISLAND ROAD SCALE: 1" = 40' APRIL 1997 TRANSPORTATION CHIEF ENGINEER - BUREAU OF ENGINEERING AND HIGHWAY OPERATIONS JAMES F. BYRNES, JR., P.E.", Last Revised 04/03/00, Sheet 1 of 1, (14-148-6).

SCHEDULE A
DESCRIPTION

All that certain piece or parcel of land, with the buildings and all other improvements thereon, situated in the Town of Branford, County of New Haven and State of Connecticut, bounded as follows:

BEGINNING at a point in the southwesterly line of Leete's Island Road being the point of intersection of the boundary between the premises herein described and land belonging to the State of Connecticut being the limited access line of the westbound entrance ramp of I-95; thence running South 64 degrees, 31 minutes, 37 seconds West along land of the State of Connecticut, 6.07 feet to a point; thence running South 63 degrees, 47 minutes, 17 seconds West along land of the State of Connecticut, 69.78 feet to a point; thence running South 00 degrees, 47 min. 47 seconds West along land of the State of Connecticut, 84.01 feet to a point; thence running South 57 degrees, 50 minutes, 12 seconds West along land of the State of Connecticut, 233.08 feet to a point; thence running Southwesterly in a curve to the right of radius 728.61 feet along land of the State of Connecticut, 35.26 feet to a point; thence running North 29 degrees, 20 minutes, 08 seconds West along land now or formerly of Frank A. Durso, 30 feet to a point; thence running North 59 degrees, 30 minutes, 21 seconds East along land now or formerly of Frank A. Durso, 25 feet to a point; thence running South 31 degrees, 23 minutes, 10 seconds East along land now or formerly of Frank A. Durso, 10 feet to a point; thence running North 60 degrees 13 minutes, 31 seconds East along land now or formerly of Frank A. Durso, 9.61 feet to a point; thence running North 57 degrees, 50 minutes, 12 seconds East along land now or formerly of Frank A. Durso, 81.65 feet to a point; thence running North 23 degrees, 15 minutes, 01 seconds West along other land in part belonging formerly to the State of Connecticut and in part belonging now or formerly to Frank A. Durso, 169.56 feet to a point; thence running North 57 degrees, 50 minutes, 12 seconds East along land now or formerly of Frank A. Durso, 145.45 feet to a point; thence running North 70 degrees, 34 minutes, 10 seconds East along land now or formerly of Frank A. Durso, 190.50 feet to the southwesterly line of Leete's Island Road; Thence running Southeasterly along the southwesterly line of Leete's Island Road, 187.79 feet to the point and place of beginning.

Together with, in common with others, a right of way to pass and repass on foot or in vehicles over a triangular shaped piece of land bounded: East by Leetes Island Road, 50 feet; South by the northerly line of the premises above described, 75 feet; Northwest by land now or formerly of Frank A. Durso by a straight line.

Said premises are shown on a survey by Gilbert & Kalonty, Architects Engineers and Land Surveyors entitled "Survey of property Connecticut Tpke & Leetes Island Rd, Branford, Conn, Sun Oil Company", scale 1" = 20' July 27, 1967 and contains 1.5 acres.

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EXHIBIT 'B'

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Maria Rivera

From: Jim Brownstein
Sent: Tuesday, October 8, 2019 9:14 PM
To: Maria Rivera
Subject: Fwd: Oil Barons

[redacted]

Sent from my iPhone

Begin forwarded message:

From: "Robert Hartmann Sr." <[redacted]>
Date: October 8, 2019 at 4:45:39 PM EDT
To: Jim Brownstein <[redacted]>
Subject: Fwd: Oil Barons

---------- Forwarded message ---------
From: **Jerry Zevenbergen** <[redacted]>
Date: Tue, Mar 14, 2017 at 6:34 PM
Subject: Oil Barons
To: Robert Hartmann Sr. <[redacted]>
Cc: Carla Stadler <[redacted]>, Michelle Mittie <[redacted]>, TR Hazelrigg IV <[redacted]>

Robert,

Provided the loan is current and other properties are in similar shape or better than when we made our loan, that release price for the Oil Barons property should not be a problem.

Please give us a couple weeks' notice before we need to act.

Thanks,

Jerry Zevenbergen, CEO

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For Avatar's current Rates and Product Offerings, click here

Avatar Financial Group

1200 Westlake Avenue North, Suite 1006

Seattle, WA 98109

Direct: 206-719-5085 ext 103

Toll Free: 1-888-896-0078

www.avatarfinancial.com



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From: Robert Hartmann Sr. [mailto:[redacted]
Sent: Tuesday, March 14, 2017 12:13 PM
To: Jerry Zevenbergen <[redacted]>
Cc: Carla Stadler <[redacted]; Michelle Mittie <[redacted]>
Subject: Re: Interest allocation

Ok No problem I will have the accountants do that, As far as the business at the venue going that has not been doing well we have suffered serious revenue losses with weather on the past events and the insurance on 3 occasions have not paid for the damages to building & property that we now have in court and legal fees continue to grow.

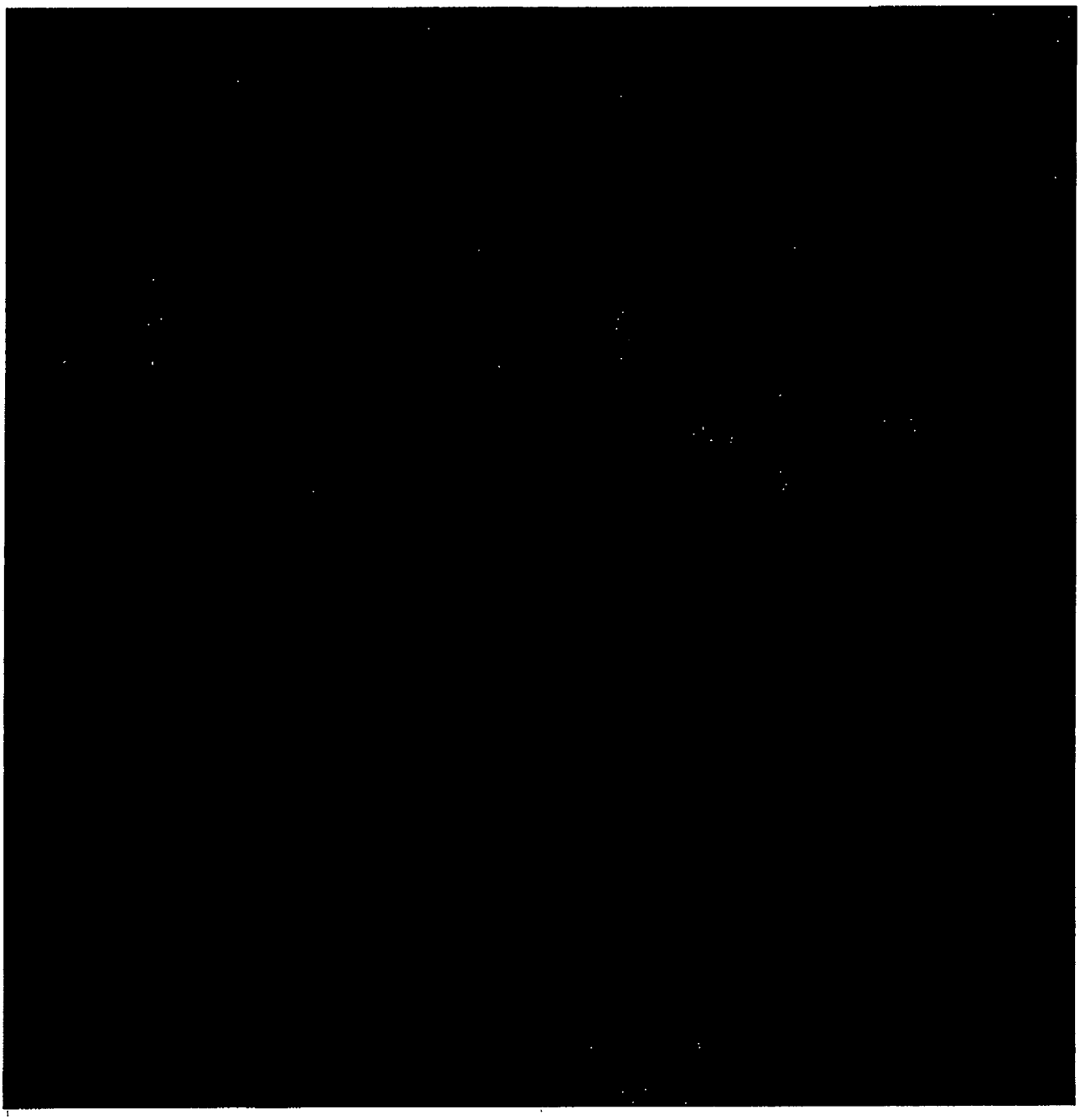
Other then that the Fox Hole Bar & Grill is picking up and growing weekly with new family faces. We are now building the Motor Sports area and looking very good. Enclosed please see the 3 d plan

We have a some problems with are tenant in Oil Barons but soon to have that rectified with a New Tennant and we will be demoing the property and rebuilding a new facility with a new national tenant

when that gets signed off I will be looking to pay your firm $1.5 million down for release of that property do you think there will be any problem with that,

Please advise if there will be.

I trust all is well with you.



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Direct: 206-719-5085 ext 103

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--

Hartmann Development LLC.
Commercial Lending
Robert D. Hartmann Sr.
Executive Chairman
Cell; 203-410-2666 | Direct: (203) 876-1152 xt 105 |
Fax: (203) 876-7566 | Email: rdhsr@hartmanndevelopmentllc.com<
www.hartmanndevelopmentllc.com

www.investhdmg.com

www.swampfoxentertainmentcomplex.com
114 Cascade Boulevard
Milford, CT 06460

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Hartmann Development LLC.
Commercial Lending
& Investments

Robert D. Hartmann Sr.
Executive Chairman
Direct: 203-410-2666
Fax: (203) 878.6036
Email: rdhsr@hartmanndevelopmentllc.com<
www.swampfoxentertainmentcomplex.com
www.sflovefest.com
www.hartmanndevelopmentllc.com
www.investhdmg.com

50 Eveningside Drive
Milford, CT 06460

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EXHIBIT 'C'

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AGREEMENT TO LEASE

This **AGREEMENT TO LEASE** (this "Lease") is dated as of May 25, 2017 (the "Effective Date") and is hereby entered into by and between **OIL BARONS, INC.** ("Landlord") and **ALLIANCE ENERGY LLC**, a Massachusetts limited liability company with a business address of 800 South Street, Suite 500, Waltham, MA 02454 ("Tenant" or "Alliance").

WITNESSETH:

WHEREAS, Landlord and Naim Kabbani and Majed Kabbani (collectively, "Kabbani") were parties to that certain lease executed on June 22, 2005 (the "Original Lease") for the lease premises located at 49 Leetes Island Road, Branford, CT 06405 ("Leased Premises"); and

WHEREAS, Kabbani assigned its interest in the Original Lease to 95 Express Fuel & Convenience LLC ("Express Fuel") by virtue of an Assignment of Lease dated July 20, 2007; and

WHEREAS, Alliance: (i) suppled petroleum products to Express Fuel at the Leased Premises; and (ii) extended credit to Express Fuel in connection with operation of the Leased Premises (collectively, the "Supply Agreement"); and

WHEREAS, Alliance and Landlord entered into that Amended and Restated Non-Disturbance Agreement dated July 20, 2007 (the "NDA") in connection with the Supply Agreement; and

WHEREAS, Express Fuel is in default under the terms of the Original Lease; and

WHEREAS, Landlord and Tenant have agreed to enter into this Lease in order for Tenant to occupy the Leased Premises while Landlord and Tenant negotiate a long term lease and development agreement for the Leased Premises, as further set forth in the Memorandum of Agreement dated May 1, 2017 and attached hereto as Exhibit A.

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

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1. **Leased Premises, Commencement, and Term**: In consideration of the rents and covenants hereinafter contained to be paid, performed and observed by Tenant, Landlord does hereby demise and lease unto Tenant a certain piece or parcel of land commonly known as 49 Leetes Island Road, Branford, CT 06405 ("Leased Premises") and being more particularly bounded and described in Exhibit B, attached hereto and made a part hereof, together with (a) all buildings, structures and other improvements now or hereafter situated thereon; (b) any and all rights, privileges, easements, appurtenances and rights of access to and egress from the Land in any way benefiting, belonging or pertaining thereto, and (c) all rights, title and interest, if any, of Landlord, in, to and with respect to any land laying in the bed of any street, road, avenue or way, open or proposed in front of or adjoining the land, to the center thereof, and all strips and gores adjacent to and abutting or used in connection.

Landlord anticipates delivery of the Leased Premises to Tenant free and clear of any and all tenants, licensees and occupants, on **June 1, 2017** ("Delivery Date") in substantially the same condition as of the Effective Date Tenant shall have the right to terminate this Lease in the event the Landlord is not able to deliver the Leased Premises to Tenant as provided herein on or before August 1, 2017. Parties agree to act in good faith. Landlord and Tenant acknowledge that the two existing subtenant's at the Leased Premises may remain at the Leased Premises.

The term of the Lease shall be for one (1) year ("Term") commencing on the Delivery Date ("Commencement Date") and terminating at 5:00PM on the one year anniversary thereof. Tenant shall have the option to extend the Term for two (2) additional terms of one (1) year each by providing written notice to the Landlord prior to the expiration of the prior term. Tenant shall be permitted to terminate this Lease upon 180 days prior written notice to the Landlord in which event the parties obligations hereunder shall terminate and neither party shall have any further obligations hereunder. Notwithstanding the above, the minimum term of this Lease is one (1) year.

2. **Use**: Tenant shall have the right to use and/or occupy the Leased Premises for any lawful purpose or purposes permitted by applicable law. Tenant shall have exclusive control, possession, occupancy, use, and management of the Leased Premises. Tenant need not operate the Leased Premises or conduct business of any nature in the Leased Premises, or use or operate the Leased Premises in any particular manner. Notwithstanding, tenant acknowledges that Landlord may commence removing trees, grading and constructing a retaining wall as part of the Work, provided that such construction activities shall not interfere with Tenant's occupancy of the Leased Premises.

3. **Rent**: Tenant agrees to pay to Landlord base rent in the amount of Eleven Thousand Dollars ($11,000.00) per month due and payable on the first day of each calendar month, plus 1/12 of real estate taxes, during the Term. Base rent during each option year, if elected, shall increase five (5) percent over the prior year's base rent. Notwithstanding anything to contrary set forth in this Lease and provided that Tenant is not otherwise operating its convenience store and gas station while Landlord is performing the Work, defined in the MOU, base rent and any additional rent (excluding real estate taxes) due or owed under this Lease shall be waived commencing on the date that Landlord commences the Work, as defined in the MOU, until the completion of such Work ("Work Completion Date"), provided that Tenant shall continue to be obligated to pay 1/12 of real estate taxes during such time period. Landlord's Work is estimated

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to take sixty (60) days. While Tenant is constructing the new site, base rent shall be at the rate of $5,000.00 per month (plus 1/12 of real estate taxes) commencing on the day following the Work Completion Date until the earlier of (a) 120 days after completion of the Work and delivery of the Leased Premises to Tenant, or (b) the opening of the New Site, as defined in the MOU, for business. Tenant's construction shall include the installation of new underground storage tanks. During the 120 day construction period Landlord shall be permitted to continue to prepare and complete rear portion of the Leased Premises, provided such construction activities do not interfere with Tenant's construction of the building and other improvements. All of Landlord's work must be completed prior to Tenant opening the New Site.

4. **Insurance**: Tenant, at its sole cost and expense, shall keep the Leased Premises and the buildings insured, during the Term of this Lease, against loss or damage by fire, with such allied perils coverage as is standard for other locations owned or operated by the Tenant, due regard being given to the height and type of buildings, their construction, use and occupancy. In the event that construction is in process at any time on a substantial improvement on the Leased Premises, fire and allied perils insurance shall be carried on the improvement during the course of construction with so-called builder's risk coverage in completed value form.

Tenant at its sole cost and expense shall maintain, during the Term of this Lease, comprehensive general public liability insurance against claims for bodily injury, death or property damage, occurring on, in or about the Leased Premises in such amounts reasonably determined by Tenant.

Any insurance required to be provided by Tenant pursuant to this Lease may be provided by blanket insurance covering the Leased Premises and other properties of Tenant provided that such blanket insurance complies with all of the other requirements of this Lease.

All insurance provided for in this Article shall be effected under valid and enforceable policies issued by insurers of recognized responsibility which are licensed to do business in the State of Connecticut. Any insurance provided for in this Article may contain a normal deductible clause consistent with the type of policy issued. Upon Landlord's written request (to be given not more frequently that once per calendar year), Tenant shall deliver certificates of insurance for the insurance coverages described above. All certificates of insurance shall name Landlord as an additional insured.

5. **Security Deposit**: Waived.

6. **Landlord's Obligations to Rebuild in the Event of Casualty**: Tenant shall have no obligation to rebuild any portion of the Leased Premises in the event of a casualty, and either party may elect to terminate this Lease in the event of a casualty.

7. **Maintenance**: Tenant shall only be obligated to undertake ordinary maintenance and repair of the Leased Premises during the Term. Tenant shall have no obligations to make capital repairs or replacements or any structural repairs or replacements during the Term.

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8. **Indemnification**:

a. Landlord's Indemnification. Except as otherwise provided for in this Lease, Landlord agrees to indemnify and save Tenant, and its parents, affiliates, subsidiaries, directors, officers, employees, agents, successors and assigns harmless from and against any and all claims, actions, notices, damages, penalties, liability and expense (including attorney's fees) related to or in connection with any loss of life, personal injury and/or damage to property arising from or out of, or directly or indirectly relating to: (i) any act or omission of Landlord, its agents, contractors or employees; and (ii) any failure of Landlord to perform and discharge its covenants and obligations hereunder (to the extent such claims, actions, notices, damages, penalties, liability and expense are not otherwise caused by the negligence or willful misconduct of the Tenant or its affiliates).

b. Tenant's Indemnification. Except as otherwise provided for in this Lease, Tenant agrees to indemnify and save Landlord and its directors, officers, employees, agents, successors and assigns harmless from and against any and all claims, actions, notices, damages, penalties, liability and expense (including attorney's fees) related to or in connection with any loss of life, personal injury and/or damage to property arising from any negligent act or omission of Tenant in its operations at the Leased Premises, its agents, contractors or employees, or by failure of Tenant to comply with all applicable laws or otherwise perform and discharge its covenants and obligations hereunder (to the extent such claims, actions, notices, damages, penalties, liability and expense are not otherwise caused by the negligence or willful misconduct of the Landlord or its affiliates).

c. Tenant shall have no liability, responsibility or risks associated with any existing Hazardous Materials located at, under or on the Leased Premises, as of the Delivery Date or during the Term, except to the extent there is a reportable release of a hazardous material caused by Tenant during the Term. In which event Tenant shall only be obligated to remediate such reportable release. Landlord shall be responsible and Landlord agrees to be responsible for any and all hazardous materials located at, on or under the Leased Premises, including any such hazardous materials that migrate onto or from the Leased Premises, except as set forth above. Tenant may, at its sole election, prepare a baseline report prior to the Delivery Date of this Lease. Tenant shall have no obligation to replace the underground storage tanks.

9. **Events of Default**: If any one or more of the following events (each an "**Event of Default**") shall happen:

a. Tenant:

(i) if default shall be made in the due and punctual payment of Rent to Landlord, and such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant; or

(ii) if default shall be made by Tenant in the performance of or compliance with any of the covenants, agreements, terms or provisions contained in this

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Lease, other than those referred to in the foregoing paragraph (a), and such default shall continue for a period of thirty (30) days after written notice thereof from Landlord to Tenant, except that in connection with a default not susceptible of being cured with due diligence within thirty (30) days the time of Tenant within which to cure the same shall be extended for such time as may be necessary to cure the same with all due diligence, provided Tenant commences promptly and proceeds diligently to cure the same; or

(iii) the occurrence of any of the following events: (i) the making by Tenant of any general arrangement or assignment for the benefit of creditors; (ii) Tenant's becoming a "debtor" as defined in 11 U.S.C. Section 101 or any successor statute thereto (unless, in the case of a petition filed against Tenant, the same is dismissed or withdrawn within sixty (60) days); (iii) the appointment of a trustee or receiver to take possession of substantially all of Tenant's assets located at the Leased Premises or of Tenant's interest in this Lease, where possession is not restored to Tenant within thirty (30) days; or (iv) the attachment, execution or other judicial seizure of substantially all of Tenant's assets located at the Leased Premises or of Tenant's interest in this Lease, where such seizure is not discharged within thirty (30) days; provided, however, in the event that any provision of this subparagraph (c) is contrary to any applicable law, such provision shall be of no force, and not affect the validity of the remaining provisions,

then and in any such event, Landlord at any time thereafter during the continuance of such Event of Default may give written notice to Tenant specifying such Event or Events of Default and stating that this Lease and the Term hereby shall expire and terminate on the date specified in such notice, which shall be at least sixty (60) days after the giving of such notice in case of any Event of Default; and, upon the date specified in such notice, this Lease and the Term hereby leased and all rights of Tenant under this Lease shall expire and terminate.

b. If Landlord shall: (i) fail to perform or observe any of the covenants of this Lease on Landlord's part to be performed or observed within thirty (30) days after receiving notice from Tenant thereof, except that in connection with a default not susceptible of being cured with due diligence within thirty (30) days the time of Landlord within which to cure the same shall be extended for such time as may be necessary to cure the same with all due diligence, provided Landlord commences promptly and proceeds diligently to cure the same, or (ii) materially breach any warranty or representation under this Lease (either of (i) or (ii) above being hereinafter referred to as a **"Landlord's Default"**), then Tenant, in addition to such other rights and remedies as may be available under this Lease, or at law or in equity, may, in its sole discretion (x) as applicable, perform such obligation(s) of Landlord in accordance with the provisions of this Lease on behalf of, and at the expense of Landlord; and/or (y) bring suit for the collection of any amounts for which Landlord is in default, seek injunctive relief, or seek specific performance for any other covenant or agreement of Landlord, without terminating this Lease; and/or (z) may terminate this Lease, without waiving its rights to damages for Landlord's Default.

10. **Assignment**: Tenant may assign this Lease to an affiliate of Tenant without Landlord's consent.

current term, and Landlord desires to accept such offer, Landlord shall immediately submit to Tenant a written copy of such offer with a full disclosure of all terms and provisions thereof, including name and address of offeror, and Tenant shall have forty-five (45) days after receipt thereof in which to notify Landlord in writing of its election to purchase or lease the Leased Premises at the same price (or rental), and upon substantially the same terms and provisions, as contained in such offer. Tenant's failure to timely deliver such notice shall constitute a waiver of its rights hereunder only as to the particular offer (and particular terms and conditions) then submitted to Tenant, provided, however, that if Tenant fails to exercise its option, and the transaction does not proceed upon the terms and conditions contained in said offer, Tenant's rights under this Section shall remain in full force and effect. Furthermore, if Tenant shall not exercise its rights hereunder, and if a sale is then made to a third party, said sale shall be made subject to this Lease (including Tenant's ongoing rights pursuant to this Section as to any subsequent sale or lease).

17. Authority:

a. Landlord represents to Tenant that:

i. Landlord has good and marketable fee simple title to the entire Leased Premises, free and clear of all easements, restrictions, liens and encumbrances.

ii. Landlord has full right, title, authority, and capacity to execute and perform this Lease and any other agreements and documents to which Landlord is a party and referred to or required by this Lease (collectively, the "**Lease-Related Documents**"); the execution and delivery of the Lease-Related Documents have been duly authorized by all requisite actions of Landlord; the Lease-Related Documents constitute valid, binding, and enforceable obligations of Landlord; and neither the execution of the Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Landlord's organizational documents), contract, or other restriction to which Landlord is a party or is bound. The foregoing representations and warranties shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

b. Tenant represents to Landlord that Tenant has full right, title, authority, and capacity to execute and perform this Lease and any other agreements and documents to which Tenant is a party and referred to or required by this Lease (collectively, the "**Tenant Lease-Related Documents**"); the execution and delivery of the Tenant Lease-Related Documents have been duly authorized by all requisite actions of Tenant; the Tenant Lease-Related Documents constitute valid, binding, and enforceable obligations of Tenant; and neither the execution of the Tenant Lease-Related Documents nor the consummation of the transactions they contemplate violates any agreement (including Tenant's organizational documents), contract, or other restriction to which Tenant is a party or is bound. The foregoing representations and warranties shall continue to apply in full force and effect throughout the Term as if made continuously during the Term.

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11. **Subordination and Superiority**: Landlord shall provide Tenant with a non-disturbance agreement in a form reasonably acceptable to Tenant prior to the Delivery Date.

12. **Surrender**: Tenant shall have no obligation to make any capital repairs or replacements to the building or any improvements located on the Leased Premises during the Term. Tenant shall have no obligation to remove any Trade Fixtures, improvements, buildings, or such any other equipment at the end of the Term, except as Tenant may elect, in its sole discretion.

13. **Removal of Hazardous Waste**: Tenant shall only be obligated to remove any hazardous waste and other petroleum products, toxic materials and waste that Tenant brought onto the Leased Premises during the Term.

14. **Notices**: All notices, demands and requests required under this Lease shall be in writing. All such notices, demands and requests shall be deemed to have been properly given if served personally or if sent by United States registered or certified mail, postage prepaid, or by a nationally recognized overnight courier service, providing proof of delivery addressed as hereinafter provided. All notices, demands, payments and requests mailed to Landlord shall be addressed to Landlord at the following address, or at such other address as Landlord may from time to time designate by written notice to Tenant:

To Tenant: Alliance Energy LLC
800 South Street, Suite 500
Waltham, MA 02454
Attn:

To Landlord: OIL Barons Inc.
114 Cascade Boulevard
Milford, CT 06460
Attention Robert D Hartmann Sr., President

All notices, demands, payments and requests mailed to Tenant shall be addressed to Tenant at the following address, or at such other address as Tenant may from time to time designate by written notice to Landlord.

15. **Quiet Enjoyment**: Landlord covenants and agrees that it has good right and lawful authority to lease the Leased Premises to Tenant and that Tenant shall quietly have and enjoy the Leased Premises and the buildings during the Term of this Lease without hindrance or molestation by any one claiming by or through Landlord. Landlord agrees that throughout the entire Term of this Lease it will not either voluntarily or involuntarily, cause or permit its fee simple interest in the Leased Premises to be encumbered in any manner other than for the Permitted Exceptions.

16. **Right of First Refusal**: If at any time during the Term of this Lease (and for a period of one hundred and eighty (180) days after its expiration), Landlord shall receive a bona fide offer to purchase the Leased Premises, or to lease same for a term to begin subsequent to the then

18. This Lease may be executed in counterparts, each of which shall be deemed an original and all of which taken together shall constitute one and the same document.

19. The terms of this Lease and MOU are prior to Tenant conducting any due diligence.

IN WITNESS WHEREOF, the parties have executed this Lease as of the date first set forth above.

LANDLORD
Oil Barons, Inc.

By: _____
Name:
Title: Its President

TENANT
Alliance Energy LLC

By: _____
Name: Gary Stain
Title: Senior V.P. Director of Real Estate & Development

GUARANTOR:
GLOBAL PARTNERS LP

By: **GLOBAL GP LLC**, its general Partner

By: _____
Name:
Title:

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MEMORANDUM OF UNDERSTANDING

ALLIANCE ENERGY LLC

And

OIL BARONS, INC.

This **MEMORANDUM OF UNDERSTANDING** (this "MOU") is dated as of May 25, 2017 (the "Effective Date") and is hereby entered into by and between **OIL BARONS, INC.** ("Barons") and **ALLIANCE ENERGY LLC**, a Massachusetts limited liability company with a business address of 800 South Street, Suite 500, Waltham, MA 02454 ("Alliance").

WITNESSETH:

WHEREAS, Barons and Nairn Kabbani and Majed Kabbani (collectively, "Kabbani") were parties to that certain lease executed on June 22, 2005 (the "Lease") for that lease premises located at 49 Leetes Island Road, Branford, CT 06405 ("Leased Premises"); and

WHEREAS, Kabbani assigned its interest in the Lease to 95 Express Fuel & Convenience LLC ("Express Fuel") by virtue of an Assignment of Lease dated July 20, 2007; and

WHEREAS, Alliance: (i) suppled petroleum products to Express Fuel at the Leased Premises; and (ii) extended credit to Express Fuel in connection with operation of the Leased Premises (collectively, the "Supply Agreement"); and

WHEREAS, Alliance and Barons entered into that Amended and Restated Non-Disturbance Agreement dated July 20, 2007 (the "NDA") in connection with the Supply Agreement; and

WHEREAS, Express Fuel is currently in default under the terms of the Lease; and

WHEREAS, Barons and Alliance have agreed to amend the Lease in order for Alliance to occupy the Leased Premises (the "Short Term Lease") while Barons and Alliance negotiate a long term development and lease agreement; and

WHEREAS, Barons and Alliance have entered into a short term lease agreement ("Short Term Lease") for the Leased Premises with the understanding that the parties will negotiate in good faith to enter into a longer term development and lease agreement whereby Barons will agree to undertake and complete the Work, as defined below, and Alliance will agree to enter into a fifteen (15) year lease agreement (the "New Lease"), excluding option terms, as further set forth in this MOU; and

NOW, THEREFORE, in consideration of the mutual covenants contained herein and for other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereby agree as follows:

A. In consideration of Alliance entering into the New Lease, Barons agrees to undertake and complete the following (collectively, the "Work"):

1. Prepare a lease, upon terms reasonably acceptable to Alliance, with an original term of fifteen (15) years with not less than six (6) option terms of five (5) years each.

2. Upon sixty (60) days prior written notice to Alliance,

a. Demolish the existing building and all improvements located at the Leased Premises;

b. Regrade the Leased Premises in accordance with the Plan and Specifications, as defined below;

c. Apply for and obtain all necessary Approvals for the construction of a gas station, and convenience store at the Leased Premises, including any signage;

d. Construct a new building pad at the Leased Premises in accordance with the Plans and Specification;

e. Bring all utilities within four (4) feet of the proposed pad position in accordance with the Plans and Specifications;

f. A foundation or providing electrical and plumbing stub up into a finished slab;

g. Provide necessary curb cuts and documentation supporting approvals from state and town;

h. Undertake and complete any off site development;

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i. Provide Alliance with certificate of origin for material brought onto the Leased Premises;

j. Rough grade the Leased Premises to 18 inches before finish grade; and

ki. Provide a report showing compaction of 95% throughout entire area being developed, including any parking areas.

B. In consideration of Baron entering into the New Lease and Baron's performance of the Work, Alliance agrees to undertake and complete the following:

1. Alliance will provide Baron with a preliminary site plan and specifications ("Plans and Specifications") showing the proposed finished grades, building pad, utility and drainage requirements. Tenant reserves the right to make minor modifications to the Plans and Specifications such as building size and number of dispensers at the site; and

2. Upon completion of the Work, Alliance shall apply for any and all permits necessary to construct the improvements on the Leased Premises, including the building permit and approvals necessary for the underground storage tanks (collectively, the "Improvements").

C. Base rent after Alliance's substantial completion and occupancy of the new station, shall be Twenty One Thousand Dollars ($21,000) per month plus 1/12 of personal & real property taxes, triple net. Base rent shall increase 1.5% percent each year during the original fifteen (15) year original term. Base rent shall increase ten percent (10%) for each five (5) year option term.

D. Alliance shall be permitted to perform an environmental site assessment of the site, in order to establish a baseline. Barons shall be solely responsible for the existence of any hazardous materials located at the site prior to the commencement of the lease for the new site. Alliance shall not be responsible for any prior existing contamination at the site, whatsoever.

E. Alliance and Baron shall provide each other with the contact information for their respective contractors and consultants, who shall schedule a preliminary meeting to discuss the proposed project within two weeks of the date of this MOU. The consultants shall meet as necessary to develop the preliminary plans and construction schedule.

F. Barons shall be responsible, at its sole cost and expense, for permitting the site for

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Alliance's proposed use as a gas station and convenience store. Alliance shall be responsible, at its sole cost and expense, for obtaining any building permits necessary to construct the Improvements at the site, excluding permitting the Work which shall be Barons obligation. Alliance may, terminate the New Lease upon sixty (60) days prior written notice, if Alliance determines, that Alliance and/or Baron will not be able to obtain all permits and approvals necessary to construct and operate a gas station and convenience store at the Leased Premises upon terms and conditions acceptable to Alliance.

G. Miscellaneous Provisions

1. Neither this MOU, nor any rights hereunder, may be assigned by either party.

2. No waiver by either party of any breach of any of the covenants or conditions herein contained to be performed by the other party shall be construed as a waiver of any succeeding breach of the same or any other covenant or condition.

3. This MOU and the schedules attached hereto, if any, constitutes the entire Agreement between parties hereto with respect to the subject matter hereof and shall supersede all previous negotiations, commitments, and writings.

4. Except as otherwise set forth herein, this MOU may not be amended, changed, or modified except by an instrument in writing, duly executed by each party hereto.

5. Each party agrees to keep confidential all information related to the terms of this MOU that is not publicly known.

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ALLIANCE ENERGY LLC

By: _____ 5/23/17

Name Mark Cosenza Date

Title Senior V.P

OIL BARONS INC.

By: _____ 5/18/17

Name: Date

Title: its President

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EXHIBIT 'D'

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PETROGAS GROUP NEW ENGLAND INC.
168 North Main Street, Suite B
Andover MA 01810
(347) 909-0738

January 14, 2019

Robert Hartmann
Oil Baron's, Inc.
50 Eveningside Drive
Milford CT 06460

Re: **LETTER OF INTENT (LOI)**
49 Leetes Island Road
Branford CT

Dear Mr. Hartmann:

This will confirm preliminary discussions between Oil Baron's, Inc. ("Oil Baron's") as Lessor, and Petrogas Group New England Inc. ("Petrogas") as Lessee, regarding the above referenced property that Oil Baron's controls. While Oil Baron's and Petrogas acknowledge and agree that preliminary discussions have taken place, this Letter of Intent will memorialize their respective understandings as to some of the proposed terms, which among others, would be included in any Lease Agreement.

As discussed, please be advised that Petrogas (or a designee), is interested in leasing the above referenced property from Oil Baron's on certain terms and conditions, including but not limited to the following:

Location:	49 Leetes Island Road Branford CT
Property Size:	Lease area assemblage of approximately 1.829-ac, identified as 49 Leetes Island Road, all as shown on Exhibit A herein attached.
Lessor:	Robert Hartmann Oil Baron's, Inc. 50 Eveningside Drive Milford CT 06460
Lessee:	Petrogas Group New England Inc. 168 North Main Street, Suite B Andover MA 01810

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Terms:

Original Term - 15 years

Land Rent during Original Term

Yr. 1-2	$160,000 /yr. NNN
Yr. 3-5	$165,000 /yr. NNN
Yr. 6-10	$182,750 /yr. NNN
Yr. 11-15	$200,350 /yr. NNN

Lease terms shall be considered Triple Net, meaning that Lessee shall be responsible to pay its real estate taxes, its common area maintenance cost, all relevant utilities and maintain its leasehold improvements, and will maintain customary insurance coverages on its leasehold property.

Construction Contribution:

Oil Baron's will provide a construction contribution in the amount of $2,000,000 towards the construction of this site with Petrogas paying a 7.5% yield on this contribution ($2,000,000 @ 7.5% = $150,000/yr.) with Petrogas making such payment as an "additional rent" for the "life of the lease" with the combined land rent and additional rent remitted as illustrated below. Petrogas agrees to advance the entire construction funding to build out the Petrogas project improvements in its entirety and Oil Baron's would provide this contribution only upon project completion and Petrogas opening its facility for business.

Combined Rent during Original Term

Yr. 1-2	$160,000 /yr. NNN	+$150,000 construction rent	= $310,000 NNN
Yr. 3-5	$165,000 /yr. NNN	+$155,000 construction rent	= $320,000 NNN
Yr. 6-10	$182,750 /yr. NNN	+$165,000 construction rent	= $347,750 NNN
Yr. 11-15	$200,350 /yr. NNN	+$181,500 construction rent	= $381,850 NNN

Lease Option Periods:

Oil Baron's grants Petrogas seven (7) additional 5-year options.
Rent is adjusted +10% each 5-year period.

Due Diligence and Permitting Period:

Once the parties have executed a lease agreement, Petrogas agrees to begin its pursuit of the necessary Planning Board, CTDOT, CTDEP, and other municipal Zoning Approvals necessary to construct a convenience store with gasoline, diesel fuel, and fast food with drive thru according to Petrogas plans and specifications and subject to the conditions below. Petrogas will propose a design that it believes will be in accordance with current Town Codes and Zoning.

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Conditions:

a. The parties agree to begin negotiating a lease agreement upon signing this Letter of Intent, upon Petrogas obtaining Applegreen PLC Investment Committee approval of location in January and obtaining Burger King approval of location.

b. It is agreed that Petrogas would have the right during the permitting period at its own cost and expense to conduct its due diligence, to include but not limited to, an environmental assessment, test soil conditions, conduct surveys, and perform a title search, etc. The obligations of Petrogas to lease the Premises will be contingent on receiving acceptable results from its due diligence. Oil Baron's agrees to provide Petrogas with all environmental reports, traffic studies, metes and bounds survey including existing topographical and utility data, subdivision approvals and any other studies, Site Plan Approval and Special Permit engineering and documentation previously approved and title reports in its possession within 10-days of execution of the lease agreement.

c. The parties agree that Petrogas will provide all survey, civil engineering, petroleum engineering and building architecturals for Petrogas pursuit of the required Planning Board and Zoning Approvals, or other required governmental agencies approvals. Petrogas will have twelve (12) months from signing the lease agreement to obtain the necessary permits and approvals including all appeal periods (the "Permitting Period"). Petrogas shall have two (2) additional 3-month extensions if necessary, provided Petrogas is diligently pursuing its engineering and permit approvals. Oil Baron's agrees to actively assist Petrogas with its pursuit of these approvals. Petrogas will then have 4 months to secure its building permits after all Zoning approvals are obtained. Petrogas agrees to submit to Oil Baron's an electronic copy of its plan submission to Branford Planning and Zoning.

d. This LOI is subject to Oil Baron's, its assigns and affiliates agreeing that it shall not enter into any lease or purchase agreements with a competitor gasoline and or convenience store for a development within 2 miles of said location.

e. The rent commencement date shall be the earlier of; (1) five months after final Planning & Zoning approvals, licenses and Building Permit have been obtained, or (2) upon Petrogas opening its facility for business.

f. It is agreed that Oil Baron's shall take the depreciation charge on its $2,000,000 portion of the building cost contribution and Petrogas shall take the depreciation charge on the balance of the construction build.

g. Both Oil Baron's and Petrogas acknowledge that there are no real estate agents or brokers of record representing Oil Baron's and Petrogas in this transaction and neither party shall have the obligation to pay any commission due if any and will each indemnify the other against claims of any other agent arising from dealings by it in connection with this transaction.

h. Intentionally deleted.

i. It is understood that Petrogas will construct a convenience store with gasoline, diesel fuel, and fast food. Petrogas agrees to pay Oil Baron's $50,000 upon receipt of an invoice from Oil Baron's for an equipment expense within the building to be paid to Oil Baron's upon Petrogas store opening for business.

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Environmental:

Oil Baron's shall be responsible for all environmental conditions currently existing at, on, or under the Premises prior to Petrogas's taking possession, as identified by Petrogas in its environmental due diligence, and Petrogas shall be responsible for all newly created environmental conditions resulting from Petrogas's actions or inactions from and after the commencement of the lease or purchase of the Premises.

Option to Purchase:

None.

Right of First Refusal:

During the lease term, and for a one hundred and eighty (180) day period following its expiration, Petrogas shall have the right of first refusal with respect to any purchase or lease of the Premises or any portion thereof.

Oil Baron's and Petrogas understand and agree that this letter shall be considered part of preliminary negotiations and shall not be deemed a binding contract between Oil Baron's and Petrogas.

Final agreement, if any, between the parties will be subject not only to the terms set forth herein but shall contain such other terms and conditions mutually agreed between the parties and customary in transactions of this nature and will be evidenced by a lease agreement executed and delivered by the parties hereto.

Oil Baron's agrees that once this LOI is signed it will not initiate similar discussions with any other interested third parties and will cease any such discussions currently in process regarding the Premises. In addition, the information contained therein is non-public and private, and shall be treated as confidential.

Neither Oil Baron's nor Petrogas shall disclose any of the terms of this letter or of our negotiations with respect to the subject matter of this letter to any person or entity other than their respective attorneys, accountants, consultants, or employees actively engaged in prosecution of this matter. Neither party shall be legally bound by this LOI unless and until a formal Lease agreement shall be executed and delivered by both parties. Oil Baron's and Petrogas each acknowledge and agree that each party may terminate negotiations at any time and for any reason or for no reason without any liability or obligation whatsoever. Be advised that unless this letter is signed and returned to the undersigned within two (2) weeks of the date shown, it will become null and void without any further action by the parties.

Remainder of page intentionally left black

Sincerely,

PETROGAS GROUP NEW ENGLAND INC.

By: _____
Conrad Decker, Real Estate Development Manager

Agreed and assented to:

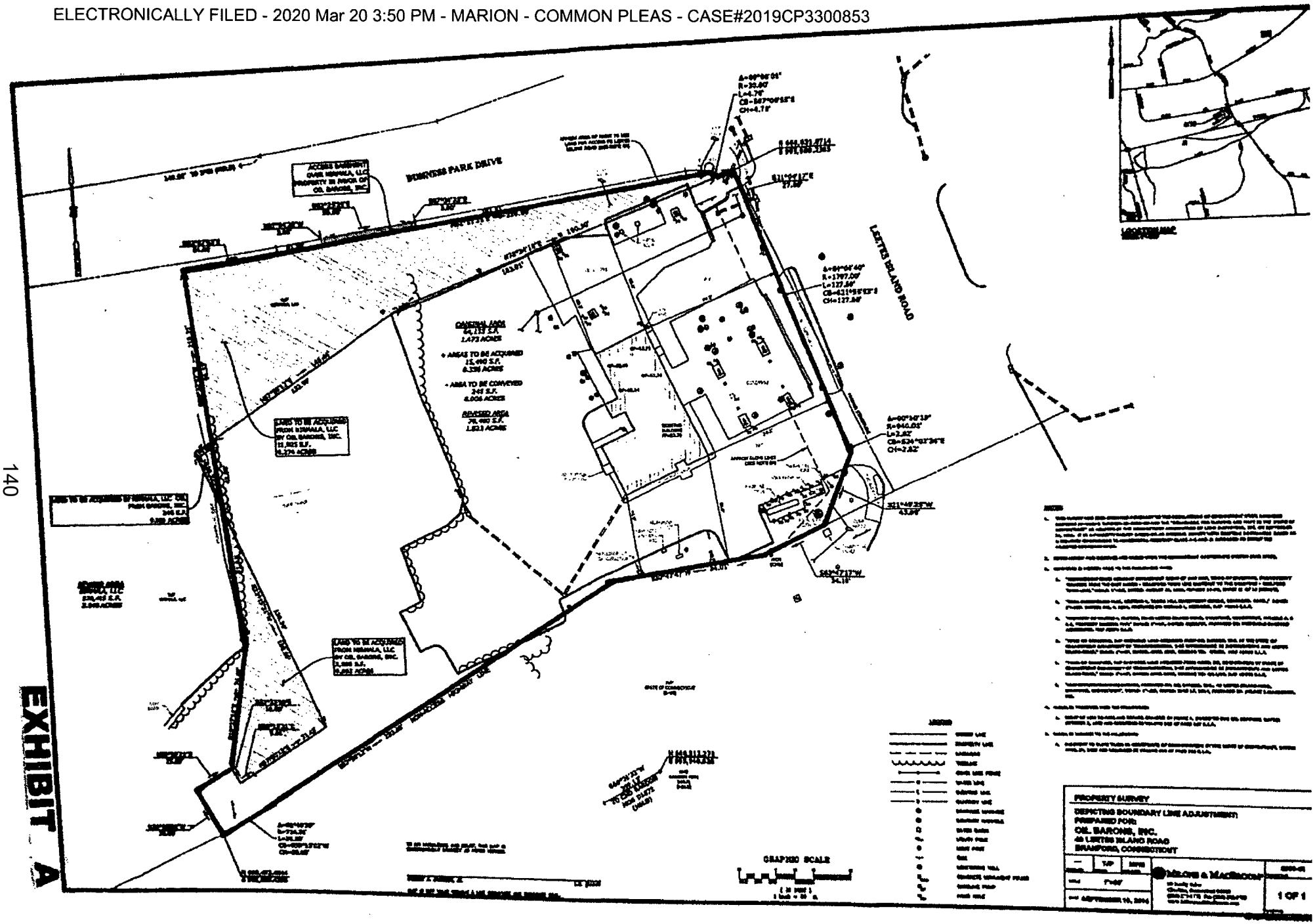
OIL BARON'S, INC.

By: _____
Robert Hartmann, its President
1/13/2019

_____
Witness

cc: Trevor Moore

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EXHIBIT A

State of Connecticut Judicial Branch
Superior Court Case Look-up

ELECTRONICALLY FILED - 2020 Mar 20 3:50 PM - MARION - COMMON PLEAS - CASE#219CP330053

Superior Court Case Look-up
Civil/Family
Housing
Small Claims
-
Attorney/Firm Juris Number Look-up
-
Case Look-up
By Party Name
By Docket Number
By Attorney/Firm Juris Number
By Property Address
-
Short Calendar Look-up
By Court Location
By Attorney/Firm Juris Number
Motion to Seal or Close
Calendar Notices
-
Court Events Look-up
By Date
By Docket Number
By Attorney/Firm Juris Number
-
Legal Notices
-
Pending Foreclosure Sales
-
Understanding
Display of Case Information
-
Contact Us

Comments

NNH-CV19-6093534-S **AVATAR PARTNERS CT, LLC v. PARTNERS 95, L.L.C. Et Al**

Prefix/Suffix: [none] **Case Type:** P00 **File Date:** 06/20/2019 **Return Date:** 07/09/2019

Case Detail | Notices | History | Scheduled Court Dates | E-Services Login | Screen Section Help
Pending Foreclosure Sales

To receive an email when there is activity on this case, click here.

Information Updated as of: 03/20/2020

Case Information

Case Type: P00 - Property - Foreclosure
Court Location: NEW HAVEN JD
Property Address: 96 FRONTAGE ROAD, EAST HAVEN, CT 06512
List Type: No List Type
Trial List Claim:
Last Action Date: 03/18/2020 (The "last action date" is the date the information was entered in the system)

Disposition Information

Disposition Date:
Disposition:
Judge or Magistrate:

Party & Appearance Information

Party		No Fee Party	Category
P-01	**AVATAR PARTNERS CT, LLC** **Attorney:** POLIVY LOWRY & CLAYTON LLC (407964) File Date: 02/05/2020 SIX CENTRAL ROW PO BOX 230294 HARTFORD, CT 061230294		Plaintiff
D-01	**PARTNERS 95, L.L.C.** **Attorney:** NEUBERT PEPE & MONTEITH PC (407996) File Date: 10/10/2019 195 CHURCH ST 13TH FLOOR NEW HAVEN, CT 06510		Defendant
D-02	**OIL BARONS, INC.** **Attorney:** NEUBERT PEPE & MONTEITH PC (407996) File Date: 10/10/2019 195 CHURCH ST 13TH FLOOR NEW HAVEN, CT 06510		Defendant
D-03	**HSGCHG INVESTMENTS, LLC** **Attorney:** NEUBERT PEPE & MONTEITH PC (407996) File Date: 10/10/2019 195 CHURCH ST 13TH FLOOR NEW HAVEN, CT 06510		Defendant
D-04	**ROBERT D HARTMANN SR** **Attorney:** NEUBERT PEPE & MONTEITH PC (407996) File Date: 10/10/2019 195 CHURCH ST 13TH FLOOR NEW HAVEN, CT 06510		Defendant

Viewing Documents on Civil, Housing and Small Claims Cases:

If there is an in front of the docket number at the top of this page, then the file is electronic (paperless).

- Documents, court orders and judicial notices in electronic (paperless) civil, housing and small claims cases with a return date on or after January 1, 2014 are available publicly over the internet.* For more information on what you can view in all cases, view the Electronic Access to Court Documents Quick Card.

EXHIBIT "C"

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- For civil cases filed prior to 2014, court orders and judicial notices that are electronic are available publicly over the internet. Orders can be viewed by selecting the link to the order from the list below. Notices can be viewed by clicking the **Notices** tab above and selecting the link.*
- Documents, court orders and judicial notices in an electronic (paperless) file can be viewed at any judicial district courthouse during normal business hours.*
- Pleadings or other documents that are not electronic (paperless) can be viewed only during normal business hours at the Clerk's Office in the Judicial District where the case is located.*
- An Affidavit of Debt is not available publicly over the internet on small claims cases filed before October 16, 2017.*

*Any documents protected by law Or by court order that are Not open to the public cannot be viewed by the public online And can only be viewed in person at the clerk's office where the file is located by those authorized by law or court order to see them.

Motions / Pleadings / Documents / Case Status

Entry No	File Date	Filed By	Description	Arguable
	06/20/2019	P	**SUMMONS**	
	06/20/2019	P	**COMPLAINT**	
	07/10/2019	D	**APPEARANCE** Appearance	
	09/05/2019	D	**APPEARANCE** Appearance	
	10/10/2019	D	**APPEARANCE** Appearance	
	10/10/2019	D	**APPEARANCE** Appearance	
	02/05/2020	P	**APPEARANCE** Appearance	
100.30	06/20/2019	P	**RETURN OF SERVICE**	No
100.31	06/20/2019	C	**FORECLOSURE MEDIATION – INELIGIBLE CASE (NO DOCUMENT)**	No
101.00	07/17/2019	P	**MOTION FOR DEFAULT -FAILURE TO APPEAR PB 17-20** *RESULT:* Granted 7/26/2019 BY THE CLERK	No
101.10	07/26/2019	C	**ORDER** *RESULT:* Granted 7/26/2019 BY THE CLERK	No
102.00	07/17/2019	P	**DEMAND FOR DISCLOSURE OF DEFENSE PB 13-19**	No
103.00	08/01/2019	P	**MOTION FOR DEFAULT FOR FAILURE TO DISCLOSE DEFENSE** *RESULT:* Granted 8/19/2019 HON JOHN CORDANI	No
103.10	08/19/2019	C	**ORDER** *RESULT:* Granted 8/19/2019 HON JOHN CORDANI	No
104.00	09/06/2019	P	**DEMAND FOR DISCLOSURE OF DEFENSE PB 13-19**	No
105.00	09/19/2019	P	**MOTION FOR DEFAULT FOR FAILURE TO DISCLOSE DEFENSE** *RESULT:* Granted 10/7/2019 HON CLAUDIA BAIO	No
105.10	10/07/2019	C	**ORDER** *RESULT:* Granted 10/7/2019 HON CLAUDIA BAIO	No
106.00	09/27/2019	P	**MOTION FOR JUDGMENT-STRICT FORECLOSURE** AND ORDER FOR POSSESSION	Yes
107.00	09/27/2019	P	**AFFIDAVIT OF DEBT**	No
108.00	09/27/2019	P	**APPRAISAL** 49 Leetes Island Road, Branford	No
109.00	09/27/2019	P	**APPRAISAL** 96 Frontage Road, East Haven, CT	No
110.00	10/10/2019	P	**FORECLOSURE WORKSHEET JD-CV-77**	No
111.00	10/10/2019	P	**AFFIDAVIT OF DEBT** Updated	No

112.00	10/10/2019	P	**OATH OF APPRAISERS** 49 Leetes Island Road, Branford	No
113.00	10/10/2019	P	**OATH OF APPRAISERS** 96 Frontage Road, East Haven	No
114.00	10/10/2019	P	**AFFIDAVIT RE: ATTORNEY/COUNSEL FEES**	No
115.00	10/10/2019	D	**MOTION TO OPEN DEFAULT** (re. Disclosure of Defense) *RESULT:* Granted 10/15/2019 HON ROBERT YOUNG	No
115.10	10/15/2019	C	**ORDER** *RESULT:* Granted 10/15/2019 HON ROBERT YOUNG	No
116.00	10/10/2019	D	**DISCLOSURE OF DEFENSE**	No
117.00	10/10/2019	D	**MOTION FOR EXTENSION OF TIME TO PLEAD**	No
117.10	10/15/2019	C	**ORDER** *RESULT:* Granted 10/15/2019 HON ROBERT YOUNG	No
118.00	10/10/2019	D	**OBJECTION TO MOTION** (Judgment of Strict Foreclosure)	No
119.00	10/10/2019	D	**CASEFLOW REQUEST (JD-CV-116)** *RESULT:* Granted 10/11/2019 HON ROBERT YOUNG	No
119.10	10/11/2019	C	**ORDER** *RESULT:* Granted 10/11/2019 HON ROBERT YOUNG	No
120.00	12/05/2019	D	**ANSWER AND SPECIAL DEFENSE AND COUNTERCLAIM**	No
121.00	02/21/2020	P	**MOTION FOR ORDER** Motion to Sever Special Defenses and Counterclaims (#120.00)	No
121.10	03/11/2020	C	**ORDER** ! NEW *RESULT:* Off 3/11/2020 HON CLAUDIA BAIO	No
122.00	02/21/2020	P	**NOTICE OF SERVICE OF REQUEST FOR ADMISSION PB 13-22** Re: First Set of Requests for Admission to Defendants	No
123.00	02/25/2020	P	**NOTICE OF SERVICE OF REQUEST FOR ADMISSION PB 13-22** Notice of Second Set of Requests for Admission to Defendants	No
124.00	02/26/2020	D	**MOTION FOR EXTENSION OF TIME** (re. Motion to Sever)	No
124.10	03/11/2020	C	**ORDER** ! NEW *RESULT:* Order 3/11/2020 HON CLAUDIA BAIO	No
125.00	02/26/2020	D	**MOTION FOR EXTENSION OF TIME RE DISCOVERY MOTION OR REQUEST PB CH13**	No
125.10	03/11/2020	C	**ORDER** ! NEW *RESULT:* Order 3/11/2020 HON CLAUDIA BAIO	No
126.00	02/28/2020	P	**OBJECTION TO MOTION FOR EXTENSION OF TIME** Re: Motion to Sever #124.00	No
126.10	03/11/2020	C	**ORDER** ! NEW *RESULT:* Order 3/11/2020 HON CLAUDIA BAIO	No
127.00	02/28/2020	P	**OBJECTION TO MOTION FOR EXTENSION OF TIME** Re: Discovery #125.00	No
127.10	03/11/2020	C	**ORDER** ! NEW *RESULT:* Order 3/11/2020 HON CLAUDIA BAIO	No
128.00	02/28/2020	P	**MOTION FOR SUMMARY JUDGMENT** Re: Liability	Yes
129.00	02/28/2020	P	**AFFIDAVIT** Affidavit in Support of Motion for Summary Judgment re: Liability #128.00	No
130.00	02/28/2020	P	**MEMORANDUM IN SUPPORT OF MOTION** Memorandum of Law in Support of Motion for Summary Judgment #128.00	No
131.00	03/06/2020	P	**REQUEST TO REVISE** ! NEW	No
132.00	03/11/2020	D	**MOTION FOR EXTENSION OF TIME** ! NEW	No

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			Requests for Admission	
133.00	03/11/2020	D	**MOTION FOR EXTENSION OF TIME** NEW Motion for Summary Judgment	No
134.00	03/12/2020	P	**OBJECTION TO MOTION FOR EXTENSION OF TIME** NEW Re: Second Set of Requests for Admission #132.00	No
135.00	03/12/2020	P	**OBJECTION TO MOTION FOR EXTENSION OF TIME** NEW Re: Motion for Summary Judgment #133.00	No
136.00	03/18/2020	D	**MOTION FOR EXTENSION OF TIME** NEW (Request to Revise)	No
137.00	03/18/2020	P	**OBJECTION TO MOTION FOR EXTENSION OF TIME** NEW Re: Request to Revise #136.00	No

Scheduled Court Dates as of 03/19/2020

NNH-CV19-6093534-S - AVATAR PARTNERS CT, LLC v. PARTNERS 95, L.L.C. Et Al

#	Date	Time	Event Description	Status
1	03/23/2020		Short Calendar SC-02 #038	

Judicial ADR events may be heard in a court that is different from the court where the case is filed. To check location information about an ADR event, select the **Notices** tab on the top of the case detail page.

Matters that appear on the Short Calendar and Family Support Magistrate Calendar are shown as scheduled court events on this page. The date displayed on this page is the date of the calendar.

All matters on a family support magistrate calendar are presumed ready to go forward.

The status of a Short Calendar matter is not displayed because it is determined by markings made by the parties as required by the calendar notices and the civil standing orders. Markings made electronically can be viewed by those who have electronic access through the Markings History link on the Civil/Family Menu in E-Services. Markings made by telephone can only be obtained through the clerk's office. If more than one motion is on a single short calendar, the calendar will be listed once on this page. You can see more information on matters appearing on Short Calendars and Family Support Magistrate Calendars by going to the Civil/Family Case Look-Up page and Short Calendars By Juris Number or By Court Location.

Periodic changes to terminology that do not affect the status of the case may be made.

This list does not constitute or replace official notice of scheduled court events.

Disclaimer: For civil and family cases statewide, case information can be seen on this website for a period of time, from one year to a maximum period of ten years, after the disposition date. If the Connecticut Practice Book Sections 7-10 and 7-11 give a shorter period of time, the case information will be displayed for the shorter period. Under the Federal Violence Against Women Act of 2005, cases for relief from physical abuse, foreign protective orders, and motions that would be likely to publicly reveal the identity or location of a protected party may not be displayed and may be available only at the courts.

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ELECTRONICALLY FILED - 2020 Jul 13 5:01 PM - MARION - COMMON PLEAS - CASE#2019CP3300853

STATE OF SOUTH CAROLINA COUNTY OF MARION	IN THE COURT OF COMMON PLEAS FOR THE TWELFTH JUDICIAL CIRCUIT Case No. 2019-CP-33-00853
Avatar Partners CT, LLC, Plaintiff, vs. HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr., Defendants.	**ANSWER OF DEFENDANTS, HSGCHG INVESTMENTS, LLC f/k/a CAROLINA ENTERTAINMENT COMPLEX, LLC and ROBERT D. HARTMANN, SR., TO PLAINTIFF'S COMPLAINT**

Defendants, HSGCHG Investments, LLC, f/k/a Carolina Entertainment Complex, LLC, Partners 95, LLC, Oil Barons, Inc., and Robert D. Hartmann, Sr. (collectively referred to as "Defendants"), answering Plaintiff's Complaint, respectfully show:

FOR A FIRST DEFENSE

1. Defendants deny any allegation of the Complaint not specifically admitted.

FOR A SECOND DEFENSE

2. Defendants do not have enough information to admit or deny paragraph 1.

3. Responding to paragraph 2, Defendants admit the property which is the subject of this lawsuit ("South Carolina Property") is in Marion County, South Carolina. Defendants do not have enough information to admit or deny the balance of this paragraph.

4. Responding to paragraph 3, Defendants admit they have some interest in the South Carolina Property.

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5. Paragraphs 4, 5, 6, 7, and 8 are admitted.

6. Defendants do not have enough information to admit or deny paragraph 9.

7. Paragraphs 10 and all its subparagraphs, and paragraph 11, are admitted to the extent their allegations are consistent with the public land records of Marion County. To the extent any allegation in paragraph 10 and its subparagraphs, or paragraph 11, remains unanswered, Defendants do not have enough information to admit or deny any such allegation.

8. Paragraph 12 is admitted.

9. Paragraphs 13, 14 and 15 are admitted to the extent their allegations are consistent with the express terms of the documents these paragraphs seek to quote, paraphrase, or categorize. To the extent any allegation in these paragraphs remains unanswered, Defendants do not have enough information to admit or deny any such allegation.

10. Paragraph 16 is admitted to the extent it alleges the loan which is the subject of this lawsuit is not a consumer loan under S.C. Code. Ann. § 37-3-105. To the extent any allegation in this paragraph remains unanswered, Defendants do not have enough information to admit or deny any such allegation.

11. Paragraph 17 does not appear to require a response. To the extent paragraph 17 is interpreted to require a response, Defendants do not have enough information to admit or deny this paragraph.

12. Paragraph 18 is denied unless previously admitted.

13. Paragraph 19 is admitted to the extent it alleges Defendant, Robert D. Hartmann, Sr., signed and delivered to Plaintiff a document entitled Recourse Guaranty ("Guaranty") dated January 22, 2015. To the extent any allegation in this paragraph remains

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unanswered, Defendants do not have enough information to admit or deny any such allegation.

14. Paragraph 20 is admitted to the extent its allegations are consistent with the express terms of the document this paragraph seeks to quote, paraphrase, or characterize. To the extent any allegation in this paragraph remains unanswered, Defendants to not have enough information to admit or deny any such allegation.
15. Responding to paragraphs 21, 22, 23, 24 and 25, Defendants to not have enough information to admit or deny the allegations in these paragraphs.
16. Paragraph 26 is denied, unless previously admitted.
17. Paragraph 27 is admitted to the extent its allegations are consistent with the public land records of Marion County, South Carolina and consistent with the express terms of the document or documents this paragraph seeks to quote, paraphrase, or characterize. To the extent any allegation in this paragraph remains unanswered, Defendants do not have enough information to admit or deny any such allegations.
18. Responding to paragraphs 28 and 29, Defendants do not have enough information to admit or deny the allegations in these paragraphs.
19. Paragraph 39 is denied unless previously admitted.
20. Paragraph 40 is admitted to the extent its allegations are consistent with the public land records of Marion County, South Carolina.
21. Paragraph 41 is admitted to the extent its allegations are consistent with the express terms of the document this paragraph seeks to quote, paraphrase or characterize. To the extent any allegation in this paragraph remains unanswered, Defendants do not have enough information to admit or deny any such allegation.

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22. Responding to paragraphs 34 and 35, Defendants do not have enough information to admit or deny the allegations in these paragraphs.

FOR A THIRD DEFENSE
(Marshaling Assets)

23. Every allegation of this Answer is repeated as if set forth verbatim.
24. On June 20, 2019, Plaintiff filed an action in Superior Court, New Haven Judicial District, Connecticut, naming the same Defendants as in this lawsuit (Connecticut Lawsuit).
25. The Connecticut Lawsuit seeks enforcement of the same note (Note) against the same alleged makers of the Note, i.e., Defendants, Partners 95, Oil Barons, Inc., and HSGCHG, Investments, LLC, as it seeks enforcement of in this lawsuit.
26. The Connecticut Lawsuit, as it does in this lawsuit, enforcement of the Guaranty against Defendant, Robert D. Hartmann, Sr.
27. The Connecticut Lawsuit Complaint alleges payment of the Note is secured by mortgage(s) it holds encumbering property in East Haven and Branford, Connecticut ("Connecticut Property") and seeks a deficiency judgement against the Note makers if the sale of the Connecticut Property fails to yield proceeds sufficient to satisfy the Note debt.
28. Defendants are informed and believe they may have an interest or interests in the South Carolina and Connecticut Property which may be junior and subordinate to the mortgage(s) Plaintiff alleges it holds encumbering the South Carolina and Connecticut Property.
29. Defendants are informed and believe the South Carolina Property has a value vastly greater than the debt allegedly due on the Note.
30. Defendants are informed and believe the Court should require Plaintiff to marshal the assets it alleges secure payment of the Note and, if it succeeds in enforcement of the Note

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and foreclosure of the mortgages it allegedly holds encumbering the South Carolina and Connecticut Property, because the South Carolina Property's value so greatly exceeds the debt allegedly due under the Note, it would be inequitable to force the sale of the South Carolina Property and the Plaintiff should be required to accept the South Carolina Property in full satisfaction of the Note. Alternatively, Defendants are informed and believe the Plaintiff should be required to sell the South Carolina Property before it attempts to sell the Connecticut Property. If the South Carolina Property, following any sale of that property and any subsequent appraisal proceedings as may be brought and concluded, is of sufficient value to satisfy the balance allegedly due on the Note, the Defendants are further informed and believe the Plaintiff should be required to satisfy the mortgage(s) it allegedly holds encumbering the Connecticut Property and mark the Note paid and satisfied and the Guaranty cancelled.

FOR A FOURTH DEFENSE
(Order of Sale)

31. Every allegation of this Answer is repeated as if set forth verbatim.

32. Defendants are informed and believe, given the value of the South Carolina Property, that if Plaintiff succeeds in its foreclosure claim regarding the Connecticut and South Carolina Property, because the South Carolina Property's value so greatly exceeds the debt allegedly due under the Note, it would be inequitable to force the sale of the South Carolina Property and the Plaintiff should be required to accept the South Carolina Property in full satisfaction of the Note. Alternatively, Defendants are informed and believe the Plaintiff should be required to sell at foreclosure the South Carolina Property before it attempts any sale of the Connecticut Property. If the South Carolina Property, following any sale of that property and any subsequent appraisal proceedings as may be

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brought and concluded, is of sufficient value to satisfy the balance allegedly due on the Note, the Defendants are informed and believe Plaintiff should be required to satisfy the mortgage(s) it allegedly holds encumbering the Connecticut Property and mark the Note paid and satisfied and the Guaranty cancelled.

Wherefore, having fully answered the Complaint, Defendants respectfully request the Court inquire into the matters in the Complaint and this Answer, require the Plaintiff to prove the facts denied by this Answer, dismiss this Complaint with prejudice upon the Plaintiff's failure to do so, and, if a foreclosure sale is ordered, require the Plaintiff to proceed under paragraphs 30 and 32 above, and grant the Defendants such other and further relief as the Court may deem just and proper.

CALLISON TIGHE & ROBINSON, LLC

s/ Louis H. Lang
Louis H. Lang, SC Bar No. 03127
1812 Lincoln St., Ste. 200
PO Box 1390
Columbia SC 29202-1390
Telephone: 803-404-6900
Email: louislang@callisontighe.com

ATTORNEYS FOR DEFENDANTS HSGCHG INVESTMENTS, LLC f/k/a CAROLINA ENTERTAINMENT COMPLEX, LLC, PARTNERS 95, LLC, OIL BARONS, INC. and ROBERT D. HARTMANN, SR.

Columbia, South Carolina
July 13, 2020

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STATE OF SOUTH CAROLINA COUNTY OF MARION Avatar Partners CT, LLC, PLAINTIFF, vs. HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr., DEFENDANTS.	IN THE COURT OF COMMON PLEAS C/A NO: 2019-CP-33- **LIS PENDENS** (NON-JURY MORTGAGE FORECLOSURE) (SUIT ON GUARANTY) (CLAIM AND DELIVERY) (APPOINTMENT OF RECEIVER)

NOTICE IS HEREBY GIVEN that an action has been commenced and is now pending in this court upon Complaint of the above-named Plaintiff against the above-named Defendant(s) for foreclosure of a certain mortgage of real estate given by HSGCHG Investments, LLC in the amount of $2,000,000.00, dated January 22, 2015 and recorded in the Office of the Clerk of Court for Marion County in Book 295 at Page 7 on January 23, 2015.

The premises covered and affected by the said mortgage, as by the foreclosure thereof, were at the time of the making thereof, and at the time of the filing of this Notice, described as follows:

> All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. by Beasly Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and other; and on the Northeast by lands of William E. Thompson
>
> LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.

TMS#: 085-00-00-001-000
Property Address: 1548 S HWY 501 Bypass (Carolina Amphitheatre) Marion, South Carolina 29571

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FINKEL LAW FIRM LLC

Magalie A. Creech (SC Bar 78855)
P.O. Box 41489
Charleston, SC 29423
Tel.: (843) 755-7560
Fax: (866) 800-7954
Attorneys for Plaintiff

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STATE OF SOUTH CAROLINA COUNTY OF MARION Avatar Partners CT, LLC, PLAINTIFF, vs. HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr., DEFENDANTS.	IN THE COURT OF COMMON PLEAS C/A NO: 2019-CP-33- **SUMMONS AND NOTICES** (NON-JURY MORTGAGE FORECLOSURE) (SUIT ON GUARANTY) (CLAIM AND DELIVERY) (APPOINTMENT OF RECEIVER)

TO THE ABOVE NAMED DEFENDANTS:

YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or to otherwise appear and defend, and to serve a copy of your Answer to said Complaint upon the Plaintiff's attorneys at their office, 4000 Faber Place Drive, Suite 450 (29205), P.O. Box 41489, Charleston, South Carolina, 29423, or to otherwise appear and defend the action pursuant to applicable court rules, within thirty (30) days after service hereof, exclusive of the day of such service; except that the United States of America, if named, shall have sixty (60) days to answer after the service hereof, exclusive of such service; and if you fail to answer the Complaint or otherwise appear and defend within the time aforesaid, the Plaintiff in this action will apply to the Court for relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

TO MINOR(S) OVER FOURTEEN YEARS OF AGE, AND/OR TO MINOR(S) UNDER FOURTEEN YEARS OF AGE AND THE PERSON WITH WHOM THE MINOR(S) RESIDE(S), AND/OR TO PERSONS UNDER SOME LEGAL DISABILITY:

YOU ARE FURTHER SUMMONED AND NOTIFIED to apply for the appointment of a guardian ad litem within thirty (30) days after the service of this Summons and Notice upon you. If you fail to do so, application for such appointment will be made by the Plaintiff.

YOU WILL ALSO TAKE NOTICE that pursuant to Rule 53(b) of the South Carolina Rules of Civil Procedure, as amended effective September 1, 2002, the Plaintiff will move for a general Order of Reference to a Special Referee for Marion County, which Order shall, pursuant to Rule 53(b) of the SCRCP, specifically provide that the said Special Referee is authorized and empowered to enter a final judgment in this action.

FINKEL LAW FIRM LLC

Magalie A. Creech (SC Bar 78855)
P.O. Box 41489
Charleston, SC 29423
Tel.: (843) 755-7560
Fax: (866) 800-7954
Attorneys for Plaintiff

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STATE OF SOUTH CAROLINA	IN THE COURT OF COMMON PLEAS
COUNTY OF MARION	C/A NO: 2019-CP-33-
Avatar Partners CT, LLC, PLAINTIFF, vs. HSGCHG Investments, LLC f/k/a Carolina Entertainment Complex, LLC; Partners 95, LLC; Oil Barons, Inc.; and Robert D. Hartmann, Sr., DEFENDANTS.	**COMPLAINT** (NON-JURY MORTGAGE FORECLOSURE) (SUIT ON GUARANTY) (CLAIM AND DELIVERY) (APPOINTMENT OF RECEIVER)

The Plaintiff alleges as follows:

1. The Plaintiff, a corporation or other legal entity, brings this foreclosure action to collect a debt and/or enforce a mortgage, security interest, or other rights in property securing the debt.

2. The Plaintiff is the present lienholder of the mortgage covering real property located in Marion County, which is the subject of the within captioned action, and is entitled to enforce same.

3. The defendant(s) named herein may have an interest in the property that is the subject of this action.

4. Any defendant(s) described herein as Judgment Creditor(s) have by filing judgment(s) designated the attorney(s) entering the judgment(s) as their agent for service of process pursuant to the provisions of §15-35-840 of the South Carolina Code of Laws (1976 as amended).

5. Upon information and belief, the Defendant Robert D. Hartmann, Sr. is not in the military service of the United States of America pursuant to the provisions of the Servicemembers Civil Relief Act (2003)

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Mortgage)

6. On or about January 22, 2015, for value received, Partners 95, LLC, Oil Barons, Inc., and HSGCHG Investments, LLC executed and delivered to Avatar Capital Finance, LLC a certain promissory note (hereinafter "Note") in the sum of $2,000,000.00, together with interest thereon pursuant to the terms of the Note.

7. To secure the payment of the said Note and debt, secured thereby, and in accordance with the terms and conditions thereof, on January 22, 2015, HSGCHG Investments, LLC executed and

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delivered to Avatar Capital Finance, LLC, its successors and assigns, a mortgage (hereinafter "Mortgage") covering the following described property:

> All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. by Beasly Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and other; and on the Northeast by lands of William E. Thompson
>
> LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.

TMS#: 085-00-00-001-000
Property Address: 1548 S HWY 501 Bypass (Carolina Amphitheatre) Marion, South Carolina 29571

8. Thereafter the Mortgage was recorded in the Office of the Clerk of Court for Marion County in Book 295 at Page 7 on January 23, 2015.

9. The Mortgage constitutes a first lien on the subject property.

10. Thereafter, the Mortgage was assigned as follows:

a. By assignment dated January 23, 2015 and recorded in Book 318 at Page 61 on September 16, 2015, Avatar Capital Finance, LLC assigned as to Parker Ferguson an undivided 5.00% interest, as to Steven Ganeless an undivided 3.750% interest, as to Downtime Enterprises, LLC an undivided 10.00% interest, as to Patrick Guthrie, trustee of the Guthrie Family Trust an undivided 5.00% interest, as to Marc S. Homme APLC Defined Benefit Pension Trust an undivided 2.50% interest, as to O. Michael Homme, Trustee of the Homme Family Trust an undivided 1.250% interest, as to JBH Trust dated June 24, 2009 an undivided 1.250% interest, as to William R. Horton an undivided 7.50% interest, as to MMJ Group, Inc. an undivided 17.50% interest, as to Self Directed IRA Services, Inc. FBO Mark Picking, IRA an undivided 3.750%, as to Paul R. Verkuil and Judith Rodin an undivided 3.750% interest, as to Jay and Elaine Hazelrigg an undivided 1.75% interest, as to Richard Kester, trustee of the Kester Family Living Trust an undivided 5.00% interest, as to Susan Lundell an

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undivided 2.40% interest, as to Patrick A. Waldron and Peggy Waldron an undivided 1.65% interest, as to James and Joyce Zevenbergen Living Trust dated August 18, 2014 an undivided 10.00% interest, the Ronald and Sandra Lope Living Trust dated April 12, 2013 an undivided 10.00% interest, and as to Jerry Zevenbergen an undivided 7.95% interest;

b. By assignment dated February 19, 2016 and recorded in 334 at Page 195 on March 11, 2016, Parker Ferguson assigned an undivided 5.00% interest, Steven Ganeless assigned an undivided 3.750% interest, Downtime Enterprises, LLC assigned an undivided 10.00% interest, Patrick Guthrie, trustee of the Guthrie Family Trust assigned an undivided 5.00% interest, Marc S. Homme APLC Defined Benefit Pension Trust assigned an undivided 2.50% interest, O. Michael Homme, Trustee of the Homme Family Trust assigned an undivided 1.250% interest, JBH Trust dated June 24, 2009 assigned an undivided 1.250% interest, William R. Horton assigned an undivided 7.50% interest, MMJ Group, Inc. assigned an undivided 17.50% interest, Self Directed IRA Services, Inc. FBO Mark Picking, IRA assigned an undivided 3.750%, Paul R. Verkuil and Judith Rodin assigned an undivided 3.750% interest, Jay and Elaine Hazelrigg assigned an undivided 1.75% interest, Richard Kester, trustee of the Kester Family Living Trust assigned an undivided 5.00% interest, Susan Lundell assigned an undivided 2.40% interest, Patrick A. Waldron and Peggy Waldron assigned an undivided 1.65% interest, James and Joyce Zevenbergen Living Trust dated August 18, 2014 assigned an undivided 10.00% interest, the Ronald and Sandra Lope Living Trust dated April 12, 2013 assigned an undivided 10.00% interest, and Jerry Zevenbergen assigned an undivided 7.95% interest to Avatar Capital Finance, LLC;

c. By assignment dated March 11, 2016 and recorded in Book 347 at Page 81 on July 19, 2016, Avatar Capital Finance, LLC assigned as to Dr. Christopher L. Barley an undivided 1.4286% interest, as to Parker Ferguson an undivided 4.287% interest, as to RealTrust IRA Alternatives, LLC, a WA Limited Liability Co., FBO Michael Fotheringill IRA #22199-TR-11 an undivided 0.7143% interest, as to Steven Ganeless an undivided 2.1429% interest, as to Self Directed IRA Services, Inc. Custodian FBO Philip H. Geier Jr. IRA #201525269 an undivided 2.1429% interest, as to Patrick Guthrie Family Partnership an undivided 11.4286% interest, as to Downtime Enterprises, LLC an undivided

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5.7143% interest, as to Patrick D. Guthrie, Trustee of the Guthrie Family Trust an undivided 5.7143% interest, as to Jane and Elaine Hazelrigg an undivided 1.00% interest, as to Equity Trust Company, Custodian FBO James Holobaugh, IRA an undivided 1.4286% interest, as to Marc S. Homme APLC Defined Benefit Pension Plan an undivided 2.8571% interest, as to William R. Horton an undivided 8.5714%, as to MMJ Group, Inc. an undivided 10.00% interest, as to Richard Kester, Trustee of the Kester Family Living Trust an undivided 4.2857% interest, as to The Ronald and Sandra Loper Living Trust dated April 12, 2013 an undivided 8.5714% interest, as to Equity Trust Company, Custodian FBO Richard Lundell, IRA an undivided 1.4286% interest, as to Susan M. Lundell an undivided 1.3714% interest, as to PS Funding, Inc., a Delaware Corporation an undivided 11.4286% interest, as to Self Directed IRA Services, Inc. Custodian FBO Mark Picking IRA # 201525268 an undivided 0.7143% interest, as to Paul and Judy Verkuil an undivided 3.5714% interest, as to Patrick A. Waldron and Peggy C. Waldron an undivided 0.9429% interest, as to Jerry Zevenbergen an undivided 1.6857% interest, and as to James and Joyce Zevenbergen Living Trust dated August 18, 2014 an undivided 5.7412% interest;

d. By assignment dated February 27, 2019 and recorded in Book 476 at Page 292 on November 13, 2019, Dr. Christopher L. Barley assigned an undivided 1.4286% interest, Parker Ferguson assigned an undivided 4.287% interest, RealTrust IRA Alternatives, LLC, a WA Limited Liability Co., FBO Michael Fotheringill IRA #22199-TR-11 assigned an undivided 0.7143% interest, Steven Ganeless assigned an undivided 2.1429% interest, Self Directed IRA Services, Inc. Custodian FBO Philip H. Geier Jr. IRA #201525269 assigned an undivided 2.1429% interest, Patrick Guthrie Family Partnership assigned an undivided 11.4286% interest, Downtime Enterprises, LLC assigned an undivided 5.7143% interest, Patrick D. Guthrie, Trustee of the Guthrie Family Trust assigned an undivided 5.7143% interest, Jane and Elaine Hazelrigg assigned an undivided 1.00% interest, Equity Trust Company, Custodian FBO James Holobaugh, IRA assigned an undivided 1.4286% interest, Marc S. Homme APLC Defined Benefit Pension Plan assigned an undivided 2.8571% interest, William R. Horton assigned an undivided 8.5714%, MMJ Group, Inc. assigned an undivided 10.00% interest, Richard Kester, Trustee of the Kester Family Living Trust assigned an undivided 4.2857% interest, The Ronald and Sandra Loper Living Trust dated

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April 12, 2013 assigned an undivided 8.5714% interest, Equity Trust Company, Custodian FBO Richard Lundell, IRA assigned an undivided 1.4286% interest, Susan M. Lundell assigned an undivided 1.3714% interest, PS Funding, Inc., a Delaware Corporation assigned an undivided 11.4286% interest, Self Directed IRA Services, Inc. Custodian FBO Mark Picking IRA # 201525268 assigned an undivided 0.7143% interest, Paul and Judy Verkuil assigned an undivided 3.5714% interest, Patrick A. Waldron and Peggy C. Waldron assigned an undivided 0.9429% interest, Jerry Zevenbergen assigned an undivided 1.6857% interest, and James and Joyce Zevenbergen Living Trust dated August 18, 2014 assigned an undivided 5.7412% interest to Avatar Partners CT, LLC, the presemt lienholder and Plaintiff herein.

11. By agreement dated March 11, 2016 and recorded on March 11, 2016 on Book 334 at Page 220, the parties modified the terms of the agreement which, *inter alia*, increased the unpaid principal balance to $3,500,000.00 and extended the maturity date to June 30, 2018.

12. The underlying commercial promissory Note secured by the Mortgage that is the subject matter of this action concerns a commercial transaction. Accordingly, the Mortgage is not subject to the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program (HMP), the United States Treasury Supplemental Directive 09-01 and the Administrative Order of the South Carolina Supreme Court dated May 22, 2009 (2009-05-22-01) and thus the foregoing provisions are inapplicable. In addition, the subject property is not an owner occupied dwelling and the Administrative Order issued by the Chief Justice of the Supreme Court of South Carolina on May 2, 2011, Order 2011-05-02-01, is not applicable.

13. Pursuant to the terms of the Mortgage, any sums paid by the plaintiff for inspecting and securing the subject property, for fire and other hazard insurance, taxes and assessments for the mortgaged premises, and any costs of collection, including reasonable attorney's fees, are secured by the mortgage.

14. According to the terms of said Mortgage, and as additional security, the mortgagors assigned all rents, issues and profits of the mortgaged premises from and after any default thereunder, and should legal proceedings be instituted pursuant to said Mortgage, the mortgagee, its successors and 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, towards the debt secured by said Mortgage.

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15. The subject loan matured pursuant to its terms and is in default. Although demand for payment thereof has been made and the Plaintiff, as the holder of the said note and mortgage, after providing all required notices, elects to, and does declare the entire balance of said indebtedness due and payable, and that there is due on said Note and Mortgage as of October 1, 2018 the sum of $3,500,000.00 together with interest pursuant to the terms of the note, insurance reimbursement and default charges, and also for the costs and disbursements of this action, including attorney's fees.

16. Pursuant to Section 37-3-105, South Carolina Code of Laws (1976 as amended), the mortgage lien, which is the subject of this action, is a first lien on real estate and is not a *'consumer loan'* for the purposes of the South Carolina Consumer Protection Code. Any notice of right to cure has been given as required.

17. Plaintiff reserves all rights and benefits to which it may be entitled, including but not limited to the right to a deficiency judgment against any obligor of the Note, pursuant to S.C. Code Ann. § 29-3-660 (1976, as amended), following a judicial sale of the mortgaged premises. Plaintiff may waive its right to a deficiency judgment at any time prior to the sale herein.

FOR A SECOND CAUSE OF ACTION
(Suit on Guaranty)

18. The allegations of the previous paragraphs are incorporated herein as if repeated verbatim.

19. On or about January 22, 2015, for value received, the Defendant Robert D. Hartmann, Sr. executed and delivered to Avatar Capital Finance, LLC, a Recourse Guaranty ("Guaranty"), guarantying the performance of Defendants Partners 95, LLC, Oil Barons, Inc., and HSGCHG Investments, LLC under the terms of the Note, including payment of all amounts due and owing.

20. By agreement dated March 11, 2016, the parties modified the terms of the Guaranty pursuant to which Defendant Robert D. Hartmann, Sr. acknowledged and ratified the modification referenced in paragraph 19 herein, and agreed to continue to guaranty repayment of the Note.

21. Defendants Partners 95, LLC, Oil Barons, Inc., and HSGCHG Investments, LLC are in default of the payments required under the Note.

22. Plaintiff demanded that Defendant Robert D. Hartmann, Sr. perform his obligations arising under the Guaranty by paying the amounts due and owing.

23. Despite such demands, Defendant Robert D. Hartmann, Sr. refuses to pay the amounts owed and materially breached his obligation arising under the Guaranty.

24. As of October 1, 2018, Defendant Robert D. Hartmann, Sr. is liable to Plaintiff in the amount of $3,500,000.00 together with interest pursuant to the terms of the note, insurance

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reimbursement and default charges, and also for the costs and disbursements of this action, including attorney's fees.

25. Plaintiff is entitled to entry of judgment against Defendant Robert D. Hartmann, Sr. for the amounts found due and owing, together with Plaintiff's costs and expenses including attorneys' fees.

FOR A THIRD CAUSE OF ACTION
(Claim and Delivery on Personal Property)

26. The allegations of the previous paragraphs are incorporated herein as if repeated verbatim.

27. In addition to the mortgage encumbering the property as set forth *supra*, all personal property and fixtures contained within and subject to the above-referenced agreements provide further security for the above-referenced debt pursuant to the UCC-1 Financing Statement recorded in the Office of the Clerk of Court for Marion County on January 23, 2015 in Book 295 at Page 43, and the Amended UCC-3 recorded in the Office of the Clerk of Court for Marion County on March 9, 2015 in Book 299 at Page 5.

28. Defendants Partners 95, LLC, Oil Barons, Inc., and HSGCHG Investments, LLC are in default under their subject loan agreements.

29. Plaintiff is entitled to immediate possession of all contents, personal property, and fixtures encumbered and secured by a UCC-1 Financing Statement recorded in the Office of the Clerk of Court for Marion County on January 23, 2015 in Book 295 at Page 43, and the Amended UCC-3 recorded in the Office of the Clerk of Court for Marion County on March 9, 2015 in Book 299 at Page 5.

FOR A FOURTH CAUSE OF ACTION
(Claim and Delivery on Assignment of Leases and Rents, Appointment of Receiver)

30. The allegations of the previous paragraphs are incorporated herein as if repeated verbatim.

31. As additional security, HSGCHG Investments, LLC executed an Assignment of Rents and Leases in favor of Avatar Capital Finance, LLC on January 22, 2015.

32. The Assignment of Rents and Leases was recorded in the Office of the Clerk of Court for Marion County on January 23, 2015 in Book 295 at Page 34.

33. The Assignment of Leases and Rents provides, *inter alia*, that upon or at any time after the occurrence of an event of default, the assignee is entitled to immediate possession of all rents and sums due and payable, and should legal proceedings be instituted pursuant to said mortgage, the mortgagee, its successors and assigns, is entitled to have a Receiver appointed of the rents and profits of the mortgaged premises.

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34. Plaintiff is entitled to have a Receiver appointed of the rents, issues and profits of the mortgage premises, 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, towards the debt secured by said mortgage.

35. Plaintiff is entitled to and is seeking claim and delivery on rents and profits due under the Assignment of Leases and Rents.

WHEREFORE, having fully set forth its Complaint, the Plaintiff prays that this Honorable Court inquire into the matters set forth herein and that:

1. The amount due upon the said Note and Mortgage held by Plaintiff be ascertained and determined under the direction of this Court, together with attorney's fees and the costs of this action.

2. The said Plaintiff's Mortgage be declared a first mortgage lien and that the said Plaintiff have judgment of foreclosure for the amount so found to be due and owing thereon, 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.

3. The mortgaged premises be sold under the direction of this Court, the equity of redemption be barred, and that the proceeds of sale be applied as follows:

First, to the costs and expenses of the within action and sale.

Second, to the payment and discharge of the amount due on Plaintiff's note and mortgage, together with the attorney's fees as aforesaid, and

Third, the surplus, if any be distributed according to law.

4. Plaintiff be granted a deficiency judgment against the obligor(s) of the Note and any guarantors pursuant to S.C. Code § 29-3-660 (1976, as amended), following a judicial sale of the mortgage premises. Plaintiff may waive its right to a deficiency judgment at any time prior to the sale herein.

5. An Order be entered directing and empowering the Sheriff of Marion County, South Carolina, to place the successful purchaser at said foreclosure sale in possession of the property hereinabove described should the same become necessary.

6. An Order be entered for the ejectment of the defendants in possession herein and all persons claiming thereunder and the removal therefrom of all furnishings, fixtures and items not subject to the lien of the Plaintiff's mortgage, which personal property if not removed shall be deemed abandoned and shall be removed by the plaintiff or its agents from the subject property by placing said property on the public street or highway or by any other means.

7. An Order be entered granting the appointment of a Receiver to secure and supervise the rental of the property sought to be foreclosed with authority to take possession thereof and collect rents,

issues and profits thereon during the pendency of this action and to hold the same as further security for Plaintiff's debt.

9. An Order be entered for reimbursement of all costs for inspecting and securing the property incurred by the plaintiff as a result of the delinquency.

10. An Order be entered for such other and further relief as may be just and proper.

FINKEL LAW FIRM LLC

Magalie A. Creech (SC Bar 78855)
P.O. Box 41489
Charleston, SC 29423
Tel.: (843) 755-7560
Fax: (866) 800-7954
Attorneys for Plaintiff

ELECTRONICALLY FILED - 2019 Dec 17 9:43 AM - MARION - COMMON PLEAS - CASE#2019CP3300853

ELECTRONICALLY FILED - 2019 Dec 17 9:43 AM - MARION - COMMON PLEAS - CASE#2019CP3300853

NOTICE REQUIRED BY THE FAIR DEBT COLLECTION PRACTICES ACT, (THE 'ACT') 15 U.S.C. SECTION 1601, AS AMENDED

1. As of November 15, 2019, you owe $4,804,801.09. Because of interest, late charges, and other charges that may vary from day to day, the amount due on the day you pay may be greater. Hence, if you pay the amount shown above, an adjustment may be necessary after we receive your check, in which event we will inform you before depositing the check for collection. For further information, write or call as directed in Paragraph 6 of this Notice.

2. Avatar Partners CT, LLC is the Creditor to whom the debt is owed.

3. The debt described in this Notice will be assumed to be valid by the Creditor's law firm unless you, the Debtor, within thirty (30) days after receipt of this notice, dispute the validity of the debt or some portion thereof.

4. If you, the Debtor, notify the Creditor's law firm in writing, within thirty (30) days from receipt of this notice that the debt or any portion thereof is disputed, the Creditor's law firm will cease all collection activities until it obtains and provides to you a verification of the debt, and a copy of the verification will be mailed to you, the debtor, by the Creditor's law firm.

5. If the Creditor named in the attached letter is not the original Creditor, and if you make a written request to the Creditor's law firm within thirty (30) days, the name and address of the original Creditor will be mailed to you by the Creditor's law firm.

6. Written requests should be addressed to Finkel Law Firm LLC, Post Office Box 41489, Charleston, SC 29423, or call (843) 577-5460.

7. Please be advised that the time period in which you have to dispute the amount of your debt and request additional information does not alter or affect the time period set forth in the South Carolina Rules of Civil Procedure for the filing of an answer or other responsive pleading to the Complaint.

8. If the Debtor has received a discharge of the debt described in paragraph one pursuant to the United States Bankruptcy Code, then neither Creditor nor its law firm is seeking to collect any portion of the debt and all information contained herein is supplied for informational purposes only. Any pending or ensuing legal action by Creditor's law firm will undertake to foreclose a valid security interest only and neither is intended nor will operate as any effort to collect upon any debt that has been so discharged.

THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE



Deposition of:

Hearing

December 14, 2020

In the Matter of:

Avatar Partners CT, LLC Vs. HSGCHG Investments, LLC, Et Al.

A. William Roberts, Jr & Assoc.
800-743-3376 | calendar-awr@veritext.com | www.veritext.com

STATE OF SOUTH CAROLINA
COURT OF COMMON PLEAS
COUNTY OF MARION

HEARING IN THE CASE OF:

AVATAR PARTNERS CT, LLC,
Plaintiff,
vs. CASE NO. 2019-CP-33-00853
HSGCHG INVESTMENTS, LLC f/k/a CAROLINA ENTERTAINMENT COMPLEX, LLC; PARTNERS 95, LLC; OIL BARONS, INC.; and ROBERT D. HARTMANN, SR.,
Defendants.

BEFORE THE
HONORABLE JUDGE: W. Haigh Porter
DATE: Monday, December 14, 2020
TIME: 10:00 a.m.
LOCATION: Florence Co. Judicial Center
181 N. Irby Street
Florence, SC 29501
REPORTED BY: Tia Shean, Court Reporter

APPEARANCES OF COUNSEL:

ATTORNEY FOR THE PLAINTIFF
AVATAR PARTNERS CT, LLC:
FINKEL LAW FIRM, LLC
BY: MAGALIE A. CREECH, ESQ.
4000 Faber Place Drive, Suite 450
North Charleston, SC 29405-8556
(843)577-5460
mcreech@finkellaw.com

ATTORNEY FOR THE DEFENDANTS
HSGCHG INVESTMENTS, LLC f/k/a
CAROLINA ENTERTAINMENT COMPLEX, LLC;
PARTNERS 95, LLC; OIL BARONS, INC.;
and ROBERT D. HARTMANN, SR.:
CALLISON TIGHE & ROBINSON, LLC
BY: LOUIS LANG, ESQ.
1812 Lincoln St., Suite 200
Columbia, SC 29201
(803)404-6900
louislang@callisontighe.com

ALSO PRESENT:

Jerry Zevenbergen
Robert D. Hartmann
Ryan Cronin-Prather
William Joe McMillian

(INDEX AT REAR OF TRANSCRIPT)

P R O C E E D I N G

JUDGE PORTER: I believe this matter was referred to me back in July. I believe it was pursuant to an Order issued by the Clerk of Court of Marion County. Ms. Creech, I believe you represent the Plaintiff. Mr. Lang, I understand you represent one or more of the Defendants.

MR. LANG: That's right, Your Honor. I represent all of the Defendants.

JUDGE PORTER: Okay. Are there any matters we need to take-up before you commence?

MS. CREECH: I don't believe so, Your Honor. I stipulated to a number of the exhibits already, so if it is acceptable to Mr. Lang, I would like to begin with Plaintiff's testimony.

JUDGE PORTER: Okay.

MR. LANG: That's perfectly acceptable, Your Honor. Your Honor, over weekend I e-mailed you a copy of my Pre-Trial Brief.

JUDGE PORTER: I got it.

MR. LANG: I have a hard copy, if Your Honor pleases.

JUDGE PORTER: Pardon?

MR. LANG: I have a hard copy, if Your Honor wishes to have it.

JUDGE PORTER: Got it right here --(indicating)-- on my desk.

MR. LANG: Thank you, Judge.

JUDGE PORTER: I believe that Judge Russo issued an Order that I saw. I think he issued an Order, back in January, citing the issues that you folks had had; is that correct?

MR. LANG: That is correct, Your Honor.

JUDGE PORTER: Okay. Ms. Creech, you may proceed.

MS. CREECH: Yes, Your Honor. I'd like the call the Plaintiff's witness, Jerry Zevenbergen, please.

JUDGE PORTER: Okay. If you'd come around over here --(indicating)-- please, sir. If you will, put your left hand on the Bible and raise your right hand. The evidence you shall give will be the truth, the whole truth, and nothing but the truth, so help you God.

WITNESS: I do.

JERRY ZEVENBERGEN

being first duly sworn, testified as follows:

JUDGE PORTER: Thank you. I'm going to give you an option of where you sit. If you want to be a little further away from this nice, young lady --(indicating), the reporter, you can sit in the end seat, over there --(indicating)-- in the Jury box, and I have had -- I have recently had several people say they'd like to do that, and that way we all stay distanced. Okay. Ms. Creech, before you start, let me get you and Mr. Lang to confirm that -- I have had the opportunity this morning to briefly run through the pleadings in the matter.

I hope I've got everything. It was done fairly rapidly, but I had done it about two weeks ago and it refreshed my memory. The original debt, I believe, was a Note signed by Partners 95; Oil Barons; and HSGCHG, but the original Mortgage was just from Avatar Capital; is that correct?

MS. CREECH: That's correct, Your Honor.

JUDGE PORTER: Okay, and then there are numerous Assignments of which is totally -- I didn't try to figure-out each one, but I'll leave it to you folks to make sure -- if there's

anything I need to understand, about the Assignments, you will point it out.

MS. CREECH: Yes, Your Honor.

JUDGE PORTER: Thank you.

MS. CREECH: May I approach? I want to make sure the Witness has the exhibits available. Thank you.

JUDGE PORTER: If the Witness would -- would you mind tapping --(demonstrating)-- that mic, and see if it's on?

WITNESS: [Complies].

JUDGE PORTER: I'm not sure it's on.

WITNESS: Test.

JUDGE PORTER: No, I don't believe it's on. If you'll just kind of speak-up so we can hear.

WITNESS: Yes, I will.

DIRECT EXAMINATION

BY MS. CREECH:

Q. Would you, please, state your full name for the record, sir.

A. Jerry Allen Zevenbergen.

Q. Where are you currently employed?

A. Avatar Capital, LLC.

Q. What kind of entity is

Avatar Capital?

A. It is a limited liability company.

Q. What business does Avatar Capital engage in?

A. We make commercial real estate loans.

Q. What types of -- any other types of loans, apart from commercial real estate?

A. No.

Q. No residential?

A. Only on investment residential property, no -- nothing personal.

Q. What is your position with Avatar Capital?

A. I am 50 percent owner and manager.

Q. How long have you been a 50 percent owner and manager?

A. Since the entity's inception, in about 2012.

Q. In your capacity as manager, do you have access to Avatar Capital's servicing records?

A. I do.

Q. Do you review those records in the course of your duties at Avatar Capital?

A. I do.
Q. Are you familiar with the account that is the subject of this foreclosure action?
A. Yes, I am.
Q. Are Avatar Capital's records for the subject loan normally kept by Avatar Capital in the course of its commercial mortgage business?
A. That's correct.
Q. Is it Avatar Capital's regular practice to make those records at or near the time of the occurrence or events reflected in those records?
A. Yes, as monies come in or costs are paid, those are recorded concurrent with those activities, and the accounts are reconciled on a regular basis.
Q. Is it Avatar Capital's regular practice for those records to be made by a person of knowledge or firm information transmitted by a person of knowledge?
A. Yes. I have personal involvement and I oversee two accounting people in our company that do this work.
Q. Was -- was Avatar Capital the

original lender of the loan that is the subject of this action?

A. We were.

Q. Do you have personal knowledge about that lending transaction?

A. Yes, I do.

Q. Did Avatar Capital also service the loan account?

A. Since its inception, yes.

Q. So to confirm, no other entities besides Avatar Capital serviced this account.

A. That is correct.

Q. Are there any other entities that may have an interest in this action -- excuse me, in this loan?

A. Avatar Partners, CT, is an LLC that has an ownership interest in the loan.

Q. What kind of entity is -- what is the purpose of that entity?

A. It was an entity formed specifically for the purpose of owning this loan, and to proceed with this foreclosure action.

Q. Is it the current Lienholder and Mortgagee in this action?

A. It is.

Q. On the Plaintiff's loan.
A. Yes.
Q. Approximately, when did Avatar Partners, CT come into existence?
A. In about January of 2019.
Q. All throughout, I will refer to Avatar Capital and Avatar Partners, if that's acceptable to you.
A. All right.
Q. What is your position with Avatar Partners?
A. I am the manager.
Q. You mentioned, a moment ago, that Avatar Partners was created for purposes of holding this asset. What type of business, apart from that, does Avatar Partners engage in, if any?
A. None. It's a special purpose entity.
Q. Can you tell me what records that you have reviewed for the subject account in this action.
A. I have reviewed the -- the loan documents, and the servicing records, and underlying invoices.

Q. Have you familiarized yourself with those records?

A. I have.

Q. I'd like to refer you to what's been marked as Plaintiff's Exhibit 1. It's a copy of the subject Note. Can you, please, tell the Court what the principal amount under this Agreement is?

A. The original Note had a principal balance of two million dollars.

(PLF. EXHIBIT 1, Commercial Promissory Note, 8pgs, were marked for identification.)

BY MS. CREECH:

Q. What is the contractual interest rate on your returns of this entity?

A. 9.99 percent.

Q. Are there any other interest rates set-forth under this Note?

A. Yes. In the event of a default the interest rate is increased from 9.99 to 19.99 percent.

Q. What is the date of this instrument?

A. January 22, 2015.

Q. If you will, direct your attention

to the last page of the exhibit labeled: PL00008. Can you, please, identify the three signatures that are on the final page of that.

A. Paul R. Greenberg, signing for Partners 95, LLC, as its managing member; Robert D. Hartmann, Senior, signing for Oil Barons, Inc. as it's president; and Robert D. Hartmann, Senior, signing for HSGCHG Investments, LLC, as its president and chief executive officer.

Q. Thank you. Is there a corresponding Guarantee for this Note?

A. There is.

Q. I'll direct your attention to what's been labeled, Plaintiff's 2.

MR. LANG: Your Honor, excuse me. For the record, we don't object to Plaintiff's 1-8, so that the witness can speak.

JUDGE PORTER: I'm sorry, Mr. Lang, could you speak-up or use your mic?

MR. LANG: I'm sorry. I have a very soft voice, Your Honor. I'm going to keep my mask on because I'm out-and-about a lot and I don't want to -- Your Honor, we have no objection to the Plaintiff's Exhibits 1-8, if counsel

wishes to move them into evidence, at this point, we have no objection to that, so this witness can freely talk about them.

MS. CREECH: Yes, Your Honor. I would like to do that. I was just going to have him go through them, and then move them into evidence at the same time, but I -- I'd like to move to admit Plaintiff's 1-8.

JUDGE PORTER: Without objection.

(PLF. EXHIBIT 2, Recourse Guaranty, 12pgs, were marked for identification.)

DIRECT EXAMINATION

BY MS. CREECH:

Q. Back to the Guarantee, Mr. Zevenbergen, that we were just looking at, can you tell me who's signature appears on the very last page?

A. Robert Hartmann, Senior.

Q. Is there a corresponding Security Agreement that is referenced in these documents, Mr. Zevenbergen?

A. Yes, a Commercial Mortgage.

Q. I'll direct your attention to what's been entered into evidence as Plaintiff's Exhibit 3. If you could, take a look

at the page labeled: PL000045, and tell the Court who executed this Mortgage.

A. Robert D. Hartmann, Senior, as president and executive chairman of HSGCHG Investments, LLC.

(PLF. EXHIBIT 3, Commercial Mortgage Agmt, 27pgs, were marked for identification.)

BY MS. CREECH:

Q. Did the Mortgagor that you just referenced agree to assign its rents and leases to the Plaintiff?

A. Yes.

Q. Is the corresponding Assigning of the Rents and Leases what's been entered as Plaintiff's 4, before you?

A. Yes, it is.

(PLF. EXHIBIT 4, Assignment of Rents & Leases, 9pgs, were marked for identification.)

BY MS. CREECH:

Q. Was there additional security provided by the mortgagor for -- in consideration of the loan?

A. Yes, we also obtained a UCC Financing Statement.

Q. Are those the set of documents that

are admitted as Plaintiff's 5?

A. Yes.

(PLF. EXHIBIT 5, UCC Financing Stmt, 13pgs, were marked for identification.)

BY MS. CREECH:

Q. At the beginning of your testimony you stated that Avatar Partners is the current Mortgagee and Plaintiff in this action. Is that -- is it correct to state that there are purported assignments of the Mortgage, which transfer those interests into Avatar Partners and that those assignments are before you and admitted as Plaintiff's Exhibit 6?

A. Yes, that's correct.

(PLF. EXHIBIT 6, Assignment of Mortgage, 66pgs, were marked for identification.)

BY MS. CREECH:

Q. Can you, please, tell the Court if there were any modifications to the original loan instruments?

A. Yes, there was a Modification of the original Note that increased the principal from two million dollars to 3.5 million dollars.

Q. Is that Modification what has been marked as Plaintiff's Exhibit 7?

JUDGE PORTER: That new amount was what?

WITNESS: The new amount, Your Honor, is 3.5 million dollars.

JUDGE PORTER: Thank you.

(PLF. EXHIBIT 7, First Modification, 11pgs, were marked for identification.)

BY MS. CREECH:

Q. In addition to increasing the loan amount, did this first Modification extend the maturity date of the subject loan?

A. Yes, the maturity date was extended to June 30, 2018.

Q. How about any other Modifications were there?

A. Yes, there was a second Modification, which extended the due-in-full date of the loan to July 1, 2019.

Q. Is that document what's been admitted as Plaintiff's Exhibit 8, the Second Modification?

A. Yes.

(PLF. EXHIBIT 8, Second Modification, 7pgs, were marked for identification.)

BY MS. CREECH:

Q. Can you, please, tell us what properties serve as collateral for this loan?

A. Yes, there is the property, here in South Carolina, and there are also two properties in Connecticut. One property in Connecticut is a small retail strip center, and the other property in Connecticut is a gas station/convenience store.

Q. For those properties that are located in Connecticut, have Foreclosure proceedings begun?

A. Yes, they have.

Q. What is the status of those proceedings?

A. It's in-progress. It's a very contentious piece of litigation there in Connecticut.

Q. Please, tell the Court what the status of the account is at present.

A. It is in default.

Q. Has the loan matured, pursuant to those terms?

A. It did.

Q. As we sit here today, does the loan remain in default?

A. It does.
Q. Has the default been cured?
A. No.
Q. Do you know whether a Notice of Default was sent, regarding the past due balance?
A. Yes, it was.
Q. Can you, please, identify the document I've just handed you?
A. This was a document created and sent by our attorneys, in Connecticut, setting forth the defaults under our Loan Agreement Note and Mortgages.
MS. CREECH: I'd like to move to offer the default letters into evidence as Plaintiff's Exhibit 9.
(PLF. EXHIBIT 9, Braucher & Amann default letters, 8pgs, were marked for identification.)
JUDGE PORTER: What was the date of that document?
WITNESS: January 15, 2019.
JUDGE PORTER: Thank you.
MR. LANG: No objection, Your Honor.
JUDGE PORTER: Entered without objection.

DIRECT EXAMINATION

BY MS. CREECH:

Q. Pursuant to these default letters, did Avatar, in-fact, exercise its rights under the Assignment of Rents and Leases?

A. We did. There are tenants in the retail property in Connecticut and we contacted them, notified them, of our Assignment of Rents and directed them to send the rest to Avatar.

Q. Have they done that?

A. Yes.

Q. What about the South Carolina property?

A. There's no income being generated on the South Carolina property that I'm aware of.

Q. For those rents that you've received, have they been credited to the subject account?

A. Yes, they have.

Q. Are you prepared to testify as to the debt amount due and owing under the Note and Mortgage?

A. I am.

Q. What specific documents had you looked at to arrive at the figure that you will

testify that constitute the debt amount as of today?

A. I've reviewed the loan documents, they -- I've reviewed the Statement of Account. I've reviewed the accounting of the receipts and disbursements that we have made since we began the collection of rents, and I've also reviewed the calculation of payoff that shows the interest and extension fee, and due-in-full fee that's due and owing.

Q. Please identify the document I just handed you.

A. This is a Borrower's Statement of Account for Partners 95, and the Oil Barons, HSGCHG. It is a document that is generated from our regular accounting records. We use a software, common in the mortgage industry, called the Mortgage Office, and when loans aren't paying on a consistent basis it reflects the amount of loan we advanced, and it reflects payments, and their application to principal interest and reserves.

Q. The information contained in this record, was it prepared at or near the time of the occurrence or events reflected therein?

A. Yes. These are -- these are maintained on a current basis.

Q. Again, that's by a person with knowledge?

A. Yes.

Q. And this record is kept in Avatar Capital's regular servicing business course of dealing.

A. Correct.

MS. CREECH: I'd like to move to offer this exhibit as Plaintiff's 9.

MR. LANG: No objection.

JUDGE PORTER: Without objections.

COURT REPORTER: Wouldn't that be, 10?

MS. CREECH: Oh, excuse me, 10.

(PLF. EXHIBIT 10, Borrowers Statement of Account, 3pgs, were marked for identification.)

DIRECT EXAMINATION

BY MS. CREECH:

Q. Mr. Zevenbergen, can you please tell the Court what the document I just handed you is.

A. Yes, this --(indicating)-- is an accounting of the rents received, and expenses

paid, relative to this loan, and it is segregated by the entities who are the Borrowers. Partners 95 owns the retail property that I referred to earlier, and so that's where the majority of the activity is.

Q. This document, again, was prepared by Avatar Capital?

A. Yes, by our accounting staff.

MS. CREECH: I'd like to move to enter this as Plaintiff's Exhibit 11.

MR. LANG: Your Honor, the trouble -- this -- there's been inadequate foundation laid with this particular document to be entered into evidence, and I object, on that basis.

JUDGE PORTER: Mr. Lang, I'm sorry. You're going to have to repeat yourself.

MR. LANG: I'm going to have to take this --(demonstrating)-- off to do it. I'm sorry, Your Honor. I object to this document, which is Plaintiff's Exhibit No. 11. There has been no foundation laid for this document to be entered into evidence.

MS. CREECH: I'll be happy to keep asking some questions to --

JUDGE PORTER: Proceed.

DIRECT EXAMINATION

BY MS. CREECH:

Q. So tell me more about this specific document. You said that it was prepared by Avatar Capital; is that correct?

A. That's correct.

Q. By whom was it prepared?

A. By Carla Stadler, who is an accountant at our company.

Q. Okay. So does she have knowledge of the information that is inputted into this document?

A. Yes.

Q. How does she obtain that knowledge?

A. She receives rents, and she is the person who either accounts or the wire transfer, if it came in via wire, or she makes the deposit of those checks into our collection bank account.

Q. Those are all activities that are performed in the regular course of business as Avatar Capital's servicing business --

A. Yes, for this and other loans.

Q. Information that is contained within this document is entered near or at the time of the occurrence of the events reflected;

is that right?

A. Yes, and at -- at the time we began collecting rents and -- and incurring expenses, those transactions are input into QuickBooks, and this is a summary of the QuickBook accounting.

Q. As the manager of Avatar Capital you directly oversee -- do you oversee these processes, these administrative functions that your staff performs?

A. I do.

MS. CREECH: I'd like to move to offer this as Plaintiff's 11.

MR. LANG: I will maintain my objection as there is not an adequate foundation laid for this document under the business records to hearsay.

JUDGE PORTER: Admitted. Overruled. Admitted.

(PLF. EXHIBIT 11, Partners 95 Income & Expenses by Month, 4pgs, were marked for identification.)

DIRECT EXAMINATION

BY MS. CREECH:

Q. Can you, please, identify the document I've just handed you?

A. Yes, this is a letter dated December 7, 2020, addressed to Louis Lang, authored by you, and it is a Statement of Account for the payoff on this loan.

Q. If you will flip back to the last page and, please, tell me what this document is.

A. This is a Payoff Statement and its a calculation of the -- based on the -- the principal balance due, of 3.5 million dollars, interest at -- at regular rates, which is due from September 1, 2018, through today. So that's 835 days, for a total at 9.99 percent interest of $810,993.75. Further, there is default rate of interest, which began on 11/01 -- November 1, 2018, and calculated through today.

The default interest is calculated for 774 days, at ten percent interest, which is the premium over the regular rate. I testified, earlier, that it was 9.9 percent interest, and the default rate is 19.99 percent. The next item here are late charges, which are due under the -- under the Note, and we have a detail of that, but they total --

MR. LANG: Your Honor, again, this

document has not been entered into evidence and I object to the witness referring to the specifics of it until it -- a proper foundation is laid.

BY MS. CREECH:

Q. Mr. Zevenbergen, before we get into the details of this document, would you tell me who prepared it, and how it was prepared for this?

A. It was prepared by Carla Stadler, in our office, who reports to me, and I reviewed it with her, and it was prepared from the records that we maintain as a Servicer of this loan.

Q. Again, those records are maintained in your regular course of business as a Loan Servicer?

A. That's correct.

JUDGE PORTER: Now let him go back through the figures.

MS. CREECH: I'd like to move to offer it as Plaintiff's 12.

MR. LANG: Your Honor, I object. This document has not been prepared in the ordinary course of business, by the Plaintiff. It isn't in ordinary practice of the business to prepare such a document. This document was

obviously prepared for this litigation or for this hearing and, accordingly, I would suggest to the Court that the proper foundation has not been laid of the admissibility of this evidence, in particular the letter dated, 12/07/2020, as well as its attachments which contain the financial data.

In addition, Your Honor, I have diligently looked through all of the documents that counsel has provided -- that counsel has provided me, in Discovery, and I found no document that indicates an interest accrual, except this document here, which is simply a summary and not an actual document prepared in the ordinary course of business by the Plaintiff. That's the basis of my objection, Your Honor. Thank you.

MS. CREECH: Mr. Zevenbergen --

JUDGE PORTER: Wait. Mr. Lang, I think -- I think the Plaintiff's attorney has basically given you a basis of how its done. The letter, as I understood the testimony, that he's referring to was a letter prepared by Ms. Creech, based on the information that they have -- her client, this gentleman, has provided to her along

with the assistance of the person at his office that normally keeps the records under his supervision, and he testified that he had reviewed it all -- it was done under his supervision and he reviewed it all. I think -- I think we can proceed.

MS. CREECH: Thank you, Your Honor.

(PLF. EXHIBIT 12, Finkel Law Ltr, 12/07/2020, were marked for identification.)

DIRECT EXAMINATION

BY MS. CREECH:

Q. Just to further clarify that point, is it part of Avatar Capital's regular servicing practice to provide payoffs to its borrowers?

A. Yes, on a regular basis.

Q. On occasion, if those accounts are involved in litigation, do those payoffs come from Avatar Capital's counsel?

A. They are originated by the accounting staff at Avatar, are reviewed by me, and transmitted to counsel, who typically then provide that to third parties.

Q. This last page of what we are proposing to be Plaintiff's Exhibit 12, did you review and prepare this document, and mail it

to me?

A. Yes.

Q. Now, we'll go through some of those figures. Can you tell me, sir, if any of the unpaid -- if any of the principal balance of 3.5 million dollars has been repaid?

A. It has not.

Q. Can you tell me at what regular interest rate interest has accrued on this account?

A. 9.99 percent.

Q. For what range of dates has that interest rate accrued?

A. From September 1, 2018, until today.

Q. Where is that set-forth?

A. On line two, labeled: Interest.

Q. If we are referencing the loan instruments, the Note and Mortgage, can you tell me where that interest rate is set-forth?

A. That would be in the Note.

Q. What is the total accrued interest at the regular interest rate of 9.99 percent?

A. $810,993.75.

Q. You mentioned that there was a

default interest rate. Can you tell me what rate amount that is?

A. Yes. It is ten percent above the regular rate, for a total of 19.99 percent. It's calculated here as: Default Interest, at the ten percent premium from November 1, 2018, until today.

Q. Do you know where, specifically, in the loan instrument that rate is set-forth?

A. Its in the Note.

Q. Please direct your attention to the Note, Plaintiff's 1, paragraph -- Section 7, in the Note. Do you see the section where it discusses Remedies, 7-C?

A. Yes. Its in Section 7-C, No.3. Default Interest.

Q. Thank you. For what range of dates does this default interest rate accrue?

A. It started two months after the default, and its from November 1, 2018, until today.

Q. What is the total amount of default accrued interest?

A. $752,498.28.

Q. Has Avatar had to advance taxes and

insurance for the properties that serve as collateral for this loan?

A. Yes, we have.

Q. How much has it advanced for taxes?

A. $142,334.76.

Q. How much has it advanced for insurance?

A. $89,433.86.

Q. Is there applicable interest rate for advances for taxes and insurance?

A. Yes, in the Mortgage it provides for the interest at 19.99 percent.

Q. I'd like to direct your attention to Plaintiff's Exhibit 3, the Mortgage you just referenced, specifically, Section 4.02.

A. Yes.

Q. Is that the section on which Avatar relies for the accrued interest rate of 19.99 percent on taxes and insurance?

A. Yes.

Q. What is the total amount of accrued interest on taxes and insurance?

A. $11,143.49.

Q. What other amounts has Avatar advanced, not including legal costs, which we'll

get to momentarily?

A. We -- we engaged an appraiser and advanced $6,000 for properties in Connecticut, and we also paid property expenses, the operating costs of the -- of the properties, $135,751.92.

Q. Tell me more about that. These property operation expenses. How does Avatar determine what to pay?

A. Well, we exercise our Assignments of Rents and began collecting rents from the tenants at the retail property. Mr. Hartmann has been the manager of that property and provides us invoices for costs related to the ongoing operations for, you know, plumbing, landscaping, and sundry repairs that are necessary to keep the property in good condition.

Q. Does Avatar, at any point, independently determine what property expenses to admit?

A. No. Those all come to Avatar, often to me, from Mr. Hartmann or Mr. Greenberg's office.

Q. No one else?

A. No one else.

Q. What about other fees that are

assessed to the loan. You mentioned that there was an appraisal fee. How about late charges?

A. Yes, late charges accrued as of the date of the first -- well, as the date of the default, which is September 14, 2018. There were an accumulation of late charges from the inception of the loan that totaled $46,620.

Q. Those late charges are permissible on the Note.

A. Under the Note, yes.

Q. Any other applicable fees?

A. Yes, other late charges subsequent to October 15, 2018, to July 1, which was then the maturity date of the Note. There were nine additional late charges for a total of $26,223.75.

Q. Have any late charges been assessed after that date?

A. No.

JUDGE PORTER: Give me that figure again.

WITNESS: $26,223.75.

BY MS. CREECH:

Q. Was there an extension fee assess to the account?

A. Yes. When the Modified Mortgage, which took us from two million dollars to 3.5 million dollars, that had a maturity date of July -- excuse me, June 30, 2018. At the request of the Borrower we -- we entered into a Modification, extending the due date to July 1, 2019, essentially, another year, and for that the Borrower agreed to pay an extension fee of $105,000.

Q. That began to set-forth -- is that set-forth under the Second Modification?

A. Yes, it is.

Q. Was there a due-in-full fee assessed?

A. Yes. Our loan provides for a -- or Note provides for a due-in-full fee equal to ten percent of the principal balance if the -- if the principal payment isn't made by the due date.

Q. Is that set-forth in the Note, specifically, Section 5-C?

A. Yes, it is, and that is $350,000, which is ten percent of the Note balance.

Q. Do the Note and Mortgage allow Avatar to recover the costs it incurs to bring this action to enforce the terms of the Note

and Mortgage?

A. Yes, it does.

Q. Where does it say that?

A. It's in the Note.

Q. Is it anywhere else?

A. It's in the Mortgage as well, I believe.

Q. Can you tell me how much, in legal fees, Avatar has incurred in the enforcement of its Note and Mortgage?

A. Yes. $283,370.18.

Q. Have any amounts been credited to the account?

A. Yes, the account has been credited for all of the rents we have received.

Q. What is the reserve balance that's referenced on the payoff breakdown?

A. At the time the loan was originated we had a reserve for taxes and insurance and that's the residual amount in that reserve account, and we -- and that amount is $40,165.82, and we have deducted that from the payoff balance.

Q. As we sit here today can you, please, tell the Court, exclusive of attorneys

fees and costs that are in the Note and Mortgage, that have been unbilled and not reflected in the payoff, what the total amount due and owing is?

A. Yes, the total amount due and owing is $5,839,616.99.

Q. Are there any other recoverable fees or costs that are not accounted for in these figures, apart from the unbilled or not yet assessed attorneys fees and costs?

A. The travel costs of coming here today, and just the ongoing costs of litigation.

Q. Is Avatar seeking a deficiency in this action?

A. Yes, we are.

MS. CREECH: Your Honor, I have an Affidavit of Attorneys Fees and Costs, which sets forth the time that the Finkel Law Firm has expended in its handling of this matter through December 11, 2020. The Plaintiff has advanced $6,722.50 as partial payment of its attorneys fees. That amount is included in the payoff figures to which Mr. Zevenbergen just testified. The unpaid attorneys fees, as of December 11th, were $4,180.

JUDGE PORTER: Four-thousand what?

MS. CREECH: $4,180. In addition, the Plaintiff has advanced $12,094.34 in costs of collection. Those amounts are also included in the legal expenses set-forth in the breakdown of -- to which Mr. Zevenbergen just testified. The unpaid costs of collection will include the court reporter fee, and the number of other costs that have yet to be assessed. We will respectfully ask for -- that we be permitted to supplement the record with the attorneys fees and costs that are incurred subsequent to December 11th, to include the time for trying the case as well as any post-trial matters.

Additionally, we we would request to offer, subsequent to the trial, any additional expenses that have been incurred to which Mr. Zevenbergen just testified for travel and a number of other items that were not incurred as of the date that the figures were prepared. I have no further questions for the witness at this time.

JUDGE PORTER: Mr. Lang.

MR. LANG: Thank you, Your Honor.

CROSS-EXAMINATION

BY MR. LANG:

Q. Could you pronounce for me your name, because I don't want to butcher it?

JUDGE PORTER: Mr. Lang, excuse me. Excuse me a minute. I know you prefer to have your mask on, so put it on. If you would, just tap -- I think that microphone in front of you might be live, but I'm not sure. Is there a button down there?

MR. LANG: I don't think it is, Judge.

JUDGE PORTER: On the base of it, is there a little green light? No?

MR. LANG: I don't see any.

JUDGE PORTER: Well, put your mask on -- put your mask on and just speak-up a little more.

MR. LANG: I'll try my best, sir.

JUDGE PORTER: Okay.

CROSS-EXAMINATION

BY MR. LANG:

Q. Since I'm closer to you, Judge, let me put this on. Please, pronounce your name for me.

A. Zevenbergen.

Q. Mr. Zevenbergen, my name is

Louis Lang, and I represent the Defendants in this case. Let me ask you a couple of questions, kind of where you left-off, and I invite your attention, first, to Plaintiff's Exhibit No. 12, which is a letter dated December, which has the summary of debt, are you with me?

A. Yes.

Q. Direct your attention to the summary of the debt, which is on the last page. I was a little confused about your attorneys fees. Let me ask you this, the 5.8 million and change that you assert as the debt due under this Note, does that include $283,370.18 in attorneys fees?

A. Yes.

Q. Let me ask you something about that. Now, that includes the attorneys fees for all of the litigation in Connecticut and South Carolina, correct?

A. Correct.

Q. There's no distinction between those two, correct?

A. Correct.

Q. Tell me and remind me of when the Connecticut litigation began. Well, let me ask you a better question. It began before this

litigation; isn't that correct?

A. Yes. Near the beginning of 2019.

Q. This litigation began toward the end of 2019, correct?

A. I'd be guessing, but yes.

Q. Sometime after, we can agree on that point?

A. Yes.

Q. All right. Now, in that regard, I think counsel indicated, in her Affidavit, that you had advanced her firm about $6,700 in attorneys fees for this litigation; is that correct?

A. I don't recall.

Q. Have you seen her Affidavit that she submitted to the Court earlier? Its not on there. I have a copy of it.

A. I haven't -- no, I have not seen it.

Q. Seeing it, would that refresh your recollection as to whether or not your firm has advanced about $6,700 in attorneys fees to Ms. Creech's firm --

A. Yes.

Q. -- for this litigation?

A. Yes.
Q. I will hand it to you. Take a minute to look at that, and then I will take it back and ask you if it has indeed refreshed your memory. Thank you. Has it refreshed your recollection as to the amount that you may have or your firm may have had or advanced Ms. Creech's -- her firm in regard to this litigation?
A. Yes.
Q. Approximately, what is that figure?
A. Approximately, $6,700.
Q. So out of that $283,000 that money -- let me back-up for a minute. Out of that $283,000 about $6,700 of that is accountable to this litigation in South Carolina. Isn't that a fair statement?
A. Fair statement.
Q. In regard to the Appraisal, is that for Connecticut properties or for South -- for this property?
A. Connecticut.
Q. So none of that $6,000 in appraisal fees were utilized to appraise the property in connection here today, which is the Marion County

property, correct?

A. All right. In terms of the taxes paid, $114,334 and some change, how much of that is attributable to this property in Marion County as opposed to the Connecticut property, if you can tell me, based upon the documents that you have?

A. $26,545.38.

Q. So how did $114,334 reflected on your debt statement, $26,000 and give me the -- the other figures; if you would.

A. $26,545.38.

Q. $26,545.38 is attributable to real estate taxes, I assume, from Marion County, South Carolina. Is that a fair statement?

A. Yes.

Q. How about insurance, tell me about that. $89,433.86. How much of that is attributable to this property here in South Carolina?

A. $74,659.86.

Q. Now we have, kind of, a catchall in the category of property expenses. Are you with me, about $135,000?

A. Yeah, I'm trying to find it.

Q. Are you looking at the back of the document?
A. Yes, sir. Yes.
Q. Right. Tell me, the $135,751.92, how much of that is attributable to Marion County?
A. None.
Q. Let me ask you a couple of questions about the first loan modification. That is -- let me back-up completely and go to -- the originator of this loan was Avatar Capital; isn't that right?
A. Correct.
Q. Shortly after the loan was originated and funded to the two million dollar point, before the first modification, Avatar Capital assigned its interest in the Mortgage and Note to a series of third parties. Is that a fair statement?
A. Yes.
Q. If you add up all of those people and their percentages, it comes to a hundred percent of Avatar's interest as assigned to those individuals named on the First Assignment; is that right?

A. Yes, and that Assignment was made pursuant to a debt offering to accredited investors.

Q. Right. I understand, but it was done.

A. It was.

Q. Avatar -- the servicer assigned this interest in the loan to those accredited --(inaudible)--

A. Yes.

Q. All right. Thereafter, Avatar -- before the First Modification, Avatar had all those investors reassigned their interest to Avatar Capital; isn't that right?

A. At the time of the First Modification?

Q. Prior to the first Mod.

A. Immediately prior.

Q. Right. Yes, exactly.

A. Yes.

Q. The First Modification was one for two million dollars; is that correct?

A. No. The first loan was for two million dollars.

Q. I'm sorry. The First Modification

was for 1.5, I apologize.

A. An increase in the debt of 1.5, yes.

Q. One-point-five was to fund improvements and other expenses for the Marion County property; isn't that correct?

A. Most of the proceeds of the 1.5, went for the purchase of the Marion County property, and there was some money held back to make improvements.

Q. Right but it was all, basically, from the Marion County property. Not basically, it was for the Marion County property.

A. Yes.

Q. Now, let me invite your attention -- begging the Court's indulgence for a moment. The First Modification, the 1.5 million increase over the original two million, that was signed only by HSGCHG; isn't that correct?

A. I don't believe so.

Q. Well, let me invite your attention to Plaintiff's Exhibit No. 7.

A. I have it.

Q. All right. Let me -- you are welcome to review it, but I'm going to ask you a

couple of questions.

A. Okay.

Q. Are you with me, all right. Back to my first question, HSGCHG was the entity of Defendants in this case that signed the first -- well the first -- I'll call it the first --(inaudible)-- is that a fair statement?

A. That appears to be a correct statement.

Q. Okay, and we've already established that the 1.5 million dollar loan increases went to the Marion County property; is that correct?

A. [No verbal response.]

Q. To purchase it, as well as for improvements?

JUDGE PORTER: Excuse me, Mr. Lang, clarify that a little bit for me. The 1.5 went to Marion for what?

MR. LANG: As I understand it, Your Honor, the testimony moments ago was that 1.5 go to the Marion County property for purchase acquisition and for improvements.

JUDGE PORTER: Okay. I thought that was what it was, but I wanted to make sure.

WITNESS: If not in their entirety

the bulk went for that purpose. Yes.

CROSS-EXAMINATION

BY MR. LANG:

Q. At the time the First Modification with Commercial Mortgage that is in Plaintiff's Exhibit No. 7, Avatar Capital owned a hundred percent, because the Servicer and the Holder and the Owner of the Note and the Mortgage that was being modified, isn't that --

A. Yes.

Q. Now, thereafter Avatar then assigned a 3.5 million dollar Note and Mortgage to another series -- some the same, some different, of qualified investors; isn't that correct?

A. Correct.

Q. Now, in adding up those percentages that were assigned to those qualified investors, is it your testimony that Avatar Capital assigned 100 percent of this interest to those qualified investors?

A. Yes.

Q. You're sure?

A. I believe so.

Q. All right, you believe so -- do you

know that or do you think so?

A. If not 100 percent, certainly the vast majority.

Q. All right, so if not a hundred percent, certainly the vast majority went to these qualified investors, correct?

A. Correct.

Q. Then those qualified investors returned or reassigned their interest to Avatar Capital. Is that a fair statement or is that not right?

A. I'm trying to recall if they assigned it back to Avatar Capital or directly to Avatar Partners CT. If -- if they assigned it back to Avatar Capital, it was with the purpose of assigning the loan to Avatar Partners CT.

Q. So as I understand the pleadings they in-fact assigned it directly to Avatar Partners CT, correct?

A. I -- yeah, right.

Q. If Avatar Capital did not receive or did not assign a hundred percent of its interest in this Note and Mortgage, it still holds a percentage; isn't that correct?

A. Well, that's logic, but I don't

believe we hold any of it.

Q. You don't believe that, but logic will tell you that if the math doesn't work -- isn't that correct?

A. I --

MS. CREECH: Objection to relevance, Your Honor.

MR. LANG: It certainly is relevant, Your Honor. The pleading is -- Avatar Capital is the Owner and Holder of this other Mortgage. I would suggest to the Court that that's not the case. A percentage is still held by Avatar Capital, which is not a party to this lawsuit.

MS. CREECH: Again, Your Honor, I would object on relevance grounds. An Assignment of Mortgage is not required under South Carolina law. The Plaintiff is the Holder in possession of the Original Note instrument, and based on South -- or based on UCC law, as well as the common law of South Carolina, there is no dispute that the Plaintiff has the standing to foreclose the subject Note and Mortgage.

So these questions regarding the various assignments, I would submit,

are irrelevant.

MR. LANG: I would --

JUDGE PORTER: Well, I think Mr. Lang has a point.

MR. LANG: I would suggest that I do, Your Honor, because we have a Note, we have the Note Modification Agreement, and then -- and then we have all these assignments back-and-forth, and I would suggest to the Court, in order to be clear -- in order to litigate this case with a conclusion all parties have to be before the Court. Yeah, there's no question that a Servicer can Foreclose a Mortgage.

We've litigated that back in the great Recession days, but that's not the way this was pled. This was pled with the Plaintiff being the Owner and Holder of the Note and Mortgage being Foreclosed and that is not the case.

JUDGE PORTER: Question.

MR. LANG: Yes, sir.

JUDGE PORTER: Have you taken time, I haven't, in reviewing the pleadings -- but have you taken time, going through that long list of assignments and percentages, and have you taken time to total them up?

MR. LANG: I have.

JUDGE PORTER: Have you done that and there's a reason -- that's the basis for your driving-home on this point? If you haven't done that, let's just proceed, because this gentleman thinks he's -- to the best of his knowledge, I presume, that a hundred percent was Assigned. If it wasn't, I would suppose he would say, well, it was intended to be, but intent and doing is another thing, also.

MR. LANG: I have taken the time to do that, Your Honor, and according to my math, which I'm a lawyer, not an accountant, but at this point in time, as we stand here today, the Plaintiff in this case has a 96.52833 percent interest in the Note and Mortgage. The Lender, which is 3.457167 percent, is held by a non-party to this action, and that's Avatar Capital. That's the point of my cross-examination.

JUDGE PORTER: Even if his testimony is wrong, according to what you -- your statement, he -- Avatar Partners has a ninety-what percent?

MR. LANG: 96 percent and some percentage.

JUDGE PORTER: I believe he can proceed. They can proceed with this Foreclosure with that -- any surplus funds, certainly, they owe -- other fractional interests would have some interest.

MR. LANG: So, I mean, I take it --

JUDGE PORTER: I'm taking my initial ruling is -- during the torpedos, full-speed ahead.

MR. LANG: Okay.

CROSS-EXAMINATION

BY MR. LANG:

Q. Let me -- I just -- and I won't berate the point, but let me direct your attention back to Plaintiff's Exhibit No. 8. This is the second Note Modification Agreement.

A. Okay.

Q. The Recital on the first page says that: Avatar Capital Finance, LLC, a Washington Limited Liability Company, as servicing agent for the investors listed on Exhibit A, attached, are the Holder's. All right. Now, let me ask you a couple questions about that statement. I don't see an Exhibit A attached to the Second Note Modification Agreement. Is there such a thing?

A. I don't know.

Q. You don't? Well, we can agree that the document says that: The investors listed on Exhibit A, are the Holders. It says: Holder apostrophe 'S' which may be a typo or maybe not. So let me ask you this, who was the Holder of the Note when this Second Note Modification Agreement was entered into?

A. There were investors that had the two million dollar ownership of that existing Note, and we were in the process of modifying that Note and making it a 3.5 million dollar Note, and in our world of assigning participations to investors it -- it may have been necessary to have the investors assign it back to Avatar Capital, fund the additional million-and-a-half dollars to make it a 3.5 million dollar loan, and then assign that Mortgage of 3.5 million out to investors which -- most of which were investors in the original two million dollar loan.

So whether we, for administrative purposes, had the investors release their assignment or transfer the ownership back to Avatar so that we could effectuate the change to

the 3.5 million dollar Note, and then reassign that Note -- or assign that Note to, essentially, a new group of investors I -- I don't -- I don't recall the exact steps. I'm sure my attorney was involved in that.

Q. Well, we can agree that the investors, whether they were Holders of the loan or not at the time did not sign this Second Note Modification Agreement, correct?

A. Correct.

MR. LANG: Begging the Court's indulgence for a moment.

JUDGE PORTER: Pardon?

MR. LANG: I'm begging the Court's indulgence for a moment.

JUDGE PORTER: Sure.

MR. LANG: I have no other questions. Thank you.

JUDGE PORTER: Folks, let's take about a ten-minute break to give everybody a chance to stand-up and move around a little bit.

(Off the record.)

(A recess transpired.)

JUDGE PORTER: Mr. Lang, I believe you were through with the Witness. Ms. Creech.

MR. LANG: Your Honor, if I could, begging the Court's indulgence, if I could ask the Witness a couple questions, if the Court would indulge me, and Ms. Creech indulge me, I just have a couple more questions.

JUDGE PORTER: Take-off.

MR. LANG: Thank you.

CROSS-EXAMINATION

BY MR. LANG:

Q. Have you been the manager of Avatar Capital since the inception of this loan?

A. Yes.

Q. Are you familiar with the appraisals that are done in regard to the value of the property both before the loan and then after?

A. Which property?

Q. I'm sorry, Marion County.

A. Avatar has never ordered an appraisal on this property. We, I believe, were provided some appraisal document or BPO document, Brokers Opinion document, prior to closing.

Q. What documents have -- what may be in or have been in the Avatar files?

JUDGE PORTER: Mr. Lang, are you

referring now to the Marion County property or the Connecticut property?

MR. LANG: This is the Marion County property.

JUDGE PORTER: Okay.

CROSS-EXAMINATION

BY MR. LANG:

Q. Do those refresh your recollection as to --

A. I -- I may have seen those before.

Q. You would agree with me that one document, made in January, 2010, has the value of the property, as-is, at 25 million.

A. [Laugh]. Yes. Okay. In 2010.

Q. Right, 2010.

A. 25 million.

Q. A while ago.

A. Okay.

Q. In the second document, which is dated December 22, 2014, values the property, as-is, again, at $3,025,000, right?

A. Okay.

Q. Does it? I mean --

A. If that's what the document says.

Q. These were in your files, and by

your files I mean, Avatar, correct?

A. I believe so.

MR. LANG: Thank you. I have no further questions.

JUDGE PORTER: Ms. Creech, anything in reply?

MS. CREECH: I just have a few follow-up questions for you.

REDIRECT EXAMINATION

BY MS. CREECH:

Q. If you would, please, direct your attention to the Note, Plaintiff's Exhibit 1. Would you, please, read paragraph three out-loud to the Court?

A. This Note is secured by: (a) a first lien Commercial Mortgage of Real Property Security Agreement and Fixture Filing (the SC Mortgage) and an Assignment of Leases and Rents, each of even date herewith and executed by Maker covering and relating to that certain property located at 1548 US Highway 501, Marion, South Carolina, which property is more particularly described in the SC Mortgage and exhibits thereto; (b) a first lien Open-End Mortgage Deed and Security Agreement (the No. 1

CT Mortgage) and an Assignment of Leases and Rents, each of even date herewith and executed by Maker covering and relating to that certain property located at 96 Front Road, East Haven, Connecticut, which property is more particularly described in the No. 1 CT Mortgage and exhibits thereto; (c) a second lien Open-Ended Mortgage Deed and Security Agreement (the No. 2 CT Mortgage) and an Assignment of Leases and Rents, each of even date herewith and executed by Maker covering and relating to that certain property at 49 Leetes Island Road, Branford, Connecticut, which property is more particularly described in the No. 2 Connecticut Mortgage and exhibits thereto; (d) a Recourse Guaranty of even date herewith executed by Robert D. Hartmann, Senior; (e) any and all other documents executed by Maker in connection with the loan as evidenced herein (herein collectively the "Security Instruments").

NOTE: The SC Mortgage, No. 1 CT Mortgage and No. 2 CT Mortgage can individually -- can be individually referred to herein as the "Mortgage" and are collectively referred to herein as the "Mortgages?"

Q. So that last sentence that you read, collective rephrase I should say -- collectively referred to herein as The Mortgages, is there any dispute that this single Note is secured by multiple Mortgages?

A. No.

Q. This single Note, again, is executed by whom?

A. Partners 95, LLC; Oil Barons, Inc.; and HSGCHG Investments, LLC.

Q. If you would, please, read aloud the paragraph seven, which sets forth events of default that numerated 7-A Sections one, two, three, and four.

A. Maker's Failure to perform as required. Events of Default. Anyone of the following occurrences shall constitute and event of default under this Note.

1. The failure by Borrower to timely make any payment due under this Note in accordance with the Terms of this Note; or

2. The failure to comply with any non-monetary provision in this Note; or

3. The occurrence of any event of default under the Security Agreements; or

4. A transfer of the mortgaged property under the Mortgage occurs, which is prohibited by the Mortgages.

Q. Would you agree then that this Note, expressly through reference, incorporates the terms of all of the Mortgages that were given as collateral?

A. Yes.

JUDGE PORTER: He's reading from Exhibit 1, I believe; is that correct?

MS. CREECH: That's correct, Your Honor.

JUDGE PORTER: Okay. Could I take a look at the Exhibit?

REDIRECT EXAMINATION

BY MS. CREECH:

Q. I'd like you to take a look at Exhibit 8, now, please. If you would, please, read aloud the first -- the first full sentence.

A. Of eight?

Q. Of paragraph A, yes, please. The Second Note Mod.

A. Partners 95, LLC, a Connecticut Limited Liability Company, Oil Barons, Inc., a Connecticut Corporation, and

HSGCHG Investments, LLC, a Delaware Limited Liability Company, are the maker's (hereinafter "Maker") and Avatar Capital Finance, LLC, a Washington Limited Liability Company, as servicing agent for investors listed on Exhibit A, attached, are the Holders (hereinafter "Holder") of a Promissory Note, dated January 22, 2015, and Modified, March 11, 2016, in the original sum of $2,000,000 and Modified to $3,500,000 said Note being secured by three mortgages, hereinafter Mortgage.

First Mortgage by

Oil Barons, Inc., a Connecticut Corporation recorded in New Haven, Connecticut -- New Haven County, Connecticut, January 23, 2015, in Book 1170, Page 1021-1055. Modification date, March 11, 2016. Recorded March 11th -- it says, 2106 -- in Book 1194, Page 1073-1081. Document ID: 2016-00001645, on the property commonly known as 49 Leetes Road, Branford, Connecticut.

Q. Is there any question that the Makers of this Note, the original Note, as well as the Second Note Modification, obtained $3,5000,000 from Avatar Capital?

A. There's no confusion in my mind.
Q. Okay. Again, the Note expressly incorporates all of the security instruments, by reference; is that right?
A. Yes.
Q. Avatar, in prosecuting this action, is enforcing both -- is it enforcing both its Note and Mortgage?
A. Correct.
Q. Would you -- is it then accurate to state that Avatar is seeking to enforce all the sums due under the Note, as secured by its various Mortgages?
A. It is.
Q. If you look at the first page of the Plaintiff's Exhibit 6, it is an Assignment Mortgage, which is the First Assignment Mortgage in public record. Tell me if I'm reading this correctly. It states: FOR VALUE RECEIVED, Avatar Capital Finance, LLC -- and then lists a number of -- of entities assigned -- successors and assigns the assignor's interest in and to that certain Mortgage from HSGCHG Investments, LLC, a Delaware Limited Liability Company for the benefit of

Avatar Capital Finance, LLC, as -- dated as of January 22, 2015, and recorded January 23, 2015 -- I'll skip the --(inaudible)-- in Volume 295, Page 7, in the Real Property Records of Marion County.

Based on this document, the only thing that is being assigned to these various Assignors is Avatar Capital Finance, LLC's interest in the Mortgage recorded in South Carolina; is that correct?

A. Yes.

Q. At the time that this lawsuit was commenced, in South Carolina, was it Avatar's understanding that any -- any portions of the South Carolina Mortgage that had been assigned to other entities had been subsequently assigned to Avatar Partners, the Plaintiff in this action.

A. That is correct.

Q. So if, for any reason, there are some outstanding Assignments, that have not been made back into Avatar Partners, would it be difficult to obtain those?

A. No, and if they aren't assigned back -- assigned to Avatar Capital Partners, it would be an administrative oversight and not the

intent of the parties.

Q. Is it correct, in your previous testimony, that Avatar Capital -- excuse me, that Avatar Partners, the Plaintiff in this action, has continuously maintained possession of the original loan instruments?

A. It has.

MS. CREECH: No further questions.

JUDGE PORTER: Mr. Lang?

MR. LANG: Just one very brief follow-up.

RECROSS-EXAMINATION

BY MR. LANG:

Q. Let me invite your attention back to Plaintiff's Exhibit No. 7, which is the Assignment that Avatar's counsel just asked you about. Are you with me?

MS. CREECH: If I may, I was asking about six.

MR. LANG: Six. Did I say, seven? I'm sorry. Six. I apologize.

BY MR. LANG:

Q. This is the Assignment of Mortgage, the First Assignment. The first page of the First Assignment; is that correct?

A. I don't understand.

Q. Well, let me ask you a simple question. I thought your testimony was that the purpose of this Assignment, which is Plaintiff's Exhibit No. 6, which is a multi-page assign -- a multi-page exhibit. The first -- the first three pages are the First Assignment of the Mortgage from Avatar Capital to the various qualified investors. Right?

A. It appears so, right.

Q. I thought you testified that the purpose of this Assignment, which is the first three pages of Plaintiff's Exhibit 3, was only to assign the Mortgage, and not the Note. Was that your testimony?

A. You said, Exhibit 3.

Q. No. Exhibit 6, is a multi-page -- did I say, three?

A. Yes.

Q. My apologies. I'm talking about in terms of Exhibit 6, the first three pages of it are the First Assignment, that's all I'm going to ask you.

A. The First Assignment involving the Marion Mortgage?

Q. Correct.
A. Yes.
Q. It was the Assignment of the Mortgage, and not the Note.
A. Yes.
MR. LANG: No further questions, Your Honor. Thank you.
WITNESS: This document --(indicating)-- assigns the Mortgage, but those investors who are participants have also the same ownership percentage interest in -- in the loan, the Note.
MR. LANG: Where is the document that says that, in front of this Court today?
WITNESS: I don't know that I have that in front of me.
MR. LANG: No further questions.
JUDGE PORTER: Anything further, Ms. Creech?
MS. CREECH: Mr. Lang can call his witnesses.
JUDGE PORTER: Pardon?
MS. CREECH: Mr. Lang can call his witnesses.
MR. LANG: I take it the Plaintiff

rests? I take it the Plaintiff rests, Your Honor.

JUDGE PORTER: I take it so.

MS. CREECH: We have no -- no additional witnesses. Yes, we rest.

JUDGE PORTER: All right. Mr. Lang, let me ask you this, a little housekeeping matter. About how -- give me a rough guess how long you think you're going to need on your witness.

MR. LANG: I've got just two witnesses, Your Honor. I -- I don't think they'll be particularly long, with Direct. I don't know about Cross-Examination. I think about an hour-and-a-half would finish-up, as far as my case goes.

JUDGE PORTER: I normally -- between 12, 12:30 at the latest, usually take a break for lunch. Most people, by then, need a lunch break. I've got about ten-'til-12.

MR. LANG: Yes, sir. It's about --

JUDGE PORTER: The same thing the court clock says. With that in mind, I think it might be a good idea just to go ahead and take a lunch break. Say, until 1:30.

MR. LANG: Okay.

JUDGE PORTER: Okay.

(Off the record.)

(A luncheon recess transpired.)

JUDGE PORTER: I'm ready whenever you folks are.

MR. LANG: Your Honor, at this time we will call, Joe McMillan. If you will, sit at the end of the jury.

MR. MCMILLAN: Okay.

JUDGE PORTER: Mr. McMillan, if you would step-up there, see the red Bible? Put your left hand on that, and raise your right-hand. The evidence you shall give will be the truth, the whole truth, and nothing but the truth, so help you God.

MR. MCMILLAN: I do.

WILLIAM JOSEPH MCMILLAN

being first duly sworn, testified as follows:

MS. CREECH: Before Mr. McMillan's testimony begins, Your Honor, I just want to make an objection, for the record, that based on the Plaintiff's Discovery --

JUDGE PORTER: Speak-up or lean into your microphone, please.

MS. CREECH: Sorry. I did want to make an objection, for the record, in advance of any potential testimony from Mr. McMillan, who was identified as a witness by the Defendants, in their Discovery Responses and that his proposed testimony would have to do with the subject property's value, and I would submit that that testimony is irrelevant under Rule 401 of the Rules of Evidence.

Any relevant evidence means evidence having any tendency to make the existence of any fact that is of consequence to the determination of the action more probable or less probable than it would be without the evidence. The questions before the Court deal with the Plaintiff's Foreclosure action, mainly the existence of of the debt and the Mortgagor's default on that debt.

The property's value has no bearing and no relevance whatsoever on the questions that are to be decided by this Court and we would, respectfully, ask that Mr. McMillan's testimony be excluded.

JUDGE PORTER: I'll take it under advisement. Proceed.

MR. LANG: Thank you, Your Honor.

DIRECT EXAMINATION

BY MR. LANG:

Q. Mr. McMillan, could I have your full name, please, sir?

A. It's William Joey McMillan, Junior.

Q. Mr. McMillan, I have a soft voice and I'm talking through a mask, so if you don't hear a question or don't understand a question I ask you, please, tell me, and I'll try to make it more clear.

A. Okay. I hope its okay that I took my mask off.

Q. That's fine. Mr. McMillan, what do you do for a living?

A. I'm a real estate broker. I am the owner of Coldwell Banker McMillan Associates and Seaboard Properties, in Florence, a commercial real estate firm.

Q. How long have you had your broker's license?

A. For 20 years.

Q. In regard to your broker's license, have you always been hired by Seaboard or you've had different brokerages over the years.

A. I -- I've been with -- I was with a brokerage in Columbia, South Carolina, and I've moved back. This is my hometown, Florence. I moved back here 16 years ago to buy Coldwell Banker and a residential firm, and I bought the Seaboard firm about two years ago.

Q. How many agents do you have?

A. We have 40 at Coldwell Banker, and four at Seaboard.

Q. In regard to your particular brokerage practice, do you specialize or concentrate in any type of real estate commercial, residential or a combination of both?

A. Well, so with the two firms -- and I -- you know, I'm the owner of both of them, so we do do residential and commercial. So we do both.

Q. How about you, individually?

A. I do -- I do -- I wear hats in both -- I broker in both places.

Q. In the last, say, two years, how many commercial transactions have you been involved in?

A. Four.

Q. In regard to commercial

transactions are you called upon, at times, to estimate or give an opinion as to the value of a property that you are trying to sell or representing a borrower or a seller or a purchaser?

A. I -- I've -- I have individuals call me and -- or companies ask me to give an opinion of value. I've never testified in court.

Q. How many opinions of value have you given over your years as a broker?

A. I -- I -- a lot. I mean, we do it on the residential side and the commercial side.

Q. In regard to the transaction or rather the property that we are considering here today, were you asked to provide a broker's opinion of value regarding that?

A. I was.

Q. Who asked you to do that?

A. Mr. Hartmann.

Q. Did you form an opinion as to your -- as to the value of the property?

A. I did.

MR. LANG: Your Honor, at this time I would offer Mr. McMillan as an expert, to provide an opinion of value with regard to the property

that's the subject of this Foreclosure action.

MS. CREECH: I would renew the first objection, to relevance, and secondly, object on rule -- on grounds of Rule 702, that provides the testimony by experts if scientific, technical or other specialized knowledge will assist the Trier of Fact to understand the evidence or to determine a fact in issue a witness qualified as an expert by knowledge, skill, experience, training or education may testify thereto in the form of opinion or otherwise.

I submit that his proposed testimony, Your Honor, does not determine a fact in issue nor does it help the Court understand any of the evidence presented, and for that reason his testimony should be excluded as both a lay witness or an expert witness.

JUDGE PORTER: I'm going to take it under advisement -- your objection under advisement. I have some reservations about it, but I'll take it under advisement. Proceed.

MR. LANG: Thank you.

DIRECT EXAMINATION

BY MR. LANG:

Q. Before we get to your opinion of

value with Mr. McMillan, what did you do in formulating that opinion. What did you do? What did you look at? What did you do?

A. So Mr. Hartmann gave me a site plan of what he wants to do, going forward with that -- with the project in Marion County. From there, I went to several brokers in our -- in our office and got their opinion of value of the properties that they've sold in the past, and also talked a few developers here in Florence about what the residential lots were selling for.

Q. Did you prepare a written report for Mr. Hartmann?

A. I did.

Q. Let me hand you a document and ask you if you recognize this document?

A. Yes.

Q. Mr. McMillan, is that the report that you prepared?

A. Yes, it is.

MR. LANG: Your Honor, I ask that this be marked in evidence as Defendant's Exhibit No. 1.

JUDGE PORTER: Proceed.

MS. CREECH: Renew the objection

-- continued objection.

JUDGE PORTER: Noted.

(DFT. EXHIBIT D1, Coldwell Banker Broker's Opinion of Value, 12pgs, were marked for identification.)

MR. LANG: Here is a copy, yes, sir.

JUDGE PORTER: Thank you.

BY MR. LANG:

Q. Mr. McMillan, let me hand you what's been marked as Defendant's Exhibit No. 1. I would just like you to start, if you would, I want to bring to your attention the six-page -- the sixth page of that document.

A. Back here.

Q. Yep, there you go. Is that the site plan that you referred to your testimony moments ago?

A. Yes, it is.

Q. All right. Who in gave you the site plan?

A. Mr. Hartmann.

Q. What does the site plan, generally speaking -- just generally speaking, what does it show?

A. 248 acres, in Marion County laid

out for about 1,800 homes and some multi-family things and some -- some commercial property too.

Q. When you were formulating your Opinion of Value, did you make any assumptions in regard to that opinion before you came up with those values?

A. Yes, I did. I assumed that there would be water and sewer in -- water, sewer, and all utilities in place. I assumed that and the roads would be cut-in.

Q. Now, let me invite your attention Mr. McMillan to the third page of the document that you have. It starts entitled: Positive Attributes and Negative Attributes. Are you with me?

A. Got you.

Q. Now, regarding the Positive Attributes, tell the Court what you mean by that, in terms of your evaluation of it then.

A. For a very long time its been said that Florence or Marion area would be a good area to have people moving from up north down here to retire. On the beach its getting more and more expensive. We are more protected from hurricanes. Our property taxes are low and some

-- when I was doing this, I felt like the Marion location would be a great location for a project like this.

Q. A project like this, what do you mean my that?

A. A project with 1,900 homes has not been done in this area, and so it would be residential, commercial, a complete community.

Q. In terms of Negative Attributes, again, tell the Court what you know about that.

A. Well, it is -- it is in Marion County and nothing -- nothing like this has been done before. So it would be -- it would be -- it would be a new thing that's never been done.

Q. Now, in terms of formulating your Opinions of Value, you have one, two, three, four, five, six, seven, eight categories of evaluations. How did you arrive -- why did you split it up in that way?

A. Well, so -- I'm gonna start -- I'm gonna start from the top. I'll start with the -- with the -- the home sites. I used Florence numbers for that. What -- what Florence --

Q. Well, before you get there, all I'm

asking is, why did you split-up your evaluations under those categories?

A. Because that's the only way I can arrive at a number, and it make sense.

Q. Particular categories, do they correspond with anything in your report?

A. I'm sorry. I don't understand the question.

Q. The categories. You have 11 acres of highway/commercial; eight acres of entertainment; did they correspond with any particular part of this 240-some acre tract?

A. The 248 acres encompasses those -- those parts.

Q. Are those particular sections of that 248 acres?

A. Yes. Yes.

Q. Let's start then, if you will, with the 11.34 acres, and how you come up with -- can you point out to the Court where, on the site, that area is?

A. So the commercial would front Highway 501 and -- its kind of hard to describe it. The -- right in the front of the Highway 501.

Q. Is it marked, right there, saying Highway Commercial?

A. Yeah, Highway Commercial. Yeah.

Q. What was your opinions regarding as to that section of those 250 acres?

A. In Florence, for a site like that we normally ask $10 a foot, and that's where we came up with our evaluation for that.

Q. $10 a square foot.

A. Mmm-hmm.

Q. You said the -- you multiple that by the square footage of --(inaudible)--

A. Right.

Q. Of course that evaluation of that is based on your assumptions of what you testified earlier.

A. Right.

Q. Let's go to the second evaluation. 8.42 acres of Entertainment. Where is that located?

A. That is just behind Highway Commercial.

Q. Why is that particularly suitable for entertainment?

A. Well, so that would be -- when you

have a -- when you've got 1,800 homes in there you would have a place for people to get-together, maybe have a movie theater, amphitheater, something like that. That would be the spot for that, and I'd value that at $3 a foot.

Q. $3 a foot, based upon what?

A. That was a little bit tougher number to come up with. I just felt like it's a compliment to the neighborhood. That -- that would be the number for it.

Q. The next category is -- again, the value of that -- the total value for that section of this property?

A. 1.1 million.

Q. And the total value for the Highway/Commercial is?

A. It's 4.92.

Q. Let's go next to the 7.42 acres of Community Village. Where is that located?

A. Okay, Community Village is back in the -- in the front part of the -- of the site plan.

Q. Okay. How many -- that's about --

A. Seven acres.

Q. Seven acres.
A. Mmm.
Q. About 285 single cottage lots.
A. Correct.
Q. What is a cottage lot?
A. A cottage -- cottage lots are -- Cottage Village lots are townhomes.
Q. How did you come up with the 200 -- 20 -- $20,000 per cottage lot?
A. I took the values that we have here in Florence, and what lots are going for here, with a smaller lot -- a smaller lot like that, and got that number. That's what the developers are getting here. You get that number, you figure -- a Marion number may not be as much as a Florence number, and a Myrtle Beach number is going to be higher than a Florence number. I feel like with everything coming into this project -- I felt like the Florence numbers would be the number that we could use.
Q. Let's turn over to the next page. Mr. McMillan you've got another 225 single cottage lots on evaluation. Where is that located on the site plan?
A. That would be to the -- to the

right --(indicating)-- to the right of the -- I'm sorry. To the right of the highway. As you would come in, you would go to the right. You know there's -- the right side of the black.

Q. The single family cottages and those would be accomplished in this area right here; is that right?

A. That's correct.

Q. Then that is the similar one to the 285 lots?

A. Right. Mmm-hmm.

Q. That evaluation is how much for that?

A. $25,000 each.

Q. The total would be, then?

A. (Inaudible).

Q. Then we have 126 lakefront cottage lots. Where is that on the site plan?

A. So if you -- see the lake in the middle, and then go around the lake in the middle of the -- of the plan.

Q. How did you come to that evaluation for these lakefront lots?

A. So the lots that we have in Florence that are that big, and maybe have some

kind of water feature, generally, bring about $35,000.

Q. (Inaudible)-- buy how much?

A. Well, I actually -- there's -- those are more valuable lots than the other ones, and in the final evaluation I did reduce it so -- water, and sewer, and utilities were not in it.

Q. The total for the 126 lakefront cottage lots?

A. Is 4.410 million.

Q. I'm talking about lakefront lot.

A. Yeah, the lakefront, $4,410,000.

Q. Let me invite your attention to the document that's in evidence.

A. Sure.

Q. Flip over to that evaluation.

A. I'm sorry, 285 single one cottage lots, at $20,000 is 5.7 million dollars.

Q. Okay. What about 126 lakefront lots?

A. I'm sorry.

Q. That's all right.

A. I'm sorry, 126 lake cottage lots at $25,000 each is 3.78 million

-- 3.78 million dollars.

Q. Again, how did you come up with that?

A. It was lots here in Florence.

Q. All right. The next area is 39 acres of multifamily. Tell the Court where that is located on the site map.

A. The multifamily is just behind the entertainment complex to the upper-left of the site plan.

Q. Off to the left?

A. Mmm-hmm.

Q. All right. How did you evaluate the value of those lots?

A. If you're doing multifamily or apartments in -- in our area, you normally pay about $10 a foot, if you're infrastructure is in place.

Q. The assumption is the infrastructure.

A. Right.

Q. Then, finally we have the 19-acre RV park.

A. Mmm-hmm.

Q. Where is that located on the

site plan?

A. The RV park is in the back -- so it's right near the entertainment complex, in the upper-left portion of it.

Q. How did you come to that evaluation?

A. The RV park -- we figured -- it was a little tougher to value so it probably costs 15 -- $15-to-20,000 to develop an RV lot but based on that, if he could get some -- you know, 380 RVs in there, and rent that out -- the figures would be -- we figured it'd be $5 a foot, if the water and sewer was in.

Q. The total for the RV park evaluation?

A. $3,484,000.

Q. Adding up all of those evaluations, how much, in your opinion, is the property worth?

A. $42,080,000.

MR. LANG: Mr. McMillan, thank you very much. Those are all the questions I have. Please answer any questions Ms. Creech may have.

WITNESS: Okay. Thank you.

CROSS-EXAMINATION

BY MS. CREECH:

Q. Good afternoon, Mr. McMillan. You are not an appraiser licensed under South Carolina law, are you?

A. I am not.

Q. Therefore you are not qualified to opine as to what the current appraised market value of the subject property is, are you?

A. No, I'm not.

Q. What you've testified to today, your -- excuse me, your BPO report contain a statement that: Broker is not an appraiser and this is a broker's opinion of market value with improvements; is that right?

A. Correct.

Q. None of the improvements that are contained in your report have been made to the property, have they?

A. I believe that some have.

Q. All right. Tell me which ones those are.

A. I know that there are some roads in there and -- and of course the site plan has been made, and there is some water and sewer in there. There's a lot -- a lot more to be done.

Q. Okay. But as far as required

permitting and zoning, has any of that been done to your knowledge?

A. That's not been done.

Q. Okay. This is approximately a 248-acre parcel; is that right?

A. Correct.

Q. So that amount of 42 million dollars, that comes to approximately $169,354 per square foot, based on your calculation; is that right?

A. I -- okay --

Q. If my math is correct, that is what your report would indicate.

A. Right.

Q. Are you aware of any property in Marion County with that value, per square foot? All the surrounding -- $170,000 a square foot, as we sit here today?

A. I'm sorry?

Q. As we sit here today, are you aware of any property, in Marion County, with that square footage?

A. No.

MS. CREECH: Thank you.

MR. LANG: Just one brief question,

Your Honor, on redirect.

REDIRECT EXAMINATION

BY MR. LANG:

Q. One thing I neglected to ask you, are you licensed as a broker in the state of South Carolina?

A. Yes, I am.

Q. How long have you been licensed?

A. 20 years.

MR. LANG: Those are all the questions I have, Your Honor. Thank you.

JUDGE PORTER: Any other witnesses?

MR. LANG: I have one more witness, Your Honor, and I'll ask -- request permission for Mr. --

JUDGE PORTER: I thought, before lunch, you had rested.

MR. LANG: No, sir. The Plaintiffs rested.

JUDGE PORTER: That's right. That's right. I was getting them mixed-up. You had -- I believe you said you had two witnesses.

MR. LANG: Yes, sir.

JUDGE PORTER: That's right. Go ahead.

MR. LANG: I'd like to ask that Mr. McMillan be excused.

JUDGE PORTER: Certainly.

MR. LANG: Thank you. We call, Robert Hartmann.

WITNESS: Bye, Judge.

JUDGE PORTER: See you. I've got one more question for Mr. McMillan. Mr. McMillan, you say that this is your broker's opinion of market value with improvements.

WITNESS: Right.

JUDGE PORTER: Would it be fair to say, if those improvements -- all of the improvements were there, that you'd be talking about several million dollars, perhaps even more, that the debt that they've testified to earlier today -- to put this property in the condition that you are basing the --

WITNESS: No, I wasn't -- I -- I heard -- I'm not familiar with the debt but -- but it would take a sizable amount of money to get that going.

JUDGE PORTER: Nothing else.

WITNESS: Thank you.

JUDGE PORTER: Mr. Hartmann, if you

would step over --(indicating)-- left hand on the Bible, raise your right-hand. Do you swear to tell the truth, the whole truth, and nothing but the truth so help you God?

MR. HARTMANN: Yes, Your Honor.

JUDGE PORTER: Thank you.

ROBERT D. HARTMANN, SR.

being first duly sworn, testified as follows:

JUDGE PORTER: Please, have a seat. Mr. Hartmann, I want to tell you something, as I have the others. If you would just kind of speak-up 'cause I think that microphone is cut off.

WITNESS: Okay.

COURT REPORTER: Sir, he didn't take the exhibit with him, did he? Thank you.

DIRECT EXAMINATION

BY MR. LANG:

Q. Mr. Hartmann, can I get your full name?

A. Robert D. Hartmann, Senior.

Q. Mr. Hartmann, where do you live?

A. 50 Eveningside Drive, in Milford, Connecticut.

Q. Are you the -- well, let me -- let

me ask you this, what is your relationship to HSGCHG Investments?

A. I'm the executive chairman.

Q. Do you have an ownership interest in that entity?

A. Yes, I do.

Q. What is your percentage of ownership interest?

A. Its about 90 percent.

MS. CREECH: Your Honor, if I may interject. I don't mean to disrupt, but I did not hear the oath given. Did -- was he, Mr. Hartmann sworn-in?

COURT REPORTER: Yes.

JUDGE PORTER: He was.

MS. CREECH: He was. Oh, I apologize.

BY MR. LANG:

Q. Mr. Hartmann, are you familiar with the property that we've been discussing in this action?

A. Yes, sir.

Q. How did you first become aware of this property?

A. I was aware of the property through

a bank that I did business with, still do, who had the property Mortgage on it. They were looking to sell it. Also, I was representing the Speaker of the House of the state of Connecticut, who was running for governor, and he was familiar with the owners of that property. I don't know how or why, but he had introduced me to the owner.

Q. Why did you end-up buying it?

A. I'm sorry?

Q. Why did you end-up buying it?

A. Why did...

Q. Why did you end-up buying it?

A. I ended-up buying it because the Speaker of the House in Connecticut had an interest in doing -- obtaining it. One of the people who was in the company at the time was in the entertainment business in California and they convinced me that it would be a great investment and a great opportunity to -- to take over this amphitheater.

Q. Let me -- let me ask you a couple questions about your background, Mr. Hartmann. How far did you go in school?

A. I'm sorry?

Q. How far did you go in school?
A. How far -- I can't -- I can't...
Q. I'm sorry. How far did you go in school?
A. In school?
Q. Yes, sir.
A. Eighth grade.
Q. When you started working, what did you do?
A. I did construction, real estate development.
Q. Let me talk, in particular, about development. How long have you been in the development business?
A. Probably 40 years.
Q. And what kind of projects, over those 40 years, have you been involved in development?
A. Residential, commercial, industrial and hotels, resort.
Q. That's over your 40-year career?
A. Yes.
Q. What states were you involved, principally, in that sort of development?
A. Connecticut, Florida,

Massachusetts, Rhode Island.

Q. South Carolina?

A. South Carolina.

Q. In this particular property, what was your initial development thought or idea of the plan?

A. Well, my initial thought was to -- when I got involved in it, I looked at it as, what can we do for the community? How many jobs can we create? And I tried to make it as an amphitheater to keep that, renovate it, and -- and upscale it, and -- and get a feel for the property, and also the surrounding area, and the information that I received earlier was not really correct.

Hence, what we found out was -- is that with the weather down here being inconsistent and the problems that we had in the beginning, with TimeWarner, you know not doing what they were supposed to do, we just ran into one problem after another on the amphitheater portion of it. I said, this is not gonna work for a numerous amount of reasons. So we decided -- doing some research on doing a retirement community at a low-cost, because people are

fleeing out of New England states, coming down into South Carolina. It's a great market.

You have people from Florida migrating back-up into South Carolina, because the cost of Florida is extremely expensive for an average person that's on a fixed income today.

Q. The concept of redirecting your development plans from an entertainment center to a retirement home or a retirement area, what have you done to accomplish that?

A. We had -- we boosted-up the shore capacity, water. We also have an agreement with Dominion Gas to bring in gas into the site. We have utilities -- all our utilities are on property right now. We've spent over a quarter of a million dollars in engineering, filed for all the approvals. We have all the approvals for 1,820 homes, and 670,000 square feet of commercial, and we have a hotel that's been approved.

Q. Let me hand you what's been marked as Defendant's Exhibit --

A. Just a -- and -- and we also have a -- a casino that's been approved, locally, in the county, but not in the state.

Q. Let me hand you what's been marked as Defendant's Exhibit No. 1, and invite your particular attention to the site plan that Mr. McMillan discussed. Now, do you recognize that site plan?

A. Yes, sir.

Q. In regard to the site plan, who had that done?

A. Steve Strickland, under my direction from Earthworks, in Myrtle Beach.

Q. Does the site plan reflect what your plan is in terms of the development of this project?

A. Yes, it does.

Q. Is the site plan divided into certain areas or certain developmental areas that are separate in the state or is all this one?

A. No, it's the -- each section is subdivided out, and we also have Letters of Interest for the RV Park that would be subdivided off of this property.

Q. I guess my question is, can it be subdivided at this point in time?

A. It -- theoretically it already is. It hasn't been filed in the community, but the

subdivision -- we're waiting for DHEC to make it's final determination on the stormwater. So Steve knows what to put on the plans, so we can put the plan out for construction.

Q. In regard to the various subdividable areas of this 240-some-odd acres, can you give the Court an idea of what those categories or areas are or would be?

A. Yes. The first phase was -- we were building a spine road from the front of 501 to the back, which would be Bearcat Crossing -- I mean, Bobcat Crossing, which consists of 93 lots. Those would be the first 93 lots, that would be single family, that would be released.

Q. All right. What are the other areas would be developed --

A. And then the other areas are -- would be also single family lots that continued to the right side of Bobcat Crossing, and that would be this section over in here --(indicating).

Q. Then what other areas addressed by Mr. McMillan --

A. And then we have condominiums, which would be over in this --(indicating)--

section, and then we have duplex homes which would be up here --(indicating)-- the multi-level -- the multi-family. And then we have the RV Park, which is -- consists of 226 tiny homes. That's where we've been LOI at.

Q. LOI, what do you mean by that?

A. We have a Letter of Interest for someone to purchase that, once the improvements are in place, for 6.9 million dollars.

MS. CREECH: I'm just going to object on hearsay grounds, Your Honor, to the documents that -- that Mr. Hartmann is referring to, to the extent that they're -- the truth of those documents is attempted to be admitted for the truth thereof. They are hearsay. They haven't been offered into evidence. All we have his his testimony.

MR. LANG: Your Honor, this document is in evidence. The objection -- I think the Witness can testify as to what is in the document.

JUDGE PORTER: I'm not sure what the value is, but proceed.

MR. LANG: Thank you.

DIRECT EXAMINATION

BY MR. LANG:

Q. In terms of the infrastructure, how much infrastructure is actually in place at this time?

A. Well, the construction road is already in place. The property is completely cleaned off and ready for the lots to be staked out, and City water and City sewer is on property, and so is the UI -- not UI, I'm sorry. The electric is on property. The only thing that has to be brought in, which would be brought through the spine road, which would be the gas. All our fiberoptics are already in place. We have high-speed cable on property.

Q. Anything else that's actually in place? Anything else that is actually in place?

A. Yes.

Q. Is that is all that's in place, at this point in time?

A. All the utilities are in place, except gas. We have a contract with Dominion. Dominion is willing to bring in the gas, once we have the spine road, and once we have all of the elevations set.

Q. Now, in terms of permitting, how

many permits are -- or what is the permitting processes that you've accomplished thus far?

A. Well, we already have the approvals through the town, like I said, for the whole entire project -- I mean, through the county. We also have our Army Corp. of Engineering permits, and we have DHEC permits.

Q. What additional permits would you need in order to begin or complete the development process?

A. The only thing that we need to do is to finalize the construction drawings for the site work to put that out to bid and the -- and then do the HOA documents.

Q. Now, based upon your -- you've been involved with this property for how long?

A. Five years. A little over five.

Q. Based upon -- you have 90 percent ownership interest in the -- your ownership interest is the entity that actually is titled to this property is 90 percent, right?

A. Yes, sir.

Q. Tell the Court about how much this property is worth, without any further development.

A. Well, I think that the -- you know, I want to address a little bit about the commercial, too, by-the-way.

Q. All right.

A. We do have people who are interested -- we have a freestanding bank that we have -- we don't have a formal Letter of Interest, but Anderson Brothers Bank has committed in the sense -- verbally that they would put a freestanding bank here if, in-fact, the homes go in place. We also have a major supermarket and a pharmacy with a gas station who is also interested in coming to the property, predicated on the housing. We also have two fast food restaurants that is interested in coming to the property, again, predicated on the housing.

Q. With that in mind just with no other development at all, today, how much is this property worth?

A. I would say, with all the permits and everything approved for a developer to buy a ready-made project -- I mean, I don't know where you're going to go and find 1,820 lots approved with utilities on-site, minimal site work, and when I say minimal site work, you're looking at

2.1 million dollars to bring this to a point where you're gonna be able to sell the lots.

Q. Tell me how much its worth. Tell the Court how much its worth.

A. I think, on a bad day, its worth 20 million dollars.

Q. How much money would it take to complete the improvements that you see on the single family, so you could then attract these other entities, commercial entities?

A. We did a perform out on the whole project, it's gonna take -- it will take 10 million dollars, the first traunch, and that pays off the first lender.

Q. What is the developed value of this property in Marion County? Done everything you need to do -- starting to sell lots?

A. I think it's worth well over 50 million dollars, if in-fact -- with commercial and if the casino happened then it would be certainly worth a lot more money.

MR. LANG: Thank you, Mr. Hartmann. I have no further questions. Please answer any questions Ms. Creech has.

JUDGE PORTER: Mr. Hartmann --

WITNESS: Yes, sir.
JUDGE PORTER: -- when you say you've got the utilities and things to the property -- but that doesn't mean that you've got all the lines run and the -- all the things in the ground and all --
WITNESS: No, they're there, sir.
JUDGE PORTER: All these streets and all -- everything --
WITNESS: The streets are not there, sir.
JUDGE PORTER: No. All right. How about all --
WITNESS: They -- utilities --
JUDGE PORTER: All the --
WITNESS: -- are --
JUDGE PORTER: The utility lines, underground lines, sewer lines and all that, any of that there?
WITNESS: All the power is there, sir.
JUDGE PORTER: To the develop -- for the lots?
WITNESS: Yes, sir.
JUDGE PORTER: The individual lots?

WITNESS: No, there is because the individual lots aren't graded yet --

JUDGE PORTER: That's right.

WITNESS: -- but the power is in the property. It's not something that we have to bring in from miles -- its already on property --

JUDGE PORTER: I understand.

WITNESS: -- and we -- cable, the fiberoptics, is already throughout the property.

JUDGE PORTER: Okay.

WITNESS: So all we have to do is take from the hub -- once the lots are staked-out we would bring it to the curb line, and the builders would pick-up from that point on.

JUDGE PORTER: Okay.

CROSS-EXAMINATION

BY MS. CREECH:

Q. Good afternoon, Mr. Hartmann.

A. Good afternoon.

Q. Is it fair to say that given your 40-year career in real estate transactions that you are sophisticated in real estate transactions?

A. Well, I don't know what you call, sophisticated.

Q. Well, based on -- what you've testified to was 40 years in construction, real estate, development of -- real estate development and business. Is it fair to say that based on your experience in such matters that you're no stranger to real estate transactions? You've been in a few.

A. Well, every time you turn around, when you're doing a real estate transaction, there's always something new that comes up.

Q. But you --

A. And there's always a different contract. There's always a different lawyer, on how they want to word things. So I wouldn't say I'm sophisticated in the sense, as far as legality-wise.

Q. You are -- you would agree with me, someone who has had a lot of experience in such matters; is that right?

A. I think I've had a lot of experience in construction, and I've had a lot of experience in developing dirt.

Q. About how many, if you could estimate for the Court, loans that -- have you obtained in furtherance of such real estate

development projects and other real estate purchases?

A. How many loans?

Q. Yeah.

A. I would probably say, anticipate maybe, 20 or 30.

Q. In response to the Plaintiff's First Interrogatory, you testified that you are the principal of all three Defendant entities. That is: Oil Barons; Partners 95; and HSGCHG; is that right?

A. Yes, ma'am.

Q. You don't dispute that the Mortgagor on this case, HSGCHG, acquired property that is the subject of this action through a loan, which was financed by Avatar Capital, do you?

A. No, I don't.

Q. Do you dispute that these three entities entered into an Agreement with Avatar Capital in which they received 3.5 million dollars?

A. No, I don't.

Q. Do you dispute the amounts that the Plaintiff has credited to your loan?

A. Yes, I do.
Q. All right. Tell me -- tell me how -- why do you dispute those? What's the --(inaudible)--
A. Well, I haven't gone through the recent numbers but I know for a fact that the Plaintiff paid vendors on certain properties, twice. I know that when the vendor -- when the Plaintiff paid the taxes, they only paid them only when the property was going to be foreclosed on and the tax lien -- so they waited 'til they paid more money on the taxes, instead of paying it when it was due. I know that the Plaintiff did not bill the tenants for the work that was done on the property because all the leases on the rents that they collect are triple-net leases. So there should be no expenses on the property.
Q. Are you disputing that you submitted invoices to Avatar to be paid for these three properties?
A. I'm -- I'm disputing that there are some --
Q. Answer the question.
A. I'm sorry?

Q. Are you -- please, answer my question. Are you disputing that you or agents on your behalf with respect to the Borrowers under this Note have given Avatar Capital expenses, invoices, to be paid by Avatar. Are you denying that?

A. No.

Q. Are you denying that Avatar was in-fact paying those expenses?

A. I don't know if they paid them or not. I'm assuming that they paid some of them. I'm assuming that maybe they paid all of them, but I don't have any proof. Avatar doesn't send me a copy of a check that they've paid an invoice.

Q. Nor do you have any invoices here today, with you, to offer into evidence to show that you paid any of the invoices that --(inaudible)--

A. There's no invoices that I paid. Any invoice that I get from a contractor that belongs to the property that they're collecting rent on, I send it directly to Jerry.

Q. You indicated that Avatar may have paid some vendors, twice. Do you have any

documentation to support --(inaudible)--
A. I don't have it with me, no.
Q. -- today. I'm sorry?
A. I don't have that with me, no.
Q. Under the various security instruments, is it not the Mortgagor's obligation to pay for taxes?
A. I'm sorry?
Q. Is it not the Mortgagor's obligation to pay for taxes and insurance?
A. Its up to the lender to pay the taxes, because that was in his -- in the loan documents, I believe.
Q. Is it their responsibility to pay it if you don't pay it or is it your -- their responsibility to pay it all the time?
A. Well, I would imagine it would be in the best interest for the lender to pay it.
Q. You don't dispute that those taxes were in-fact advanced by the lender.
A. I'm sorry. I can't hear you.
Q. You don't dispute that those taxes and insurance payments were in-fact advanced by the lender.
A. Were they paid?

Q. Yes.
A. Yes, the lender paid them, finally.
Q. Are there any payments on the loan that these three entities have made that were not credited to the loan?
A. I don't know. I didn't review the statements.
Q. So not as you sit here today.
A. I'm sorry?
Q. You're not aware of any, as you sit here today.
A. No.
Q. Its correct that in response to the Plaintiff's Third Interrogatory that the Defendants stated that they have sustained no damages in this action; is that right?
A. I -- I can't hear you. I'm sorry.
Q. I said, isn't it correct that in response to the Plaintiff's Third Interrogatory, under oath, the Defendant stated that they have not claimed any damages in this action; is that correct?
A. That I haven't claimed any damages in this action?
Q. In this case.

A. We are claiming damages in another suit, in Connecticut.

Q. But not in this case.

A. No, I don't believe our attorney put that in.

Q. How much have you spent in obtaining various plans for the development of the South Carolina property?

A. How much have we spent?

Q. Have you spent. Have -- and by you I mean the Defendants in this case, to the left of me.

A. I think, overall, close to $300,000.

Q. How much have you paid directly to the lender in satisfaction of the debt that is the subject of this action?

A. I'm sorry?

Q. How much have the Defendant's paid to the lender in attempts to satisfy a portion of the debt that is the subjection of this action?

A. I don't know.

MS. CREECH: Indulge me one moment, Your Honor.

BY MS. CREECH:

Q. The document that has been produced as Defendant's Exhibit 1, is it your testimony that all of the required permits and approvals to construct the -- the improvements as outlined in that exhibit have been obtained?

A. Yes.

Q. Do you have any of those records here with you today to offer into evidence?

A. Yes.

MS. CREECH: I would just like to reserve questions, if there is additional testimony regarding any additional evidence that may be attempted to be offered. That's all I have for you in direct -- in cross.

JUDGE PORTER: Mr. Lang.

REDIRECT EXAMINATION

BY MR. LANG:

Q. A couple questions, Mr. Hartmann. Why would you spend $300,000 on a piece of property that's in Foreclosure?

A. I'm -- I'm sorry. Again, just...

Q. Why would you spend $300,000 on a property that's in Foreclosure?

A. Well, our hopes was to get all of the approvals prior to, and our hopes was to get

a lender to take us out of this, and get a -- a builder to come in, once the approvals are in place -- I mean the -- the -- all the permits and -- and the work is done -- we'd have the builders come in to take the lots.

Q. So you would like to pay off the loan.

A. I'd love to pay them off. I mean, I have no -- no ill feelings towards Avatar. I mean, Jerry has been a gentleman. I mean, the -- the -- the lender, they've been nice people. I mean, I don't have any dispute with them, its just that -- you know, only so much money goes around. I mean, we've had a lot of problems with the property --

Q. There -- I'm sorry.

A. -- but we -- but we -- we had several plans, and we've offered them several plans to get out of it and -- and they refused them.

Q. Some discussion about permits. Did you supply me with some copies of some of the permits and some of the applications that you applied for in regard to this property?

A. Yes, I did.

Q. I'm going to hand you a document and ask you if you can identify that document.

A. This is for a permit stormwater system and maintenance and the responsibility of the Agreement we signed with DHEC.

Q. Is that -- is this related to the property that we are -- under discussion today?

A. Yes, sir.

MR. LANG: Your Honor, I asked that this be marked as Plaintiff's 2.

JUDGE PORTER: Let me take a look.

MR. LANG: I'm sorry?

JUDGE PORTER: Let me take a look.

MR. LANG: Yes, sir.

MR. LANG: Any objection?

MS. CREECH: No.

(DFT. EXHIBIT D2, Permanent Stormwater System Agmt, was marked for identification.)

BY MR. LANG:

Q. All right, Mr. -- all right, I'm going to hand you back what's been marked -- entered as Defendant's Exhibit No. 2, and ask you, is that one of the documents in terms of permitting and things of that nature that you referred to earlier when asked about on

cross-examination?

A. This --(indicating)-- is one of several.

Q. That relates to what, specifically?

A. This --(indicating)-- relates to the Enclave at Swamp Fox Community, which is the Permanent Stormwater System Maintenance that we submitted for DHEC of what we plan on doing to control the water system.

Q. Let me hand you another document and ask if you recognize that.

A. This --(indicating)-- is the approval for the Army Corp. of Engineering.

Q. Is that related this project?

A. Its -- its related to the Enclave at the Swamp Fox, which covers the ditches and the water.

MR. LANG: Let me retrieve that from you and ask that this be marked as Plaintiff's -- Defendant's 3.

MS. CREECH: No objection.

JUDGE PORTER: Admitted.

(DFT. EXHIBIT D3, US Army Corps. Interm form, 3pgs, were marked for identification.)

BY MR. LANG:

Q. Mr. Hartmann, let me hand you back what's been marked as Defendant's No. 3, and ask you again -- that has been entered into evidence, just briefly, what that document is or what it represents.

A. It represents the authorization that allows to take care of the ditches and -- and the -- to make sure of the ponds and -- and water, and so-forth, flows and allows us to mitigate the -- the lake area.

Q. All right. I'm going to hand you a fourth document and ask you if you recognize that document?

A. This --(indicating)-- is a General Permit under the -- under South Carolina, for stormwater discharges and structured activities.

Q. Is this a permit or is it a -- an application?

A. No, this is the Permit.

MR. LANG: Okay. Your Honor, I ask that this be marked as Defendant's Exhibit No. 4.

JUDGE PORTER: Whatever number --

MR. LANG: Yes, sir.

JUDGE PORTER: I've lost count.

MR. LANG: It's four. Your Honor

need a copy?

JUDGE PORTER: No.

MR. LANG: Thank you.

(DFT. EXHIBIT D4, Notice of Intent, 3pgs, were marked for identification.)

BY MR. LANG:

Q. Mr. Hartmann, let me hand you back what's been marked as Defendant's Exhibit No. 4. I will ask you, again, if you recognize that document. Just -- now, tell the Court what it is.

A. Yes, it's a -- it's the Permit for -- the General Permit for Stormwater Discharges and Construction Activities on the subject property.

Q. Just three more. Mr. Hartmann, let me hand you what -- a document -- a letter dated August, 2020, from the Army Corps. of Engineers. Can you identify that?

A. This is a letter from the Army Corp. The Department of the Army, to Grant Gibson, who is one of the engineers at Earthworks, validating the work to be -- the work approved, and we have five years, from the date of this letter, to complete said work.

MR. LANG: Your Honor, I ask that this be marked as Defendant's Exhibit No. 5.

MS. CREECH: No objection.

(DFT. EXHIBIT D5, Dept. of Army Corps. Ltr, 08/20/2020, 3pgs, were marked for identification.)

BY MR. LANG:

Q. I'll hand you two more documents and ask you if you recognize this Application?

A. This --(indicating)-- is this Construction Permit Application from the Wastewater and Water facilities at DHEC.

Q. Has that Application been approved, to your knowledge?

A. Yes.

MR. LANG: Your Honor, I asked to have this marked as Plaintiff's Exhibit No. 6 --

MS. CREECH: I didn't get that one.

MR. LANG: Oh, I'm sorry.

MS. CREECH: The Application is -- no objection.

(DFT. EXHIBIT D6, DHEC Application Water/Wastewater, 2pgs, were marked for identification.)

BY MR. LANG:

Q. Just so the Court is familiar with this document, Defendant's No. 6, is that an Application for water or wastewater? I invite your attention to the --

A. This is -- this is the Application -- Permit Application for Water/Wastewater.

Q. Let me hand you one more document and ask, is this a copy of the Application for Wastewater? There are two; water and wastewater.

A. Right. One goes to Marco, I believe, and the other was -- this is for -- to run the pipe, and the sewer line in the spine road.

Q. You do that from the --

A. That's for the -- for the 93 lots that we talked about earlier. That's what this is for.

MR. LANG: All right. Let me get that from you and ask that this be marked as Defendant's Exhibit No. 7.

MS. CREECH: No objection.

(DFT. EXHIBIT D7, DHEC Application Water/Wastewater, 2pgs, were marked for identification.)

BY MR. LANG:

Q. Mr. Hartmann, is this the entire constellation of permits and applications that you have submitted and obtained?

A. Pretty much, yes.

MR. LANG: Your Honor, I have no further questions on redirect.

JUDGE PORTER: Ms. Creech.

RECROSS-EXAMINATION

BY MS. CREECH:

Q. The document that's been offered as Defendant's Exhibit No. 2, the Permanent Stormwater System Maintenance and Responsibility Agreement. Isn't it correct that this document only contains the signatures of the owner of the property, HSGCHG, on which you executed this document on their behalf?

A. I'm sorry?

Q. Isn't it true that this Permanent Stormwater System Maintenance and Responsibility Agreement, it only has the signature of one entity, and that's the owner of the property; is that right?

A. Correct.

Q. It just sets forth some terms that the owner of the property agrees to adhere to

regarding maintenance and responsibility of the stormwater systems; is that right?

A. Correct.

Q. Defendant's Exhibit No. 3, which is an Interim US Army Corp. of Engineers Navigable Waters Protection Rule Approved Jurisdiction Determination Form. Can you tell me what property this covers?

A. What property?

Q. Yes.

A. It covers the 248-acres at 1548 Highway South 501.

Q. Do be so kind as to point out to me where that is, I'm not seeing it.

A. I think that you have to go back and look at these dates here --(indicating)-- and look at this number. South Carolina, Marion, and then if you go back to the coordinates and look at this, I think it'll bring you to that address.

Q. Do you know if that address includes any other property?

A. Does this --(indicating)? No, it doesn't, not that I'm aware of.

Q. To your knowledge, will -- would a final determination form be required from the

US Army Corp. of Engineers or is it your understanding that this Interim Determination form is all that's needed to proceed?

A. Its my understanding that once Steve Strickland does the final plan, based on everyone's comments, then that's -- that's it. When will we have that? Due to the holidays and COVID, our estimated time is probably mid-January.

Q. Steve Strickland, whom you just referred to, is he the person who completed this Application, this Notice of Intent that's Defendant's 4?

A. I'm -- I'm really sorry, but I cannot hear you.

Q. Steve Strickland, that you've just referenced -- I'll step back --

A. Yeah, can you just -- if you can, talk a little louder so I --

Q. Sure. Did he prepare this Notice of Intent, this Application --

A. Earthworks did, yes.

Q. Okay. On behalf --

A. Was it Steve Strickland? No. It was probably his -- one of his -- his engineers.

Q. Well, I will submit to you that on the last page of this document it does indicate that he was the preparer.

A. Yeah, okay.

Q. So this Notice of Intent -- this Application, is it your testimony that it's been approved?

A. Yes.

Q. Do you have that approval today?

A. Yes.

Q. Where is that approval? I'm not understanding which document you're contending purports to be that approval.

A. What -- which one are you talking about? Let me -- let me see that --

Q. This is Defendant's 4.

A. Can I see that, please?

Q. Which appears to be an Application, and I'm asking you what the -- which of these documents is the approval?

A. Right. This --(indicating)-- document is -- is a Notice of Intent. The plans are on file with DHEC. The permit has -- the cost has been paid and we're waiting for the final verbiage that they want on the plan to

approve the construction.

Q. Okay, so that final approval --

A. So it is a --

Q. -- has not been issued; is that right? You don't have it.

A. It's a matter of waiting until after the holidays and we'll have it.

Q. I'll ask you again. As you sit here today, you do not have it; is that correct?

A. [No verbal response.]

MS. CREECH: No further questions.

JUDGE PORTER: Mr. Lang, anything further?

MR. LANG: I have nothing on redirect, Your Honor. The Defendant rests -- or the Defendants rest, Your Honor.

MS. CREECH: If we could have five minutes before closing argument.

JUDGE PORTER: Sure.

MS. CREECH: Just a short break.

JUDGE PORTER: We'll take a five-minute break.

(Off the record.)

(A recess transpired.)

JUDGE PORTER: You ready?

MS. CREECH: Yes, sir.

JUDGE PORTER: Proceed.

CLOSING ARGUMENTS

MS. CREECH: Thank you, Your Honor. I respectfully submit that based on the evidence presented today that the Plaintiff has established that it is the -- holds a first position purchased money Mortgage on the property that is the subject of this action, that under US Bank Trust National Association verses Bell, that the Plaintiff has established the existence of a debt in the amount of $5,845 -- excuse me, $5,845,291.33, as of December 14, 2020, and a Mortgagor's default on that debt.

Furthermore, the Mortgagor has not presented any defense to the enforcement of the Note and Mortgage. No defense of payment for accord and satisfaction or any of the like, nor any evidence to that effect have been submitted into evidence. I would respectfully ask that the Court enter Judgment in that amount, with leave to supplement that debt amount with any amounts that have been incurred through today's presentation of evidence in any post-trial matters, including attorneys fees.

We would additionally request that the Plaintiff have immediate Judgment as -- as shown today against the -- the Defendants and the Guarantor, Mr. Hartmann, pursuant to 293 -- section -- SC Code 29-3-65, that it is appropriate that the Court enter both of those Judgements, simultaneously. Furthermore, to the extent that the Defendants may attempt to offer an argument that the Plaintiff should be in equity, required to accept the subject property in full satisfaction of the debt, based on its alleged value exceeding the debt amount.

There is simply no authority under South Carolina law, case law or statutory law that would require such a result. The mortgage lender is entitled to seek a deficiency as a matter of course if the foreclosure sale does not bring amount sufficient to pay the debt in full, and when land is used as collateral for a debt, the lender is statutorily granted right of recourse to the property is through a Judicial Foreclosure Sale.

That is South Carolina Code §29-3-610 to 29-3-790. That's additionally supported by professional building

-- Professional Building and Loan Associates of Anderson verses Braun, 270-SC-338. The Court is required to enforce the Contract, as agreed between the parties, and is not to make a new Contract for them. Jordan verses Security Group Inc, 428 SE 2d 705.

The Note and Mortgage in this action do not impose a duty on the lender to accept a Deed in Lieu or any other alternative method of -- of satisfaction in lieu of foreclosure. So for these reasons, Your Honor, we would respectfully ask the Court to grant the Defendant Judgment, and to also enter Judgment against the Defendants and Guarantor in this action as well.

JUDGE PORTER: Thank you, ma'am.

MR. LANG: May it please the Court, Your Honor?

JUDGE PORTER: Yes, sir.

MR. LANG: I will start by strenuously objecting to the immediate entry of Judgment. That was not pleaded for in the Complaint. It would have made a different presentation had it been so, and I would suggest to the Court, if you don't plead it, you can't

have it, and that's exactly what the Plaintiff wants in this case and since it was not pleaded for -- and I would suggest to the Court that that statute requires a specific pleading or request for this Court to do so.

It did not do so in it's Complaint -- it's had now almost a year or in-fact over a year to amend it's Complaint. I would suggest to the Court that it would be improper, at this point, to enter an immediate Judgment. It was not asked for, except in Closing Argument, Your Honor, and that would make improper at this point in time to do that. In-fact, Your Honor, what the Plaintiff seeks to do is hobble my client, so that he cannot possible get out of this situation through his own efforts, and that is just wrong.

That is wrong, Your Honor, and I would suggest to the Court that that would be inequitable for the Court to enter that immediate Judgment. Now, I would split my argument into the final subjects; ownership debt and sale. In regard to ownership, Your Honor, I think we've established that this Plaintiff, Avatar Partners, does not own the Note and Mortgage completely.

Now, its a small amount, Your Honor, that's true, but the fact of the matter is, they have had four years to figure-out that they don't own the complete ownership interest of this debt and therefore they come into court and say, well, we can just change that through some administrative process. That's not the way it ought to work, Your Honor. I would suggest to the Court they've had all this time to get this right, they didn't get it right, and they should not, now, be rewarded for having not done it. For having not done its homework.

Its a simple mathematic process I went through, Your Honor. That missing interest is not in this Plaintiff, it's in Avatar Capital, which is not before this Court. I would suggest that the Court that alone, the Court should dismiss this action for Foreclosure. In terms of the debt, Your Honor, what the Plaintiff is sought is to burden this property. Remember now, we have two other Foreclosures going on, in Connecticut.

What the Plaintiff seeks here though, is to burden this particular property with two-hundred and eighty-some-odd thousand

dollars in attorneys fees that it has not spent in this South Carolina Foreclosure. Now, granted, the Note says that they can collect that for enforcement purposes but the Mortgage, which they seek to enforce in this case, says that they can get attorneys fees for Foreclosure of that Mortgage.

That Mortgage, the one here in South Carolina, is the $6,700 plus the additional $10,000 in attorneys fees. So I think that is simply wrong, Your Honor. They should not be allowed to burden this property with those kinds of attorneys fees. Thirdly, Your Honor, in terms of debt, I would suggest to the Court that it is improper to, again, burden this property with the debt of the Connecticut properties.

Again, that would be inequitable to burden this property, here in South Carolina, where they have not spent a dime except for the -- I think the real estate -- the real estate taxes, but they've not spent a dime on expenses in regard to this property here in South Carolina. So for those reasons, Your Honor, I would suggest that the Court should not Foreclose this Mortgage or if it does it

should adjust that Mortgage debt to accurately reflect what this property here, in South Carolina, should be burdened with.

As far as sale goes, Your Honor, I understand its an uphill battle in terms of my affirmative defense of marshalling assets. I've read all those old cases, Judge, and quite frankly they confuse the dickens out of me.

JUDGE PORTER: By chance, last week, the lawyer, locally, asked me -- he said, what can you tell me about Marshal of Assets? I said, go look it up. I didn't want to try to explain it.

MR. LANG: Right. Right. It is a difficult argument and a difficult one to understand. But I found, Your Honor, and I cited in my pre-trial brief that old Notre Dame article where it talks about the idea that Marshalling Assets in favor of a Mortgagor. Ordinally you think of Marshal Assets in favor of other junior creditors, but in this circumstance we have a Mortgagor who has a very valuable piece of property.

I would suggest to the Court that if the Court is going to Foreclose this Mortgage,

it should sell the property, here in South Carolina, before we deal with Connecticut at all.

JUDGE PORTER: I agree.

MR. LANG: Because, I mean, this is a valuable piece of property. It is a unique property.

JUDGE PORTER: You don't have to argue that point any further.

MR. LANG: All right. In terms of the sale itself, Your Honor. Again, the property can be subdivided. It's not subdivided yet, but it can be subdivided and we have subdivisions that will equal -- that are equal in value or greater than the debt itself. I would ask the Court if the Court orders a Sale, that it do so in a fashion to allow us to subdivide it, and then sell those subdivisions -- subdivided areas so we don't have to sell the entire property, and the Court has the discretion to do that.

Ordinarily, its in a situation where its already subdivided, where you have different tracts. What we have, they probably -- they can be subdivided. Lastly, Your Honor, and I said this in front of Judge Russo -- I

asked for a Stay given the Connecticut legislation -- I'm so sorry, litigation. I would ask in terms of any sale that the Court Order that the Sale -- put that off, at least, for a -- a period of months, so we can get over the COVID19 pandemic, which hopefully we're seeing a light at the end of that particular tunnel.

I'm not exactly sure when that will happen but, again, Your Honor, its equity. This is a unique piece of property. For a sale -- regardless of whether its subdivided by lots or by sections or as a whole -- if you sell it, in February, Judge -- we're still in the midst of a pandemic and that would just depress the value significantly. So I would suggest -- I would ask that the Court delay the sale for a sufficient period of time, so that we can get the most value out of this property, no matter how its sold. That's my argument.

JUDGMENT

JUDGE PORTER: In reverse.

MR. LANG: I'm sorry?

JUDGE PORTER: In reverse. In this area, I've been told -- I'm talking about the 12th Judicial Circuit, Marion and Florence, that

the real estate right now, about every type, is hot as a firecracker. I've had three attorneys that principally do closings, tell me within the last ten days/two weeks that they're busier than they've ever been. So I don't know that the pandemic is really effecting the real estate market in the 12th Judicial Circuit.

It may be in some -- some other areas. I wouldn't be surprised, but it sure doesn't seem to be the case here. Anyway. All right. Let me make a couple comments of things, some of what each of you have touched on. I've made little notes along the way. First of all, I had a note, during the testimony, about the taxes and insurance. I made a note that, as far as taxes, it appears that only $26,545.38 applies to Marion County.

I had a notation that only $74,659.86 applied to Marion County, and I think that those figures -- you have to make the adjustment on the Schedule of Debt that your client was testifying to, Ms. Creech.

MS. CREECH: Your Honor, would you -- would you mind restating those -- those amounts? I -- forgive me, I --

JUDGE PORTER: Well, in the testimony -- in giving the -- you started out with the principal, then there was the interest at 9.9, then there was the default interest at 19.9 percent, then the taxes, and you had $142,334.76, was the testimony, unless I took it down wrong, and then, further, it was revealed that only $26,545.38 of that hundred and forty-two thousand and change applied to Marion.

On the insurance, you had listed $89,433.86, but I believe the testimony was that only $74,659.86 applied to Marion. That seems like an awful high figure, but if they've got the evidence that that's what it was, I would accept that. Now, on the operational expenses of $135,751 -- it was my understanding of the testimony, and correct me if I'm wrong, that that applied to bills or debts that was supplied by Mr. Hartmann's company on the Connecticut property, so I'm ruling that out for South Carolina -- the South Carolina case.

Now, the attorneys fees, I don't know where the two-hundred and eighty-three thousand and change came from but the testimony -- I believe, Ms. Creech, from your client was or

you clarified it, was that there were only six-thousand and something or seven-thousand and something, whatever that figure was, I didn't get the exact figure down, applied to South Carolina. I think that adjustment there is necessary.

That's as to the debt. Now -- and I may not get my thoughts in order but in South Carolina, and in the 12th Judicial Circuit of Marion and Florence for 55 years now, its been my understanding that when you sign a Promissory Note and Mortgage that you're agreeing to pay the money back. If its secured by a Mortgage, then the Holder of the Note has a right to Foreclose, if you fail to pay.

Now, I don't know what that -- how that applies to Connecticut or Charleston or Richland Counties, but that's the law in Florence and -- and Marion County. That you borrow the money, and you sign the Note, and you pay the penalty if you don't pay it back. Now, that's just simple law school law, as I recall from Professor Carrish and Professor Means, Mr. Lang. You may remember those names. You're probably young enough not to have had them in school.

As for Mr. McMillan's testimony,

folks I've known him since he was a little boy. His momma was a classmate of mine growing-up. Worked for his grandfather one summer. I've known him a long time and he is known and thought of in this community as one of the more reputable people in the real estate business, but he readily advised the Court, through testimony, that he's not an appraiser, he's not an MAI or whatever you want to call it. Some people call that: Made As Instructed.

He clearly says, on here --(indicating), that its just a broker's opinion of market value -- and here's the key, with improvements. Now, I'm not in the real estate business, I'm an old country lawyer, but I'm familiar with where this property is. I've been by it dozens and dozens of times over the years. Presided over a case -- an old original case -- I believe Mr. Hartmann was -- Wells Fargo was the Plaintiff in that case.

That's the case that eventually led to Mr. Hartmann or his company's acquiring the property, I believe. If I'm -- you know, five years, at my age, your memory is not all that red-hot, but I -- I think that was the case.

I can't remember what was established, clearly, as the value of that property. It wasn't any 42 million, and it wasn't any 50 million. You could buy a good hunk of Marion County for that.

But those are figures based on a ready-to-sell improved tract of land. Now, I'm not a developer, but I have some idea of what it takes to develop property ready-to-sell in the condition as described by Mr. McMillan, and I would hazard a guess that it would take several million dollars to do that. So I think all that shoots a hole in the value of forty-something million.

Now, from an equitable standpoint, Mr. Lang, you represented the question of equity. You know, I'm glad to look at all of that but the fact remains, going back to my first comment: You borrow the money, you got to pay it back. Country law. Another point that I'm certainly not qualified to render -- to determine exactly the ability to use the documents from DHEC or from the Corps. of Engineers or whoever exists.

I do have enough experience to know that it takes a lot more just one little sheet of paper to get approvals from DHEC or Corps. of

Engineers, getting approvals. But, again, you borrow the money, you've got to pay it back. I think the -- I think that the Plaintiffs -- I mean, the Defendants, they get a couple of gold stars for trying to get the property in saleable condition.

The steps they've taken have created some value. It's an unknown value though. There's no way that I know of for a court to assess the value like that to, in effect, reduce a debt. Ms. Creech, I think your client is entitled to an Order of Foreclosure. I'll be glad to entertain a proposed Order, but I'd like for it to be submitted to Mr. Lang, before it's sent to me, for his opportunity to review it.

I'm not telling you I won't change it, but I'll be glad for you to submit one. Now, I would -- I would like to ask you two attorneys to have some discussion and some input into when the property would sell. Time-wise you could make the February sale, but I don't know that that's an appropriate time, but I would ask you two to have some discussion about that and see if y'all can -- can maybe come up with at least

something you could mutually recommend to the -- to the Court.

I don't have any jurisdiction over when the Connecticut property may or may not sell, so I'm not going to comment on Connecticut. I'm here to focus on going ahead and proceeding with this case before me. Certainly, if the Connecticut property gets sold, it would reduce the debt, I presume, but I have -- I don't have any jurisdiction to deal with Connecticut, so I'm not going to comment further on that. All right.

It's nice to have you folks in from out-of-town in Florence. I hope you've received nice hospitality outside of the Courts. If you attorneys have anything further you need to discuss with me, I'll be glad to see you in chambers.

MR. CRONIN-PRATHER: Thank you, Your Honor.

MR. LANG: Thank you, Your Honor.

MS. CREECH: Thank you, Your Honor.

MR. CRONIN-PRATHER: Appreciate it.

JUDGE PORTER: I hope you all have a nice holiday season, and I hope you all stay safe.

MR. LANG: These are the Defendants exhibits.

COURT REPORTER: Okay, and do you want a copy?

MR. LANG: I will let you know.

COURT REPORTER: Okay. Thank you. Ms. Creech, you do want a transcript?

MS. CREECH: I'll let you know if I do.

COURT REPORTER: Okay.

MS. CREECH: I'm trying to think for the -- well, you know what, yeah. Let's -- so I can put the Order together, I'll probably need it. Yeah.

COURT REPORTER: Okay.

(Off the record.)

(The hearing was concluded at 3:10 p.m.)

CERTIFICATE OF REPORTER

I, Tia Shean, Court Reporter and Notary Public for the State of South Carolina at-large, do hereby certify that the foregoing transcript is a true, accurate, and complete record.

I further certify that I am neither related to nor counsel for any party to the cause pending or interested in the events thereof.

Witness my hand, I have hereunto affixed my official seal this 17th day of December, 2020, at Conway, Horry County, South Carolina.



Tia Shean, Court Reporter
Commission Expires: 02/10/2024

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South Carolina Rules of Civil Procedure

Part V. Depositions and Discovery

Court Rule 30

(e) Submission to Witness; Changes; Signing. When the testimony is fully transcribed the deposition shall be submitted to the witness for examination and shall be read to or by him unless such examination and reading are waived by the witness and by the parties. Any changes in form or substance which the witness desires to make shall be entered upon the deposition by the officer with a statement of the reasons given by the witness for making them. The deposition shall then be signed by the witness, unless the parties by stipulation waive the signing or the witness is ill or cannot be found or refuses to sign. If the deposition is not signed by the witness within 30 days of its submission to him, the officer shall sign it and state on the record the fact of the waiver or of the illness or absence of the witness or the fact of the refusal to sign together with the reason, if any, given therefor; and the deposition may then be used as fully as though signed unless on a motion to suppress under Rule 32(d)(4) the court holds

that the reasons given for the refusal to sign require rejection of the deposition in whole or in part.

DISCLAIMER: THE FOREGOING CIVIL PROCEDURE RULES ARE PROVIDED FOR INFORMATIONAL PURPOSES ONLY. THE ABOVE RULES ARE CURRENT AS OF APRIL 1, 2019. PLEASE REFER TO THE APPLICABLE STATE RULES OF CIVIL PROCEDURE FOR UP-TO-DATE INFORMATION.

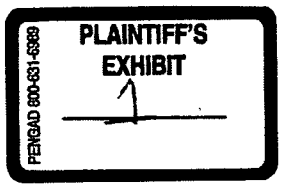
VERITEXT LEGAL SOLUTIONS
COMPANY CERTIFICATE AND DISCLOSURE STATEMENT

Veritext Legal Solutions represents that the foregoing transcript is a true, correct and complete transcript of the colloquies, questions and answers as submitted by the court reporter. Veritext Legal Solutions further represents that the attached exhibits, if any, are true, correct and complete documents as submitted by the court reporter and/or attorneys in relation to this deposition and that the documents were processed in accordance with our litigation support and production standards.

Veritext Legal Solutions is committed to maintaining the confidentiality of client and witness information, in accordance with the regulations promulgated under the Health Insurance Portability and Accountability Act (HIPAA), as amended with respect to protected health information and the Gramm-Leach-Bliley Act, as amended, with respect to Personally Identifiable Information (PII). Physical transcripts and exhibits are managed under strict facility and personnel access controls. Electronic files of documents are stored in encrypted form and are transmitted in an encrypted fashion to authenticated parties who are permitted to access the material. Our data is hosted in a Tier 4 SSAE 16 certified facility.

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COMMERCIAL PROMISSORY NOTE

January 22, 2015 Columbia, SC

$2,000,000.00

1. For value received, the undersigned, **PARTNERS 95, L.L.C.**, a Connecticut limited liability company, **OIL BARONS, INC.**, a Delaware corporation, and **HSGCHG INVESTMENTS, LLC**, a Delaware limited liability company, all with a principal place of business at 114 Cascade Boulevard, Milford, CT 06460 (collectively, the "Maker"), jointly and severally, promises to pay to the order of **AVATAR CAPITAL FINANCE, LLC**, a Washington limited liability company, its successors or assigns, (the "Holder") at its office located at 1200 Westlake Ave N, # 1006, Seattle, Washington 98109, or at such other place as the Holder hereof shall designate, the principal sum of up to TWO MILLION AND 00/100 DOLLARS ($2,000,000.00), in lawful money of the United States of America, together with interest on the unpaid balance of this Commercial Promissory Note ("Note"), beginning on the date hereof, before maturity, default or judgment, at an annual rate of interest as set forth in paragraph 4 hereof.

2. REPRESENTATIONS/WARRANTY. Maker represents and warrants to Holder that the loan evidenced by this Note is for commercial, investment or business purposes only and is not for personal, family or household purposes.

3. SECURITY. This Note is secured by: (a) a first lien Commercial Mortgage of Real Property, Security Agreement and Fixture Filing (the " SC Mortgage") and an Assignment of Leases and Rents, each of even date herewith and executed by Maker covering and relating to that certain property located at 1548 US Highway 501, Marion, SC, which property is more particularly described in the SC Mortgage and exhibits thereto; (b) a first lien Open-End Mortgage Deed and Security Agreement (the "#1 CT Mortgage") and an Assignment of Leases and Rents, each of even date herewith and executed by Maker covering and relating to that certain property located at 96 Front Road, East Haven, CT, which property is more particularly described in the #1 CT Mortgage and exhibits thereto; (c) a second lien Open-End Mortgage Deed and Security Agreement (the "#2 CT Mortgage") and an Assignment of Leases and Rents, each of even date herewith and executed by Maker covering and relating to that certain property located at 49 Leetes Island Road, Branford, CT, which property is more particularly described in the #2 CT Mortgage and exhibits thereto; (d) a Recourse Guaranty of even date herewith executed by Robert D. Hartman, Sr.; (e) and any and all other documents executed by Maker in connection with the loan as evidenced herein (hereinafter collectively the "Security Instruments"). NOTE: The SC Mortgage, #1 CT Mortgage and #2 CT Mortgage can be individually referred to herein as the "Mortgage" and are collectively referred to herein as the "Mortgages."

4. INTEREST. Provided no event of default has occurred, Maker promises to pay interest on the unpaid principal balance of the loan evidenced by this Note from the date hereof through and including July 1, 2015, at the rate per annum equal to the Interest Rate set forth below which shall be paid monthly in arrears commencing March 1, 2015. The "Interest Rate," prior to the occurrence of an Event of Default and during the first six-month period of this Note, shall be 8.99%. After the expiration of the first six-month period of this Note, provided no event of

default has occurred, Maker promises to pay interest on the unpaid principal balance of the loan evidenced by this Note at the rate per annum equal to 9.99% which shall be paid monthly in arrears commencing August 1, 2015 until repayment in full. All interest shall be calculated for the actual number of days elapsed over a year assumed to consist of 360 days. Interest for the remaining portion of the month that this Note is executed and delivered shall be payable in advance on the date hereof and shall be computed on the basis of a 360-day year and shall be equal to a per diem interest charge equal to the product of (a) 1/360 and (b) the Interest Rate and (c) the original outstanding principal balance hereunder multiplied by the number of days in such partial month.

5. PAYMENTS.

A. Time and Place of Payments. Maker shall pay interest only payments computed on a 360 day year each and every month with payments due on the first day of each calendar month beginning March 1, 2015 to AVATAR CAPITAL FINANCE LLC, 1200 Westlake Ave N, Suite 1006, Seattle, Washington 98109 or other such place as Holder may designate. If, during the term of the loan, Maker makes a principal payment, the monthly payment amount for the succeeding months shall be adjusted to reflect interest computed on the reduced principal balance. The monthly payments will be applied first to the payment of late charges, fees and costs incurred by the Holder, and/or sums advanced under this Note or any of the Mortgages, then to interest, and the balance to reduction of the principal balance.

B. Reserves. In addition to the monthly interest only payment, Holder reserves the right to collect monthly and Maker agrees to pay when so requested by Holder, an amount equal to 1/12 of the amount of taxes, assessments, if any, and insurance as reserves, all as more fully described in the Mortgage.

C. Late Charges. If Holder has not received the full amount of any monthly payment by the end of five (5) calendar days after the date it is due, Maker shall promptly pay a late charge to the Holder in the amount of ten percent (10%) of the overdue payment. Maker agrees this late charge is to compensate the Holder for damages the Holder will suffer in servicing the loan including extra expenses involved in handling delinquent payments. Maker agrees that the actual damages suffered will be extremely difficult and impractical to ascertain and the sum of ten percent (10%) of the overdue payment is fair and reasonable.

D. Prepayment Premium. There shall be no prepayment premium.

6. MATURITY DATE. Provided no event of default has occurred, the unpaid principal, advances made by Holder and any accrued interest shall be due in full by no later than July 1, 2016 (the "Maturity Date"). Maker understands and agrees to pay a late charge of ten percent (10%) of the principal amount owing if Maker fails to pay all sums due under this Note on the Maturity Date.

7. MAKER'S FAILURE TO PAY/PERFORM AS REQUIRED.

A. Events of Default. Any one of the following occurrences shall constitute an "Event of Default" under this Note:

1. The failure by Borrower to timely make any payment due under this Note in accordance with the terms of this Note; or

2. The failure to comply with any non-monetary provision in this Note; or
3. The occurrence of any event of default under the Security Instrument(s); or
4. A transfer of the mortgaged property under the Mortgage(s) occurs which is prohibited by the Mortgage(s).

B. Any Event of Default, other than an Event of Default for non-payment in accordance with Section 5 herein, may be cured within 30 days after written notice thereof is mailed to Borrower by Lender, provided, however that if in the reasonable judgment of Lender the Default cannot be remedied within the 30-day period, such 30-day period shall be extended for such additional 30-day periods as is deemed reasonably necessary to cure the default, so long as Borrower is diligently and continuously proceeding in good faith to cure such Default and Lender's interest in the Property is not materially affected. The right to cure shall be applicable only to curable defaults and shall not apply, without limitation, to Defaults based upon false warranty or bankruptcy. Borrower shall have the right to cure a Default requiring mailing of notice only once during any 12-month period. Borrower shall have a "grace period" of five (5) days for payments due under this Note, and any payment made within such grace period, although after the due date, shall not be an Event of Default.

C. Remedies. Upon the occurrence of any uncured event of default under this Note or any Security Instrument:
1. The entire unpaid principal balance, advances, any unpaid interest, and any other amounts owing under this Note shall, at the option of the Holder and without further notice or demand to Borrower, immediately become due and payable; and
2. The Holder shall have and may exercise any and all rights and remedies available at law or in equity and also any and all rights and remedies provided in the Security Instruments. The remedies of the Holder, as provided in this Note and in the Security Instruments, shall be cumulative and concurrent, and may be pursued singularly, successively or together, at the sole discretion of the Holder, and may be exercised as often as occasion therefor shall arise.
3. Default Interest. After failure to make payment, monthly, balloon or otherwise or any other default under this Note or any of the Security Instruments securing this Note, this Note shall bear interest at the rate of the lesser of 10% above the herein stated rate or the maximum rate allowed under applicable law (the "Default Rate").

C. No Waiver by Note Holder. No act of omission or commission of the Holder, including specifically any failure to exercise any right, remedy or recourse shall be deemed to be a waiver or release of any right, remedy or recourse by Holder. A waiver or release with reference to any one event shall not be construed as continuing, as a bar to, or as a waiver or release of, any subsequent right, remedy or recourse as to any subsequent event.

8. NOTICES. Unless otherwise required by law, all notices under this Note shall be in writing and shall be deemed delivered upon personal delivery to the authorized representative(s) of either Maker or Holder or upon mailing either by certified mail, return receipt requested, postage prepaid, or first class mail. Notices shall be addressed to the Maker or Holder at the following address or at such other addresses as may be designated by written notice given hereunder.

MAKER: Partners 95, L.L.C., Oil Barons, Inc. and HSGCHG Investments, LLC
114 Cascade Boulevard
Milford, CT 06460

HOLDER: AVATAR CAPITAL FINANCE, LLC
1200 Westlake Ave N, # 1006
Seattle, Washington 98109

9. GOVERNING LAW and SEVERABILITY. This Note is made pursuant to, and shall be construed and governed by the laws of the State of Connecticut. If any provision of this Note or of the Security Instruments is construed or interpreted by a court of competent jurisdiction to be void, invalid or unenforceable, such decision shall not affect the remaining provisions of this Note or the Security Instruments.

10. TIME IS OF THE ESSENCE. Time is of the essence of this Note.

11. ASSIGNMENT. Holder may assign all or a portion of its rights, title and interest in this Note to any person, firm, corporation or other entity without the consent of the Maker. Maker may not assign any of its right, title, obligation or interest in this Note.

12. OBLIGATIONS OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each person signs as a Maker, unless otherwise stated and shall be fully, jointly, severally and personally obligated to keep all of the promises made in this Note, including the promise to pay all sums due and owing.

13. NO WAIVER BY HOLDER. The failure by the Holder to insist upon the strict performance by the Maker of any terms and provisions herein shall not be deemed to be a waiver of any terms and provisions herein, and the Holder shall retain the right thereafter to insist upon strict performance by the Maker of any and all terms and provisions of this Note or any document securing the repayment of this Note.

14. HEADINGS. The subject headings of the paragraphs of this Note are included for purposes of convenience only, and shall not affect the construction or interpretation of any of its provisions.

15. ATTORNEYS FEES AND COSTS. Maker promises to pay all costs, expenses and reasonable attorney's fees incurred by Holder in the exercise of any remedy (with or without litigation) under this Note, the Mortgage or other Security Instruments, in any proceeding for the collection of the debt evidenced by this Note (including in house document preparation fees), in any sale or

foreclosure of the Mortgage or the realization upon any other security securing this Note, in protecting or sustaining the lien or priority of the Mortgage, Security Instruments or said other security, or in any litigation or controversy arising from or connected with this Note, the Mortgage or other security for this Note. Said proceedings include, without limitation, any probate, bankruptcy, receivership, injunction, arbitration, mediation or other proceeding, including post judgment collection proceedings or any appeal from or petition for review of any of the foregoing, in which Holder prevails. Maker shall also pay all of Holder's costs and reasonable attorney's fees incurred in connection with any demand, work-out, settlement, compromise, or other activity in which the Holder engages to collect any portion of this debt not paid when due or as a result of any Event of Default of Maker. If a judgment is obtained thereon which includes an award of attorney's fees, such attorney's fees, costs and expenses shall be in such amount as the court shall deem reasonable, which judgment shall bear interest at the Default Rate from the date it is rendered to and including the date of payment to Holder. "Costs and expenses" shall include, but are not limited to appraisal fees, inspection fees and costs of a title report.

16. NO DEDUCTIONS. All payments of principal of and interest on the Note shall be made without the right of set-off and without deduction of any present or future taxes, levies, duties, imposts, deductions, charges or withholdings imposed by any existing or future law, rule, regulation, treaty, directive or requirement, whether or not having the force of law, which amounts shall be paid by Maker. Maker will pay the amounts necessary such that the gross amount of the principal and interest received by Holder is not less than that required by this Note.

17. ABSENCE OF USURY; PAYMENTS IN MONEY.

(a) All agreements herein are expressly limited so that in no contingency or event whatsoever, whether by reason of advancement of the proceeds hereof, acceleration of maturity of the unpaid principal balance hereof, or otherwise, shall the amount paid or agreed to be paid to Holder for the use, forbearance or detention of the money to be advanced hereunder exceed the highest lawful rate permissible under applicable law. If, from any circumstances whatsoever, fulfillment of any provision in this Note or in any Security Instrument at the time performance of such provision shall be due, shall involve transcending the limit of validity prescribed by law that a court of competent jurisdiction may deem applicable hereto, then, ipso facto, the obligation to be fulfilled shall be reduced to the limit of such validity and if from any circumstance the Holder shall ever receive as interest an amount that would exceed the highest lawful rate, such amount that would be excessive interest shall be applied to the reduction of the unpaid principal balance due hereunder in the inverse order of maturity and not to the payment of interest.

(b) All amounts payable under this Note are payable in lawful money of the United States, without notice, demand, offset or deduction. Checks will constitute payment only when collected. Any amount paid on this Note shall be applied first, to the costs of collection with respect to the Note or any Security Instrument, then to payment of accrued but unpaid interest on this Note, then toward the outstanding balance of this Note.

18. SEVERABILITY. The parties hereto intend and believe that each provision in this Note comports with all applicable local, state and federal laws and judicial decisions. However, if any

provision or provisions, or if any portion of any provision or provisions, in this Note is found by a court of law to be in violation of any applicable local, state or federal ordinance, statute, law, administrative or judicial decision, or to be illegal, invalid, unlawful, void or unenforceable as written, then it is the intent of all parties hereto that such portion, provision or provisions shall be given force to the fullest possible extent that they are legal, valid and enforceable, that the remainder of this Note shall be construed as if such illegal, invalid, unlawful, void or unenforceable portion, provision or provisions were not contained therein, and that the rights, obligations and interest of Maker and Holder under the remainder of this Note shall continue in full force and effect.

19. TAX. If, by the laws of the United States of America, or of any state or local jurisdiction having jurisdiction over Maker, any tax is due or becomes due in respect of the issuance of this Note or the issuance or recording of any Security Instrument or any other security interest created thereby, Maker covenants and agrees to pay such tax in the manner required by any such law. Maker further covenants to hold harmless and agrees to indemnify Holder against any liability incurred by reason of the imposition of any tax on the issuance of this Note or the issuance or recording of any Security Instrument or any other security interest created thereby.

20. DELAY OR OMISSION. No delay or omission on the part of Holder or under any Security Instrument given to secure this Note (including the Mortgage) shall operate as a waiver of such right or of any other right hereunder or under said Mortgage. No single or partial exercise of any power hereunder or under any other of the Security Instruments shall preclude other or further exercises thereof or the exercise of any other power. Holder shall at all times have the right to proceed against any portion of the security for this Note in such order and in such manner as Holder may consider appropriate, without waiving any rights with respect to any of the security.

21. ENTIRE AGREEMENT. This Note and the Security Instruments contain the entire agreement of the parties with respect to the property and/or collateral. No prior agreement, statement, or promise written or oral made by any party to this Note or in the Security Instruments that is not contained herein shall be binding or valid.

22. WAIVER. THE MAKER ACKNOWLEDGES THAT THE LOAN EVIDENCED BY THIS NOTE IS A COMMERCIAL TRANSACTION; AND, TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, IT HEREBY WAIVES ANY RIGHT TO NOTICE AND HEARING AS MAY BE ALLOWED BY ANY STATE OR FEDERAL LAW WITH RESPECT TO ANY PREJUDGMENT REMEDY WHICH THE HOLDER MAY DESIRE TO USE. THE MAKER FURTHER WAIVES DILIGENCE, DEMAND, PRESENTMENT FOR PAYMENT, NOTICE OF NONPAYMENT, PROTEST AND NOTICE OF PROTEST, AND NOTICE OF ANY RENEWALS OR EXTENSIONS OF THIS NOTE. THE MAKER ACKNOWLEDGES THAT IT MAKES THIS WAIVER KNOWINGLY, VOLUNTARILY, AND WITHOUT DURESS AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH ITS ATTORNEYS. THE MAKER FURTHER CONSENTS TO THE ISSUANCE OF ANY SUCH PREJUDGMENT REMEDIES WITHOUT A BOND AND AGREES NOT TO REQUEST OR FILE MOTIONS SEEKING TO REQUIRE THE POSTING

OF A BOND UNDER ANY APPLICABLE LAW OR RULE IN CONNECTION WITH THE HOLDER'S EXERCISE OF ANY PREJUDGMENT REMEDY.

23. JURY TRIAL WAIVER. TO THE FULLEST EXTENT PERMITTED BY APPLICABLE LAW, THE MAKER AND THE HOLDER EACH WAIVES TRIAL BY JURY IN ANY COURT IN ANY SUIT, ACTION, PROCEEDING OR ANY MATTER ARISING IN CONNECTION WITH OR IN ANY WAY RELATED TO THIS NOTE OR THE FINANCING TRANSACTION OF WHICH THIS NOTE IS A PART, OR ENFORCEMENT OF ANY OF THE HOLDER'S RIGHTS AND REMEDIES IN CONNECTION THEREWITH. THE MAKER AND THE HOLDER EACH ACKNOWLEDGES THAT IT MAKES THIS WAIVER KNOWINGLY, VOLUNTARILY, AND WITHOUT DURESS AND ONLY AFTER EXTENSIVE CONSIDERATION OF THE RAMIFICATIONS OF THIS WAIVER WITH ITS ATTORNEYS.

[Signature Page Follows]

IN WITNESS WHEREOF, the undersigned has executed this document as of the date set forth hereinabove.

MAKER:

PARTNERS 95, L.L.C.
a Connecticut limited liability company

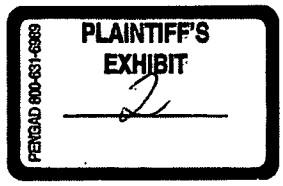
By: _____(SEAL)
PAUL R. GREENBERG
Its: Managing Member

OIL BARONS, INC.
a Delaware corporation

By: _____(SEAL)
ROBERT D. HARTMANN, SR.
Its: President

HSGCHG INVESTMENTS, L.L.C.
a Delaware limited liability company

By: _____(SEAL)
ROBERT D. HARTMANN, SR.
Its: President/Chief Executive Officer



RECOURSE GUARANTY

Recourse Guaranty dated as of January 22, 2015 ("Guaranty") made by **ROBERT D. HARTMANN, SR.** ("Guarantor") for the benefit of **AVATAR CAPITAL FINANCE, LLC**, a Washington limited liability company ("Lender").

In consideration of Lender providing credit to Borrower, Guarantor hereby agrees as follows:

Section 1. Definitions. As used in this Guaranty, the following terms have the following meanings:

"Borrower" collectively means PARTNERS 95, L.L.C., a Connecticut limited liability company, OIL BARONS, INC., a Connecticut corporation, and HSGCHG INVESTMENTS, LLC, a Delaware limited liability company.

"Borrower Obligations" means any and all present and future liabilities and obligations of Borrower to Lender, including all present and future liabilities or obligations under or pursuant to any and all of the Loan Documents together with all fees and expenses incurred in collecting any or all of the items specified in this definition or enforcing any rights under any and all Loan Documents.

"Environmental Indemnity Agreement" means the Environmental Indemnity Agreement dated as of the date of this Guaranty by each Guarantor and Borrower for the benefit of Lender and the other Indemnified Parties specified therein.

"Guaranty" means this Recourse Guaranty.

"Guaranteed Obligations" means all Losses Lender incurs arising out of or in connection with:

(a) Misappropriation or misapplication or conversion of any Rents, or other funds constituting proceeds of the Property (which misappropriation may include, without limitation, the failure to apply Rents in accordance with the terms of this Agreement and the other Loan Documents), in each case to the full extent of the funds misappropriated or misapplied;

(b) Any security deposits not delivered to Lender upon foreclosure of the Mortgage (or similar sale pursuant to the terms thereof) or an action or conveyance in lieu thereof, except to the extent previously applied in accordance with the terms of the related Lease;

(c) Proceeds (i) paid under any insurance policies (or paid as a result of any other claim or cause of action against any person or entity) by reason of damage, loss or destruction to all or any portion of the Property, or (ii) resulting from the condemnation or other taking in lieu of condemnation of all or any portion of the Property, or any of them, in each case to the full extent of such proceeds not previously delivered to Lender,

but which, under the terms of the Loan Documents, should have been delivered to Lender;

(d) Any willful misconduct by the Borrower or Guarantor, or any Person acting at the direction of either of them (including, without limitation, removal of any portion of the Property in violation of the terms of the Loan Documents);

(e) Material physical waste committed on the Property by the Borrower or Guarantor, or any Person acting at the direction of either of them;

(f) Failure to pay, or make deposits to the Tax and Insurance Reserve on account of, any (i) Taxes or Other Charges, or other amounts which (if unpaid) could create liens on any portion of the Property which would be superior to the lien or security title granted to Lender pursuant to the Loan Documents, or (ii) premiums on insurance policies required under the Loan Documents to be maintained by Borrower or with respect to the Property; or

(g) Fraud or material misrepresentation or failure to disclose a material fact by Borrower or Guarantor, or any person acting on behalf of, or at the direction of, Borrower or Guarantor.

Provided, however, Guaranteed Obligations means all liabilities and obligations of Borrower to Lender, including all of the Borrower Obligations if: (A) Borrower fails to obtain Lender's prior written consent to any subordinate financing or other voluntary lien encumbering the Property or the ownership interests in Borrower, if such consent is required by the Loan Documents; (B) Borrower fails to obtain Lender's prior written consent to any Transfer, if such consent is required by Loan Documents; (C) the first monthly payment under the Loan (together with all required payments for reserves pursuant to Article 3 hereof due concurrently therewith) is not paid in full when due; (D) a bankruptcy petition is filed by, consented to, or acquiesced in by Borrower (or Borrower takes similar voluntary action under any comparable state or federal law); or (E) Borrower or Guarantor shall have made or colluded with creditors of Borrower (other than Lender) to cause an involuntary bankruptcy filing with respect to Borrower (or similar action under any comparable state or federal law) unless the same is discharged within thirty (30) days of such filing.

"Guarantor" means ROBERT D. HARTMANN, SR.

"Lender" means AVATAR CAPITAL FINANCE, LLC, a Washington limited liability company.

"Loan Documents" means the Note, the Mortgage and each other document or agreement entered into pursuant to, as required by, or in connection with, the Note or the Mortgage, or any or all of the foregoing, all as the context may require.

"Losses" means any and all liabilities, obligations, losses (including loss of principal, interest and fees under any and all Loan Documents), damages, costs and expenses incurred by Lender in respect of or as a result of any or all claims, suits, liabilities (including strict liabilities), actions, demands, proceedings, obligations, debts, damages (including punitive and consequential damages), trials, fines, penalties, charges,

injury to a person, property or natural resource, fees, judgments, accounts, orders, adjudications, awards, liens, injunctive relief, causes of action or amounts paid in settlement of whatever kind or nature, including attorney's fees and consultant's fees and other cost of defense or otherwise related thereto.

"Material Adverse Change" means, in the case of each Guarantor, either (1) a material adverse change in the status of the assets, liabilities, financial condition or property of such Guarantor, or (2) any event or occurrence of whatever nature which does or is reasonably likely to have a material adverse effect on the ability of such Guarantor to perform his obligations under this Guaranty.

"Mortgage" collectively means the first lien Commercial Mortgage of Real Property, Security Agreement and Fixture Filing, first lien Open-End Mortgage Deed and Security Agreement and second lien Open-End Mortgage Deed and Security Agreement, all dated as of the date of this Guaranty by Borrower for the benefit of Lender.

"Note" means the $2,000,000.00 Commercial Promissory Note dated as of the date of this Guaranty made by Borrower and payable to Lender.

"Obligations" means both Borrower Obligations and Guaranteed Obligations.

"Person" means an individual, partnership (including a limited liability partnership), corporation, limited liability company, business trust, joint stock company, trust, unincorporated associates, joint venture, Governmental Authority or other entity of whatever nature.

"Proceeding" means any dissolution, winding up, liquidation, arrangement, reorganization, adjustment, protection, relief or composition of Borrower, or its debts, whether in any bankruptcy, insolvency, arrangement, reorganization, receivership, relief or similar proceedings or upon an assignment for the benefit of creditors or any other marshalling of the assets and liabilities of Borrower.

"Property" collectively means the real property located at 1548 US HWY 501, Marion, SC, 96 Frontage Road, East Haven, CT and 49 Leetes Island Road, Branford, CT.

Section 2. Rules of Interpretation. When used in this Guaranty: (1) "or" is not exclusive, (2) any pronouns used shall include the corresponding masculine, feminine or neuter form, (3) the singular form of nouns shall include the plural and vice versa, (4) a reference to a Law includes any amendment or modification to such Law, and (5) a reference to an agreement, instrument or document includes any amendment or modification of such agreement, instrument or document if and to the extent such amendment or modification is permitted under the Loan Documents.

Section 3. Guaranty. Guarantor hereby guarantees to Lender and its successors, endorsees, transferees and assigns the prompt and complete payment, as and when due

and payable, whether at stated maturity or by required prepayment, acceleration, demand or otherwise, all of the Guaranteed Obligations now existing or hereafter incurred.

Section 4. Payment Under Guaranty. Upon demand by Lender, Guarantor shall immediately pay to Lender at the address of Lender specified in this Guaranty in lawful money of the United States of America each amount due by Guarantor under this Guaranty. The amount of such payment shall not be reduced by any setoff, counterclaim or cross-claim whether such setoff or claim relates to this Guaranty, the Guaranteed Obligations or otherwise.

All payments made by Guarantor pursuant to this Guaranty shall be made free and clear of and without deduction for any taxes, levies, imposts, deductions, charges or withholdings, and all related liabilities. If a Guarantor is required by Law to deduct any such item from or in respect of any sum payable to Lender under this Guaranty, the amount payable under this Guaranty shall be increased as may be necessary so that after making all required deductions (including deductions applicable to additional sums payable by Guarantor under this Section) Lender receives an amount equal to the sum it would have received had no such deductions been made. In addition, Guarantor agrees to pay any present or future stamp or documentary taxes or any other excise or property taxes, charges or similar levies that arise from any payment made under this Guaranty or from the execution, delivery or registration of, or otherwise with respect to, this Guaranty.

Section 5. Limitation of Liability. The obligation of Guarantor under this Guaranty shall be limited to an aggregate amount equal to the largest amount that would not render the obligation of such Guarantor under this Guaranty subject to avoidance under Section 548 of the United States Bankruptcy Code or any comparable provision of any applicable state law.

Section 6.Type of Guaranty. This Guaranty is absolute and unconditional and as such is not subject to any conditions and each Guarantor is fully liable to perform all of his duties and obligations under this Guaranty as of the date of execution of this Guaranty. This Guaranty is a continuing guaranty and applies to all future Guaranteed Obligations. This Guaranty is a guaranty of payment and not of collection. The obligations and liabilities of each Guarantor under this Guaranty shall not be conditioned or contingent upon the pursuit by Lender of any right or remedy against Borrower or any other Person which may be or become liable in respect of all or any part of the Guaranteed Obligations, or against any assets securing the payment of the Guaranteed Obligations or any guarantee of such Guaranteed Obligations or right of setoff with respect to such Guaranteed Obligations. This Guaranty is irrevocable and as such cannot be cancelled, terminated or revoked by Guarantor.

Section 7. Reinstatement of Guaranty. This Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment, or any part thereof, of any of the Obligations are rescinded or must otherwise be returned by

Lender upon the insolvency, bankruptcy, dissolution, liquidation or reorganization of Borrower or otherwise, all as though such payment had not been made.

Guarantor hereby consents that, without the necessity of any reservation of rights against such Guarantor and without notice to or further assent by Guarantor, any demand for payment of any of the Obligations made by Lender may be rescinded by Lender and any of such Obligations continued after such rescission.

Section 8. Representations. At the time of execution of this Guaranty, Guarantor represents and warrants to Lender as follows:

(1) No Contravention. The execution, delivery and performance by such Guarantor of this Guaranty does not and will not (a) violate any provision of any Law, order, writ, judgment, injunction, decree, determination, or award presently in effect applicable to Guarantor, (b) result in a breach of, or constitute a default under, any indenture or loan or credit agreement or any other agreement, lease, or instrument to which Guarantor is a party or by which Guarantor or his properties may be bound or affected, or (c) result in, or require, the creation or imposition of any Lien upon or with respect to any of the properties now owned or hereafter acquired by Guarantor.

(2) Governmental Authority. No authorization, approval or other action by, and no notice to or filing with, any Governmental Authority is required for the due execution, delivery and performance by Guarantor of this Guaranty.

(3) Legally Enforceable Guaranty. This Guaranty is the legal, valid and binding obligation of Guarantor, enforceable against Guarantor in accordance with its terms, except to the extent that such enforcement may be limited by (a) applicable bankruptcy, insolvency, and other similar laws affecting creditors' rights generally, or (b) general equitable principles, regardless of whether the issue of enforceability is considered in a proceeding in equity or at law.

(4) Solvency. Guarantor is Solvent and will not be rendered insolvent by the transactions contemplated by this Guaranty.

(5) Financial Statements. The financial statements of and other financial information related to Guarantor that were delivered to Lender, are true, correct and complete in all material respects. Such financial statements fairly present the financial position of Guarantor. No Material Adverse Change has occurred with respect to Guarantor since the date of such financial statements.

(6) Disclosure. None of Guarantor's representations or warranties contained in this Guaranty or any other document, certificate or written statement furnished to Lender by or on behalf of Guarantor contains any untrue statement of a material fact or omits to state a material fact necessary in order to make the statements contained in this Guaranty or in such other document, certificate or written statement not misleading. There is no

fact known to Guarantor which could result in a Material Adverse Change which has not been disclosed in writing to Lender by such Guarantor.

Section 9. Waiver of Notices. Guarantor hereby waives any and all notices including (1) notice of or proof of reliance by Lender upon this Guaranty or acceptance of this Guaranty, (2) notice of the incurrence of any Obligations or the renewal, extension or accrual of any such Obligations, (3) notice of any actions taken by Lender or Borrower or any other Person under any Loan Document, (4) notices of nonpayment or nonperformance, protest, notices of protest and notices of dishonor, and (5) notice of intent to accelerate and notice of acceleration of any or all Obligations.

Section 10. Waiver of Defenses. Guarantor hereby waives any and all defenses to the performance by Guarantor of his duties and obligations under this Guaranty, including any defense based on any of the following:

(1) any failure of Lender to disclose to Guarantor any information relating to the business, condition (financial or otherwise), operations, performance, properties or prospects of any Person obligated to make payment on any and all Obligations, whether as principal or guarantor, now or hereafter known to Lender,

(2) any defense to the payment of any or all the Obligations, including lack of validity or enforceability of any of the Obligations or any Loan Document,

(3) any change in the time, manner or place of payment of, or in any other term in respect of, all or any of the Obligations, or any other amendment or waiver of or consent to any departure from any Loan Document,

(4) any exchange or release of, or non-perfection of any security interest on or in any assets securing the payment of the Obligations,

(5) any failure to execute any other guaranty for all or any part of the Obligations, or any release or amendment or waiver of, or consent to any departure from, any other guaranty for any or all of the Obligations,

(6) any failure to execute any subordination agreement for all or any part of the Obligations, or any release or amendment or waiver of, or consent to any departure from, any subordination agreement for all or any of the Obligations,

(7) any subordination of any or all of the Obligations,

(8) any act or omission of Lender in connection with the enforcement of, or the exercise of rights and remedies, including any election of, or the order of exercising any, remedies, with respect to (a) the Obligations, (b) any other guarantor of the Obligations, (c) any person that executes a subordination agreement for any Obligations, or (d) any assets securing the payment of the Obligations,

(9) any manner of application of any funds received by Lender to Obligations or any other obligations owed to Lender, whether from the sale or disposition of any assets securing the Obligations, from another guarantor of the Obligations or otherwise,

(10) any failure to give or provide any notices, demands or protests, including those specified under "Waiver of Notices" (Section 9), and

(11) any benefit of any statute of limitations affecting Guarantor's liability under this Guaranty or the enforcement of this Guaranty.

In addition, Guarantor hereby irrevocably waives any and all right to assert any setoff, counterclaim or crossclaim of any nature with respect to this Guaranty or the obligations of Guarantor under this Guaranty.

Section 11. Subrogation. Guarantor agrees not to exercise any rights which Guarantor may acquire by way of subrogation or contribution, whether acquired by any payment made under this Guaranty, by any setoff or application of funds of Borrower, by Lender or otherwise, until (1) the payment in full of the Obligations, and (2) the payment of all fees and expenses to be paid by Guarantor pursuant to this Guaranty. If any amount shall be paid to a Guarantor on account of such subrogation or contribution rights at any time when all of the Obligations and all such other expenses have not been paid in full, such amount shall be held in trust for the benefit of Lender, shall be segregated from the other funds of Guarantor and shall forthwith be paid over to Lender to be credited and applied in whole or in part by Lender against the Obligations, whether matured or unmatured, and all such other fees and expenses.

Section 12. Reporting Requirements. Guarantor will provide immediate notice to Lender if (1) any representation and warranty included in this Guaranty as made by Guarantor would no longer be true if made on such date or (2) there is a Material Adverse Change with respect to Guarantor. Guarantor will furnish to Lender from time to time such information regarding Guarantor as Lender may reasonably request.

Section 13. Remedies. Lender shall not, by any act, delay, omission or otherwise, be deemed to have waived any of its rights or remedies under this Guaranty or otherwise. A waiver by Lender of any right or remedy under this Guaranty on any one occasion, shall not be construed as a ban or waiver of any such right or remedy which Lender would have had on any future occasion, nor shall Lender be liable for exercising or failing to exercise any such right or remedy.

The rights and remedies of Lender under this Guaranty are cumulative and, as such, are in addition to any other rights and remedies available to Lender under Law or any other agreements.

If an uncured Event of Default occurs and Lender is exercising any of its rights and remedies with respect to Borrower or any or all of the Property, to the extent

permitted by Law, Guarantor not will object to any action taken by Lender in enforcing such rights and remedies to the extent such action is permitted by Law.

Section 14. Reserved.

Section 15. Indemnity and Expenses. Guarantor hereby jointly and severally indemnifies Lender from and against any and all claims, losses, damages and liabilities growing out of or resulting from this Guaranty, including enforcement of this Guaranty, except claims, losses, damages or liabilities resulting from Lender's gross negligence and willful misconduct.

Guarantor will upon demand pay to Lender the amount of any and all expenses, including the fees and expenses of Lender's counsel and of any experts and agents, which Lender incurs in connection with (1) any amendment to this Guaranty, (2) the administration of this Guaranty, (3) the exercise or enforcement of any of the rights of Lender under this Guaranty, or (4) the failure by any Guarantor to perform or observe any of the provisions of this Guaranty.

Section 16. Amendments. No amendment or waiver of any provision of this Guaranty, nor consent to any departure by a Guarantor from this Guaranty, shall in any event be effective unless the same shall be in writing and signed by such Guarantor and Lender, and then such amendment or waiver shall be effective only in the specific instance and for the specific purpose for which given.

Section 17. Entire Agreement. This Guaranty contains the entire agreement between Guarantor and Lender respecting the matters set forth in this Guaranty and supersedes (except as to the Loan Documents) all prior agreements, whether written or oral, between Guarantor and Lender respecting such matters.

Section 18. Notices. All notices, consents, approvals and requests required or permitted hereunder (a "Notice") shall be given in writing and shall be effective for all purposes if either hand delivered with receipt acknowledged, or by a nationally recognized overnight delivery service (such as Federal Express), or by certified or registered United States mail, return receipt requested, postage prepaid, in each case addressed as follows (or to such other address or person as a party shall designate from time to time by notice to the other party): If to Lender: AVATAR CAPITAL FINANCE, LLC, 1200 Westlake Ave N, #1006, Seattle, Washington 98109; if to Guarantor; ROBERT D. HARTMANN, SR., 114 Cascade Boulevard, Milford, Connecticut 06460. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of overnight delivery, upon the first attempted delivery on a Business Day. Business Day means any day other than a Saturday, Sunday or any day on which commercial banks in Connecticut are authorized or required to close.

Section 19. Assignment and Transfer of Obligations. This Guaranty will bind the estate of Guarantor as to Obligations created or incurred both before and after the death

or incapacity of Guarantor, whether or not Lender receives notice of such death or incapacity. This Guaranty shall inure to the benefit of Lender and its successors, transferees and assigns. Guarantor may not transfer or assign his obligations under this Guaranty. Lender may assign or otherwise transfer all or a portion of its rights or obligations with respect to the Obligations to any other Person, and such other Person shall then become vested with all the benefits in respect of such transferred Obligations granted to Lender in this Guaranty or otherwise. Guarantor agrees that Lender can provide information regarding Guarantor to any prospective or actual successor, transferee or assign.

Section 20. Setoff. Guarantor agrees that, in addition to, and without limiting, any right of setoff, banker's lien or counterclaim Lender may otherwise have, Lender shall be entitled, at its option, to offset balances (general or special, time or demand, provisional or final) held by Lender for the account of Guarantor, at any of the offices of Lender, in Dollars or any other currency, against any amount payable by Guarantor to Lender under this Guaranty which is not paid when demanded (regardless of whether such balances are then due to Guarantor), in which case Lender shall promptly notify Guarantor, provided that Lender's failure to give such notice shall not affect the validity of such offset.

Section 21. Submission to Jurisdiction. Guarantor hereby irrevocably submits to the jurisdiction of any federal or state court sitting in the State of Connecticut over any action or proceeding arising out of or related to this Guaranty and agrees with Lender that personal jurisdiction over Guarantor rests with such courts for purposes of any action on or related to this Guaranty. Guarantor hereby waives personal service by manual delivery and agrees that service of process may be made by prepaid certified mail directed to Guarantor at the address of Guarantor for notices under this Guaranty or at such other address as may be designated in writing by Guarantor to Lender, and that upon mailing of such process such service will be effective as if Guarantor was personally served. Each Guarantor agrees that a final judgment in any such action or proceeding shall be conclusive and may be enforced in other jurisdictions by suit on the judgment or in any manner provided by Law. Guarantor further waives any objection to venue in any such action or proceeding on the basis of inconvenient forum. Guarantor agrees that any action on or proceeding brought against Lender shall only be brought in such courts.

Section 22. Governing Law. This Guaranty shall be governed by and construed in accordance with the laws of the State of Connecticut.

Section 23. Further Assurances. At any time and from time to time, upon Lender's prior written request, Guarantor shall make, execute and deliver, or cause to be made, executed and delivered, to Lender and where appropriate shall cause to be recorded or filed, and from time to time thereafter to be re-recorded and refiled at such time and in such offices and places as shall be deemed necessary and appropriate by Lender in order to effectuate, or to continue and preserve the obligations of such Guarantor under this Guaranty, such documents or instruments as Lender may reasonably request. Lender may make, execute, record, file, re-record or refile any and all such documents or instruments for and in the name of such Guarantor.

Section 24. Time of Essence. Time is of the essence under this Guaranty.

Section 25. Successive Actions. A separate right of action under this Guaranty shall arise each time Lender acquires knowledge of any matter covered by this Guaranty. Separate and successive actions may be brought under this Guaranty to enforce any of the provisions of this Guaranty at any time and from time to time. No action under this Guaranty shall preclude any subsequent action under this Guaranty.

Section 26. Reliance. Lender would not make the Loan to Borrower without this Guaranty. Accordingly, Guarantor intentionally and unconditionally enters into the covenants and agreements as set forth above and understands that, in reliance upon and in consideration of such covenants and agreements, the Loan shall be made and, as part and parcel thereof, specific monetary and other obligations have been, are being and shall be entered into which would not be made or entered into but for such reliance.

Section 27. Waiver by Guarantor. Guarantor covenants and agrees that upon the commencement of a Proceeding by or against Borrower, Guarantor shall not seek a supplemental stay or otherwise pursuant to 11 U.S.C. §105 or any other provision of the Bankruptcy Reform Act of 1978, as amended, or any other debtor relief law (whether statutory, common law, case law, or otherwise) of any jurisdiction whatsoever, now or hereafter in effect, which may be or become applicable, to stay, interdict, condition, reduce or inhibit the ability of Lender to enforce any rights of Lender against Guarantor by virtue of this Guaranty or otherwise.

Section 28. Subordination. Upon the earlier of (1) the occurrence of an Event of Default or (2) a demand for payment is made on Guarantor under this Guaranty, Guarantor will not (1) make any demand for payment of, or take any action to accelerate, any obligation owed to Guarantor by Borrower, (2) seek to collect payment of, or enforce any right or remedies against Borrower, any of the obligations owed to Guarantor by Borrower or any guarantees, credit supports, collateral or other security related to or supporting any of such obligations, or (3) commence, or join with any other creditor in commencing, any Proceeding against Borrower.

Guarantor also agrees that the payment of all obligations of Borrower to Guarantor shall be subordinate and junior in time and right of payment in accordance with the terms of this Section to the prior payment in full (in cash) of the Guaranteed Obligations. In furtherance of such subordination, (1) to the extent possible, Guarantor will not take or receive from Borrower any payments, in cash or any other property, by setoff or any other means, of any or all of the obligations owed to Guarantor by Borrower, or purchase, redeem, or otherwise acquire any such obligations, or change the terms or provisions of any such obligations and (2) if for any reason and under any circumstance Guarantor receives a payment on such obligation, whether in a Proceeding or otherwise, all such payments or distributions upon or with respect to such obligations shall be received in trust for the benefit of Lender, shall be segregated from other funds and property held by Guarantor and shall be forthwith paid over to Lender in the same

form as so received (with any necessary endorsement) to be applied to, or held as collateral for, the payment or prepayment of the Guaranteed Obligations.

In the event Borrower is in a Proceeding, to the extent permitted by Law, as directed by Lender, Guarantor will either (1) duly and promptly take all actions required, and if so directed by Lender as directed by Lender, to collect and receive any and all payments and distributions on the obligations owed to Guarantor by Borrower and all related guaranties, collateral and other security in connection with such Proceeding, including the filing of all claims and proofs of claim, or (2) take all actions and execute all documents required to enable Lender to exercise all rights to collect and receive any and all payments and distributions on the obligations owed to Guarantor by Borrower and all related guaranties, collateral and other security in connection with such Proceeding, including the assignment, endorsement and delivery of all notes or instruments evidencing the obligations owed to Guarantor by Borrower together with all guarantees, collateral and other security related thereto, and then Lender shall have the right to (a) make all claims, (b) enforce all rights related to the obligations owed to Guarantor by Borrower, either in its own name or in the name of Guarantor, and (c) collect, receive and accept any and all sums or distributions of any kind that may become due and payable or distributable on or in respect of any or all of the obligations owed to such Guarantor by Borrower or such guarantees, collateral or other security. In addition, to the extent permitted by Law, Guarantor shall not object to any action taken by Lender in connection with a Proceeding.

Guarantor agrees that any subrogation rights Guarantor may acquire as a result of a payment under this Section may not be exercised until (1) the payment in full of the Obligations, and (2) the payment of all fees and expenses to be paid by Guarantor pursuant to this Guaranty.

Section 29. Miscellaneous. This Guaranty is in addition to and not in limitation of any other rights and remedies Lender may have by virtue of any other instrument or agreement previously, contemporaneously or hereafter executed by Guarantor or any other Person or by Law or otherwise. If any provision of this Guaranty is contrary to applicable Law, such provision shall be deemed ineffective without invalidating the remaining provisions of this Guaranty. Titles in this Guaranty are for convenience of reference only and shall not affect the interpretation or construction of this Guaranty.

Section 30. WAIVER OF JURY TRIAL. GUARANTOR EXPRESSLY WAIVES ANY AND EVERY RIGHT TO A TRIAL BY JURY IN ANY ACTION ON OR RELATED TO THIS GUARANTY.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, the Guarantor has duly executed and delivered this Guaranty as of the date of this Guaranty.

Signed, sealed and delivered
in the presence of:

Witness

ROBERT D. HARTMANN, SR.

Name: Michael W. Tighe

Witness

Name: Stephanie T. Brown

STATE OF South Carolina)
) ss.
COUNTY OF Richland)

On 22 day of January, 2015, personally appeared Robert D. Hartmann, Sr., as authorized signer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me.

WITNESS my hand and official seal.

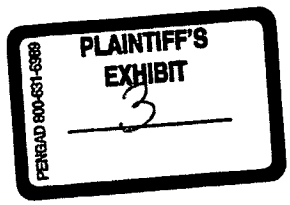
Notary Public in and for said County and State

My Commission Expires: 12/1/2018

STEPHANIE T. BROWN NOTARY PUBLIC SOUTH CAROLINA

PL00020

Instrument Vol Page
201500039284 OR 295 7



201500039284
Filed for Record in
MARION COUNTY, SC
SHERRY R. RHODES, CLERK OF COURTS
01-23-2015 At 02:19 pm.
MORTGAGE 33.00
Vol 295 Page 7 - 33

This Instrument Prepared By
and After Recording Return to:
Coleman Talley LLP
Attn: Harrison Coleman
3475 Lenox Road NE, Suite 400
Atlanta, Georgia 30326

COMMERCIAL MORTGAGE OF REAL PROPERTY, SECURITY AGREEMENT AND FIXTURE FILING

THIS COMMERCIAL MORTGAGE OF REAL PROPERTY, SECURITY AGREEMENT AND FIXTURE FILING (this "Mortgage") is made and entered into as of the day of January 22, 2015, by **HSGCHG INVESTMENTS, LLC**, a Delaware limited liability company "(Mortgagor") whose address is 114 Cascade Boulevard, Milford, CT 06460, in favor of **AVATAR CAPITAL FINANCE, LLC**, a Washington limited liability company, ("Mortgagee"), at the office of the Mortgagee located at 1200 Westlake Ave N, #1006, Seattle, Washington 98109, or such other place as the Mortgagee may designate by written notice to Mortgagor.

WITNESSETH:

WHEREAS, Mortgagor, OIL BARONS, INC., a Delaware corporation and PARTNERS 95, L.L.C., a Connecticut limited liability company (collectively, the "Borrower") are indebted to Mortgagee in the principal sum of up to Two Million and 00/100 Dollars ($2,000,000.00) together with interest thereon, as evidenced by a Commercial Promissory Note (the "Note") of even date herewith, executed by Borrower and delivered to Mortgagee, the final payment of which for each such Note is due on or before July 1, 2016 (the "Maturity Date");

NOW, THEREFORE, (a) to secure the performance and observance by Mortgagor of all covenants and conditions contained in the Note, and any renewal, extension or modification thereof, this Mortgage, and in all other instruments securing or executed in connection with the Note (collectively, the "Loan Documents"); and (b) also to secure in accordance with Section 29-3-50, Code of Laws of South Carolina (1976), as amended, all future advances and re-advances that may subsequently be made to Mortgagor by Mortgagee, evidenced by the aforesaid Note, or any other promissory notes, and all modifications, renewals and extensions thereof (provided, however, that nothing contained herein shall create an obligation on the part of Mortgagee to make future advances or re-advances to Mortgagor) the maximum amount of all indebtedness outstanding at any one time secured hereby not to exceed twice the face amount of the Note, plus interest thereon, all charges and expenses of collection incurred by Mortgagee, including court costs, and reasonable attorneys' fees; and (c) also in order to charge the properties, interests and rights hereinafter with such payment, performance and observance; and

TO THE EXTENT PROVIDED IN THE NOTE, INTEREST OR DISCOUNT WILL BE DEFERRED, ACCRUED OR CAPITALIZED.

THIS MORTGAGE OF REAL PROPERTY, SECURITY AGREEMENT AND FIXTURE FILING COVERS FIXTURES AND CONSTITUTES A FIXTURE FINANCING STATEMENT.

(d) for and in consideration of the sum of One and no/100 ($1.00) Dollar paid by Mortgagee to Mortgagor this date, and for other valuable consideration, the receipt of which is acknowledged, Mortgagor does hereby grant, bargain, sell, alien, remise, release, convey, assign, transfer, mortgage, hypothecate, pledge, deliver, set over, warrant and confirm unto Mortgagee, its successors and assigns forever all right, title and interest of Mortgagor in and to:

THE MORTGAGED PROPERTY

(A) THE LAND. All the land located in the County of Marion, State of South Carolina (the "Land"), described in Exhibit "A" attached hereto and made a part hereof.

(B) THE IMPROVEMENTS. TOGETHER WITH all buildings, structures and improvements of every nature whatsoever now or hereafter situated on the Land, and all fixtures, machinery, appliances, equipment, furniture, and personal property of every nature whatsoever now or hereafter owned by Mortgagor and located in or on, or attached to, or used or intended to be used in connection with or with the operation of, the Land, buildings, structures or other improvements, including all extensions, additions, improvements, betterments, renewals and replacements to any of the foregoing and all of the right, title and interest of Mortgagor in and to any such personal property or fixtures subject to any lien, security interest or claim together with the benefit of any deposits or payments now or hereafter made by Mortgagor or on its behalf (the "Improvements").

(C) EASEMENTS OR OTHER INTERESTS. TOGETHER WITH all easements, rights of way, gores of land, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating or appertaining to any of the property hereinabove described, or which hereafter shall in any way belong, relate or be appurtenant thereto, whether now owned or hereafter acquired by Mortgagor, and the reversion and reversions, remainder and remainders, rents, issues and profits thereof, and all the estate, right, title, interest, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor of, in and to the same, including but not limited to all judgments, awards of damages and settlements hereafter made resulting from condemnation proceedings or the taking of the property described in paragraphs (A), (B) and (C) hereof or any part thereof under the power of eminent domain, or for any damage (whether caused by such taking or otherwise) to the property described in paragraphs (A), (B), and (C) hereof or any part thereof, or to any rights appurtenant thereto, and all proceeds of any sales or other dispositions of the property described in paragraphs (A), (B) and (C) hereof or any part thereof.

(D) ASSIGNMENTS OF RENTS. TOGETHER WITH all rents, royalties, issues, profits, revenue, income, license fees and other benefits from the property described in paragraphs (A), (B) and (C) hereof to be applied against the indebtedness and other sums secured hereby, provided however, that permission is hereby given to Mortgagor so long as no default has occurred hereunder, to collect, receive, take, use and enjoy such rents, royalties, issues, profits, revenue, income and other benefits as they become due and payable, but not in advance thereof. The foregoing assignment shall be fully operative without any further action

on the part of either party and specifically Mortgagee shall be entitled, at its option upon the occurrence of a default hereunder, to all rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof whether or not Mortgagee takes possession of the property described in paragraphs (A), (B) and (C) hereof. Upon any such default hereunder, the permission hereby given to Mortgagor to collect such rents, royalties, issues, profits, revenue, income and other benefits from the property described in paragraphs (A), (B) and (C) hereof shall terminate and such permission shall not be reinstated upon a cure of the default without Mortgagee's specific consent. Neither the exercise of any rights under this paragraph by Mortgagee nor the application of any such rents, royalties, issues, profits, revenue, income or other benefits to the indebtedness and other sums secured hereby, shall cure or waive any default or notice of default hereunder or invalidate any act done pursuant hereto or to any such notice, but shall be cumulative of all other rights and remedies.

(E) ASSIGNMENT OF LEASES. TOGETHER WITH all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the property described in paragraphs (A), (B) and (C) hereof, together with all security therefor and all monies payable thereunder, subject, however, to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such lease. The foregoing assignment of any lease shall not be deemed to impose upon Mortgagee any of the obligations or duties of Mortgagor provided in any such lease, and Mortgagor agrees to fully perform all obligations of the lessor under all such leases. Upon Mortgagee's request, Mortgagor agrees to send to Mortgagee a list of all leases covered by the foregoing assignment and as any such lease shall expire or terminate or as any new lease shall be made, Mortgagor shall so notify Mortgagee in order that at all times Mortgagee shall have a current list of all leases affecting the property described in paragraphs (A), (B) and (C) hereof. Mortgagee shall have the right, at any time and from time to time, to notify any lessee of the rights of Mortgagee as provided by this paragraph. From time to time, upon request of Mortgagee, Mortgagor shall specifically assign to Mortgagee as additional security hereunder, by an instrument in writing in such form as may be approved by Mortgagee, all right, title and interest of Mortgagor in and to any and all leases now or hereafter on or affecting the Mortgaged Property (as defined below), together with all security therefor and all monies payable thereunder, subject to the conditional permission hereinabove given to Mortgagor to collect the rentals under any such lease. Mortgagor shall also execute and deliver to Mortgagee any notification, financing statement or other document reasonably required by Mortgagee to perfect the foregoing assignment as to any such lease.

This instrument constitutes an absolute and present assignment of the rents, royalties, issues, profits, revenue, income and other benefits from the Mortgaged Property to Mortgagee, subject to the right of Mortgagor to collect, receive, take, use and enjoy the same as provided hereinabove; provided, further, that the existence or exercise of such right of Mortgagor shall not operate to subordinate this assignment to any subsequent assignment, in whole or in part, by Mortgagor, and such subsequent assignment by Mortgagor shall be subject to the rights of Mortgagee hereunder.

(F) FIXTURES AND PERSONAL PROPERTY. TOGETHER WITH a security interest in (i) all personal property (tangible and intangible) and fixtures now or hereafter

acquired and affixed to or located on the property described in paragraphs (A), (B) and (C) hereof which, to the fullest extent permitted by law shall be deemed fixtures and a part of the real property, (ii) all articles of personal property, tangible and intangible, now or hereafter acquired and all materials delivered to the property described in paragraphs (A), (B) and (C) hereof (including such property for use in any construction being conducted thereon) and owned or leased by Mortgagor, including, but not limited to, all equipment, building materials, furniture, furnishings, inventory, apparatus, machinery, motors, elevators, fittings, radiators, ranges, refrigerators, awnings, shades, screens, blinds, carpeting, office equipment and other furnishings and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air conditioning and sprinkler equipment and fixtures and appurtenances thereto, telephone systems, television and television systems, computer systems and fixtures and appurtenances thereto, and all renewals or replacements thereof or articles in substitution thereof, whether or not the same are or shall be attached to said Land and Improvements in any manner, (iii) all leases of personal property, contract rights, general intangibles, escrow deposits, security deposits, permits, approvals, management contracts and agreements, trade names, trademarks, service marks, patents pending, goodwill, utility service bonds and/or cash deposits, site improvement bonds and/or cash deposits, building permits, sewer and water connection and/or tap-in permits, curb-cut permits, utility service agreements, actions and rights in action now or hereafter acquired pertaining to the Mortgaged Property, including all rights to insurance proceeds and condemnation proceeds, and including all rights to the name "Carolina Entertainment Complex" (iv) all warranties and guaranties covering any appliances and fixtures now or hereafter located upon the Land or used in connection with the Improvements including without limitation, air-conditioning, heating and other appliances and equipment, (v) all sales agreements, reservation agreements, deposit receipts, escrow agreements, and other ancillary documents and agreements entered into with respect to the sale to any purchasers of any part of the Land, together with all deposits and other proceeds of the sale thereof, (vi) all of the water, sanitary and storm sewer systems now or hereafter owned by Mortgagor which are now or hereafter located by, over and/or upon the Land or the Improvements or any part and parcel thereof, including all water and sewer lines, equipment and appurtenances, (vii) any and all materials (stored on-site or off-site), reserves, deferred payments, deposits or advance payments for materials (stored on-site or off-site), undisbursed loan proceeds, insurance refunds, insurance proceeds, impound accounts, refunds for overpayment of any kind to the extent the same arise out of or occur in connection with the construction of the Improvements, and (viii) all proceeds, products, replacements, additions, substitutions, renewals and accessions of any of the foregoing (collectively, the "Collateral"). Mortgagor (Debtor) hereby grants to Mortgagee (Secured Party) a security interest in all fixtures, rights in action and personal property described herein. This Mortgage is a self-operative security agreement with respect to such property, but Mortgagor agrees to execute and deliver on demand such other security agreements, financing statements and other instruments as Mortgagee may reasonably request in order to perfect its security interest or to impose the lien hereof more specifically upon any of such property. Mortgagor agrees to pay Mortgagee's charge, to the maximum amount permitted by law, for any statement by Mortgagee regarding the obligations secured by this Mortgage requested by Mortgagor or on behalf of Mortgagor. On demand, Mortgagor will promptly pay all costs and expenses of filing financing statements, continuation statements, partial releases, and termination statements deemed necessary or appropriate by Mortgagee to establish and maintain the validity and priority of the security interest of Mortgagee, or any

modification thereof, and all costs and expenses of any searches reasonably required by Mortgagee. Mortgagee may exercise any or all of the remedies of a secured party available to it under the Uniform Commercial Code (South Carolina) with respect to such property, and it is expressly agreed in accordance with the provisions of the Uniform Commercial Code (South Carolina), ten (10) days' notice by Mortgagee to Mortgagor shall be deemed to be reasonable notice under any provision of the Uniform Commercial Code (South Carolina) requiring such notice; provided, however, that Mortgagee may at its option dispose of the collateral in accordance with Mortgagee's rights and remedies in respect to the real property pursuant to the provisions of this Mortgage, in lieu of proceeding under the Uniform Commercial Code (South Carolina).

Some of the items of property described herein are goods that are or are to become fixtures related to the real estate described herein, and it is intended that, as to those goods, this Mortgage shall be effective as a financing statement filed as a fixture filing from the date of its filing for record in the real estate records of the county in which the Land is located. Information concerning the security interest created by this instrument may be obtained from Mortgagee, as Secured Party, or Mortgagor, as Debtor, at the address first shown above.

Everything referred to in paragraphs (A), (B), (C), (D), (E), and (F) hereof and any additional property hereafter acquired by Mortgagor and subject to the lien of this Mortgage or intended to be so is herein referred to as the "Mortgaged Property" or "Property."

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof unto Mortgagee, its successors and assigns, to its own proper use and benefit forever, subject, however, to the terms and conditions herein:

PROVIDED, HOWEVER, that if Mortgagor shall promptly pay or cause to be paid to Mortgagee the principal and interest payable under the Note, at the times and in the manner stipulated therein, herein, and in all other instruments securing the Note, all without any deduction or credit for taxes or other similar charges paid by Mortgagor, and shall keep, perform and observe all the covenants and promises in the Note, and any renewal, extension or modification thereof, and in this Mortgage and in all other instruments securing the Note, to be kept, performed or observed by Mortgagor, then this Mortgage, and all the properties, interest and rights hereby granted, conveyed and assigned shall cease and be void, but shall otherwise remain in full force and effect.

Mortgagor covenants and agrees with Mortgagee as follows:

ARTICLE ONE

REPRESENTATIONS AND WARRANTIES OF MORTGAGOR

Mortgagor represents and warrants to Mortgagee as follows (which warranties and representations survive the delivery of the Note and shall be continuing until the Note is paid in full):

1.01 No Litigation Against Mortgagor or Guarantors. There is no litigation or proceeding pending against Mortgagor or any guarantors of the Note (the "Guarantors"), nor, to the knowledge of Mortgagor, threatened which, if decided adversely to Mortgagor or Guarantors, would have a material adverse effect upon the financial condition or business of Mortgagor or Guarantors.

1.02 Intentionally omitted.

1.03 Tax Returns and Payment of Taxes. Mortgagor and Guarantors have filed or caused to have been filed all required federal, state, local and foreign tax returns and have paid or have caused to have been paid all taxes as shown on such returns or on any assessments received by them to the extent that such taxes have become due.

1.04 Binding Effect of Obligation. The Note, this Mortgage, the guaranties of Guarantors, and all other instruments securing the Note constitute legal, valid and binding obligations of Mortgagor and/or Guarantors, as applicable, and each of them are enforceable against Mortgagor and Guarantors, as applicable, in accordance with their respective terms.

1.05 Injury to Properties. Neither the business nor the properties of Mortgagor are affected by any prior or existing fire, explosion, accident, strike, lock-out or other labor disputes, storm, act of God or other casualty (whether or not covered by insurance), adversely affecting such business or the properties or operations of Mortgagor.

1.06 Inducement for Loan. No information, exhibit or report furnished by Mortgagor or Guarantors to Mortgagee in connection with the negotiation of the loan evidenced by the Note contains any material misstatement of fact or omits to state any material fact or facts necessary to make the statements contained therein not misleading.

1.07 Validity and Enforceability of Documents, No Conflicts, No Defaults.

(a) The execution, delivery and performance by Mortgagor of the Note, this Mortgage, the borrowings hereunder, and delivery of the guarantees and other instruments securing the Note have been duly authorized by all requisite corporate, partnership or other action, and do not and will not (1) require any further consent or approval of the directors or shareholders or partners (as applicable) of Mortgagor; (2) violate any provision of law, rule, regulations, order, writ, judgment, injunction, decree, determination or award presently in effect having applicability to Mortgagor or Guarantors; (3) result in a breach or constitute default under any indenture, loan or credit agreement, or any other agreement to which Mortgagor or Guarantors is a party or by which they or the properties or entities with which they are involved may be bound or affected; or (4) result in or require the creation or imposition of any mortgage, deed of trust, pledge or liens, security interest or other charge or encumbrance of any nature other than that contemplated hereunder. To the extent approvals of any kind are required, Mortgagor has obtained: (i) all governmental approvals and authorizations, together with any required registrations or filings with the appropriate governmental authorities; and (ii) all necessary consents, approvals, waivers, notifications of tenants, creditors, lessors, and other nongovernmental persons required in connection with the indebtedness secured hereby.

(b) Mortgagor and Guarantors are not in material default under any law, rule, regulation or writ, judgment, injunction, decree, determination or warrant or any indenture agreement, lease or instrument.

(c) Except as provided above, no authorization, consent, approval, license, exemption of or filing or a registration with any court, governmental department, commission, board, bureau, agency or instrumentality, is or will be necessary for the valid execution, delivery or performance by Mortgagor of the Note, this Mortgage, and all other instruments and documents securing the Note.

ARTICLE TWO

COVENANTS OF MORTGAGOR

2.01 Performance of Note, Mortgage, Etc. Mortgagor shall perform, observe and comply with all provisions hereof, of the Note and of every other instrument securing the Note, and will promptly pay to Mortgagee the principal with interest thereon and all other sums required to be paid by Mortgagor under the Note and pursuant to the provisions of this Mortgage and of every other instrument securing the Note when payment shall become due, all without deduction or credit for taxes or other similar charges paid by Mortgagor.

2.02 Performance of Other Loan Documents. Mortgagor shall perform, observe and comply with all provisions of the Loan Documents which is by this reference herein incorporated to the same extent and effect as though it were set forth in full herein.

2.03 Warranty of Title. Mortgagor covenants and warrants that it is seized of an indefeasible estate in fee simple in the Land and real property hereby mortgaged, has good and absolute title to all existing personal property hereby mortgaged or made subject to the security interest hereby created and has good right, full power and lawful authority to convey, mortgage and encumber the same as provided herein; that Mortgagee may at all times peaceably and quietly enter upon, hold, occupy and enjoy the Land and real property hereby mortgaged and every part thereof; that the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created is free and clear of all liens, security interests, charges and encumbrances whatsoever, except for the lien for the property taxes not yet due and payable and those permitted encumbrances, if any, described in Exhibit "B". Mortgagor shall and will make such further assurances to perfect Mortgagee's fee simple title to the Land and the real property hereby mortgaged, and the title to the personal property hereby mortgaged or made subject to the security interest hereby created as may reasonably be required. Mortgagor fully warrants the title to the Land, real property and all existing personal property hereby mortgaged or made subject to the security interest hereby created and every part thereof, and will forever defend the same against the claims of all persons whomsoever.

2.04 Zoning and Environmental Laws.

(a) Mortgagor covenants and warrants that all applicable zoning laws, ordinances and regulations affecting the Land permit the use and occupancy of the Improvements

and further covenants and warrants to comply with all such laws, ordinances and regulations, including, but not limited to, all environmental and ecological laws, ordinances and regulations affecting the Mortgaged Property or the use thereof. Without limiting the generality of the foregoing, Mortgagor warrants and represents to Mortgagee after thorough investigation that: (a) the Mortgaged Property described herein is now and at all times hereafter will continue to be in full compliance with all federal, state and local environmental laws and regulations, including, but not limited to, the Comprehensive Environmental Response, Compensation and Liability Act of 1980 ("CERCLA"), Public Law No. 96-510, 94 Stat. 2767, 42 USC 9601 et seq., and the Superfund Amendments and Reauthorization Act of 1986 (SARA), Public Law No. 99-499, 100 Stat. 1613, and any amendments thereto, and (b)(i) as of the date hereof there are no hazardous materials, substances, wastes or other environmentally regulated substances (including without limitation, any materials containing asbestos) located on, in or under the Mortgaged Property or used in connection therewith, or (ii) Mortgagor has fully disclosed to Mortgagee in writing the existence, extent and nature of any such hazardous materials, substances, wastes or other environmentally regulated substances, which Mortgagor is legally authorized and empowered to maintain on, in or under the Mortgaged Property or use in connection therewith, and Mortgagor has obtained and will maintain all licenses, permits and approvals required with respect thereto, and is in full compliance with all of the terms, conditions and requirements of such licenses, permits and approvals. Mortgagor further warrants and represents that it will promptly notify Mortgagee of any change in the nature or extent of any hazardous materials, substances or wastes maintained on, in or under the Mortgaged Property or used in connection therewith, and will transmit to Mortgagee copies of any citations, orders, notices or other material governmental or other communication received with respect to any other hazardous materials, substances, wastes or other environmentally regulated substances affecting the Mortgaged Property.

(b) Mortgagor shall indemnify and hold Mortgagee harmless from and against any and all damages, penalties, fines, claims, liens, suits, liabilities, costs (including clean-up costs), judgments and expenses (including attorneys', consultants' or experts' fees and expenses) of every kind and nature suffered by or asserted against Mortgagee as a direct or indirect result of any warranty or representation made by Mortgagor in the preceding paragraph being false or untrue in any material respect or any requirement under any law, regulation or ordinance, local, state or federal, which requires the elimination or removal of any hazardous materials, substances, wastes or other environmentally regulated substances by Mortgagee, Mortgagor or any transferee of Mortgagor or Mortgagee.

(c) Mortgagor's obligations hereunder shall not be limited to any extent by the term of the Note secured hereby, and, as to any act or occurrence prior to payment in full and satisfaction of said Note which gives rise to liability hereunder shall continue, survive and remain in full force and effect notwithstanding payment in full and satisfaction of said Note and this Mortgage or foreclosure under this Mortgage, or delivery of a deed in lieu of foreclosure.

2.05 Taxes and Liens.

(a) Mortgagor shall pay or bond promptly, when and as due, and shall promptly exhibit to Mortgagee receipts for the payment of all taxes, assessments, rates, dues, charges, fees, levies, fines, impositions, liabilities, obligations and encumbrances of every kind

whatsoever now or hereafter imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon or against this Mortgage or the indebtedness or other sums secured hereby, or upon or against the interest of Mortgagee in the Mortgaged Property, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon or against Mortgagor or in respect of the Mortgaged Property or any part thereof, and any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of this Mortgage before they become delinquent and before any interest attaches or any penalty is incurred.

(b) Mortgagor shall not permit or suffer more than thirty (30) days any mechanics', laborers', materialmen's, statutory or other lien upon any of the Mortgaged Property.

(c) Mortgagee may, if it deems in its reasonable judgment that its security for the Note is impaired, require Mortgagor to deposit with Mortgagee on the first day of each month, in addition to making any required payments of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes and assessments as estimated by Mortgagee to be sufficient to enable Mortgagee to pay at least thirty (30) days before they become due all taxes, assessments and other similar charges against the Mortgaged Property or any part thereof. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are required to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such taxes, assessments and similar charges. In the event of a default under any of the terms, covenants and conditions of the Note, this Mortgage or any other instruments security the Note to be kept, performed or observed by Mortgagor, Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph remaining to Mortgagor's credit.

(d) In the event of the enactment of any law by the State of South Carolina, except for a change only in state income tax rates applicable to Mortgagee generally, after the date of this Mortgage, deducting from the value of the Mortgaged Property for the purpose of taxation any lien thereon, or imposing any liability upon Mortgagee, in respect of the indebtedness secured hereby, or changing in any way the laws now in force for the taxation of mortgages, or debts secured by mortgages, or the manner of collection of any such taxes, so as to affect this Mortgage, Mortgagor shall pay any such obligation imposed on Mortgagee thereby (unless payment of such by Mortgagor is prohibited by law), and in the event Mortgagor fails to pay such obligation within thirty (30) days after written notice by Mortgagee, the whole of the indebtedness secured by this mortgage, together with the interest due thereon, shall, at the option of Mortgagee, become immediately due and payable.

2.06 Insurance.

(a) Mortgagor shall at its sole expense obtain for, deliver to and maintain for the benefit of Mortgagee, during the life of this Mortgage, insurance policies with replacement cost endorsements, for the full insurable value, insuring the Mortgaged Property against fire,

extended coverage and such other insurable hazards, casualties and contingencies as Mortgagee may require including flood damage, and business interruption or loss of rental income protection, and shall pay promptly, when due, any premiums on such insurance policies and on any renewals thereof. The form of such policies, the coverages provided, and the companies issuing them, and the coverages provided shall be acceptable to Mortgagee. All such policies and renewals thereof shall be held by Mortgagee and shall contain a noncontributory mortgagee endorsement making losses payable to Mortgagee. The coverage under such policies shall be limited to the improvements now or hereafter located on the Mortgaged Property. At least thirty (30) days prior to the expiration date of all such policies, renewals thereof satisfactory to Mortgagee shall be delivered to Mortgagee. Mortgagor shall deliver to Mortgagee receipts evidencing the payment of all premiums on such insurance policies and renewals. Delivery of the insurance policies and renewals thereof shall constitute an assignment to Mortgagee, as further security, of all unearned premiums. In the event of loss, Mortgagor will give immediate written notice to Mortgagee and Mortgagee may make proof of loss if not made promptly by Mortgagor. In the event of the foreclosure of this Mortgage or any other transfer of title to the Mortgaged Property in extinguishment of the indebtedness and other sums secured hereby, all right, title and interest of Mortgagor in and to all insurance policies and renewals thereof then in force shall pass to the purchaser or grantee. Mortgagee may at any time at its own discretion procure and substitute for any and all of the insurance so held as aforesaid, such other policy or policies of insurance, in like amount, as it may determine without prejudice to its right to foreclose hereunder should Mortgagor fail or refuse to keep said premises so insured.

(b) Mortgagor hereby assigns to Mortgagee all proceeds from any insurance policies, and Mortgagee is hereby authorized and empowered in its reasonable discretion to adjust or compromise any loss under any insurance policies on the Mortgaged Property, and to collect and receive the proceeds from any such policy or policies.

(c) Mortgagee may, in its sole discretion, require Mortgagor to deposit with Mortgagee on the first day of each month, in addition to making payments of regular installments of principal and interest, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly premiums for all insurance. Such deposits shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of Mortgagee, and no interest shall be payable in respect thereof. Upon demand by Mortgagee, Mortgagor shall deliver to Mortgagee such additional monies as are necessary to enable Mortgagee to pay such premiums when due. In the event of a default under any of the terms, covenants and conditions in the Note, this Mortgage or any other instrument securing the Note to be kept, performed or observed by Mortgagor, Mortgagee may apply to the reduction of the sums secured hereby, in such manner as Mortgagee shall determine, any amount under this paragraph remaining to Mortgagor's credit and any refund of premium received from cancellation of any insurance policy by Mortgagee upon foreclosure of this Mortgage.

2.07 Condemnation. In the event that by, or pursuant to, proper authority there is taken or condemned the entire Mortgaged Property or any part thereof, under power of eminent domain exercised by any actual or quasi-governmental authority or public utility, Mortgagor hereby assigns to Mortgagee any and all awards that may be given ("Condemnation

Proceeds"), made or due Mortgagor in any proceedings in connection therewith, and the amounts of such awards shall be applied by Mortgagee to the reduction of the indebtedness secured hereby, and Mortgagor agrees to execute any and all such further instruments of assignment of any and all such condemnation awards as may be required by Mortgagee to carry out the purposes of this Section. Mortgagor shall give written notice of such condemnation proceeding within ten (10) days of receipt of any service or process in connection therewith. In any condemnation proceedings against the Mortgaged Property, Mortgagee hereby reserves, and Mortgagor hereby acknowledges, Mortgagee's right to institute or intervene in any such condemnation proceedings to assert said interest.

2.08 Care of Property.

(a) Mortgagor shall preserve and maintain the Mortgaged Property in good condition and repair. Mortgagor shall not remove, demolish, materially alter or materially change the use of any building, structure or other improvement presently or hereafter on the Land without the prior written consent of Mortgagee. Mortgagor shall not permit, commit or suffer any waste, impairment or deterioration of the Mortgaged Property or of any part thereof, and will not take any action which will increase the risk of fire or other hazard to the Mortgaged Property or to any part thereof.

(b) Except as otherwise provided in this Mortgage, no fixture, personal property or other part of the Mortgaged Property shall be removed, demolished or altered, without the prior written consent of Mortgagee. Mortgagor may sell or otherwise dispose of, free from lien of this Mortgage, furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances, subject to the lien hereof, which may become worn out, undesirable or obsolete only if they are replaced immediately with similar items of at least equal value which shall, without further action, become subject to the lien of this Mortgage, except as otherwise provided in this Mortgage.

(c) Mortgagee may enter upon and inspect the Mortgaged Property at any reasonable time during the life of this Mortgage.

(d) Mortgagor will promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Mortgaged Property or any part thereof.

(e) If all or any part of the Mortgaged Property shall be lost, damaged or destroyed by fire or any other cause, Mortgagor will give immediate written notice thereof to Mortgagee and, unless Mortgagee elects to apply available insurance proceeds to the Note instead of to restoration as permitted in Section 2.06(b) hereof, Mortgagor shall promptly restore the Mortgaged Property to the equivalent of its original condition regardless of whether or not there shall be sufficient insurance proceeds therefor. If a part of the Mortgaged Property shall be lost, physically damaged or destroyed through condemnation, unless Mortgagee elects to apply condemnation proceeds to the Note instead of to restoration as permitted in Section 2.07 hereof, Mortgagor will promptly restore, repair or alter the remaining property in a manner satisfactory to Mortgagee, regardless of whether condemnation proceeds are sufficient to pay for such

restoration.

(f) If any work required to be performed under this Paragraph involves an estimated expenditure of more than five (5%) per cent of the face amount of the Note, no such work shall be undertaken until plans and specifications therefor, prepared by an architect or engineer satisfactory to Mortgagee, have been submitted to and approved in writing by Mortgagee.

2.09 Transfer of Property. Mortgagor shall not sell, convey, transfer, mortgage, pledge, lien, charge, lease or further encumber any interest in or any part of the Mortgaged Property, without the prior written consent of Mortgagee in its sole discretion. If any person should obtain any interest in all or any part of the Mortgaged Property pursuant to the execution or enforcement of any lien, security interest or other right, whether superior, equal or subordinate to this Mortgage or the lien hereof, such event shall be deemed to be a transfer by Mortgagor. Mortgagor shall not, without the prior written consent of Mortgagee in its sole discretion, further assign the rents from the Mortgaged Property, nor enter into any agreement or do any act to amend, modify, extend, terminate or cancel, accept the surrender, subordinate, accelerate the payment of rent, or change the terms of any renewal option of any lease now or hereafter covering such property or any part thereof. If Mortgagor is a corporation, limited liability company, or a general or limited partnership, Mortgagor further covenants that no shareholder, member or partner, as applicable, shall transfer any stock, membership interest or partnership interest in Mortgagor without the prior written consent of Mortgagee in its sole discretion. This prohibition also applies to any transfer of interest by any member of Mortgagor (or Borrower) or any member, shareholder or partner owning an interest in an entity that owns an interest, as member, shareholder or as a general or limited partner, in Mortgagor. Any such transfer shall be an Event of Default hereunder.

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

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

2.12 Leases Affecting Mortgaged Property. Mortgagor shall comply with and observe its obligations as landlord under all leases affecting the Mortgaged Property or any part thereof. Mortgagor, if required by Mortgagee, shall furnish promptly to Mortgagee executed copies of all such leases now existing or hereafter created, all of which shall be in form and substance subject to the approval of Mortgagee. Mortgagor shall not, without the express written consent of Mortgagee, modify, surrender, terminate or extend any such lease now existing or hereafter created, or permit or suffer an assignment or sublease. Mortgagor shall not accept payment of rent more than one (1) month in advance without the prior written consent of Mortgagee.

2.13 Expenses. Mortgagor shall pay or reimburse Mortgagee for all costs, charges and expenses, including reasonable attorney's fees and disbursements, and costs incurred or paid by Mortgagee in any action which is threatened, pending or completed or proceeding or in dispute in which Mortgagee is or might be made a party or appears as a party plaintiff or party defendant and which affects or might affect the Note, or the Mortgaged Property or any part thereof, or the interests of Mortgagor or Mortgagee therein, including but not limited to the foreclosure of this Mortgage, condemnation involving all or part of the Mortgaged Property or any action to protect the security hereof. All costs, charges and expenses so incurred or paid by Mortgagee shall become due and payable immediately, whether or not there be notice, demand, attempt to collect or suit pending. The amounts so incurred or paid by Mortgagee, together with interest thereon at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage.

2.14 Mortgagee's Performance of Defaults. If Mortgagor defaults in the payment of any tax, assessments, encumbrance or other imposition, in its obligation to furnish insurance hereunder or in the performance or observance of any other covenant, condition or term in this Mortgage or in any other instrument securing the Note, Mortgagee may at its option perform or observe the same, and all payments made (whether such payments are regular or accelerated payments) and costs and expenses incurred or paid by Mortgagee in connection therewith shall become due and payable immediately by Mortgagor. The amounts so incurred or paid by Mortgagee, together with the interest thereon at the Default Rate as hereinafter defined from the date incurred until paid by Mortgagor, shall be added to the indebtedness and secured by the lien of this Mortgage. Nothing contained herein shall be construed as requiring Mortgagee to advance or expend monies for any purposes mentioned in this paragraph, or for any other purpose. Mortgagee is hereby empowered to enter and to authorize others to enter upon the Mortgaged Property or any part thereof for the purpose of performing or observing any such defaulted covenant, condition or terms, without thereby becoming liable to Mortgagor or any person in possession holding under Mortgagor.

2.15 Books and Records. Mortgagor shall keep and maintain at all times complete, true and accurate books of accounts and records reflecting the results of the operation of the Mortgaged Property. Mortgagor shall furnish to Mortgagee a balance sheet and a statement of income and expenses. Mortgagor shall permit Mortgagee to inspect said books and records upon request. In addition, Mortgagor will deliver or cause to be delivered to Mortgagee with respect to the Mortgaged Property the financial statements required under the Loan Agreement.

2.16 Estoppel Affidavits. Mortgagor, within ten (10) days after written request from

Mortgagee, shall furnish a written statement, duly acknowledged, setting forth the unpaid principal of, and interest on, the Note, and any other unpaid sums secured hereby, and whether or not any offsets or defenses exist against such principal and interest or other sums.

2.17 Future Mortgage Modifications. Mortgagee may at any time and from time to time, without notice to, and without consent of, any other person or entity (except for Mortgagor in the case of a modification of the terms of the Note or this Mortgage), (a) extend or accelerate the time of payment of the indebtedness secured hereby, (b) agree to modify the terms of the Note or this Mortgage, including increasing payments of interest and principal, (c) release any person liable for payment of any indebtedness secured hereby or for performance of any obligation, (d) release all or any part of the security held for the indebtedness secured hereby, or (e) exercise or refrain from exercising or waive any right Mortgagee may have.

Mortgagee shall have such rights and may exercise them without affecting the lien or priority of this Mortgage upon the Mortgaged Property or any part thereof, and without affecting the liability of any guarantor or surety, notwithstanding the fact that guarantors, sureties, junior mortgages, judgments, or other claims or encumbrances may be impaired, prejudiced, or otherwise adversely affected thereby.

2.18 Use of Mortgaged Property. The Mortgaged Property shall be used by Mortgagor only as entertainment complex and associated purposes, which use shall not change without the prior written consent of Mortgagee.

ARTICLE THREE

SECURITY AGREEMENT

3.01 Security Agreement. This Mortgage shall constitute a security agreement pursuant to the Uniform Commercial Code (South Carolina) ("UCC") for any portion of the Mortgaged Property which, under applicable law, may be subject to a security interest pursuant to the UCC, including the Collateral, and Mortgagor hereby grants to Mortgagee a security interest in the Collateral. Mortgagee shall have all rights and remedies of a secured party under the UCC as well as all other rights and remedies available at law or in equity.

3.02 Additional Covenants and Representations of Mortgagor. Mortgagor hereby warrants and represents to and covenants and agrees with Mortgagee as follows:

(a) Mortgagor is the owner of and has good and marketable title to the Collateral free from any liens other than the liens arising hereunder and under the other Loan Documents, and any liens explicitly permitted hereunder, and Mortgagor will defend the Collateral against all claims and demands of all persons at any time claiming the same or any interest therein.

(b) The address shown at the beginning of this Mortgage is the chief executive office and principal place of business of Mortgagor and the location of all records concerning that portion of Collateral which consists of general intangibles. Mortgagor will not change such chief executive office or principal place of business or any other place of business,

or the location of any Collateral (including the records relating thereto), or make any change in its legal name or conduct business operations under any fictitious business or trade name without, in each such case (A) giving at least 30 days' prior written notice thereof to Mortgagee and (B) executing, delivering, filing and recording all necessary financing statements (or amendments thereto) or other instruments and documents in order to maintain the validity, enforceability, priority and perfection of the liens arising hereunder.

(c) Except as explicitly permitted by the Loan Documents, (A) Mortgagor will not sell, lease, transfer, convey or otherwise dispose of any of the Collateral or any interest therein and (B) Mortgagor will not create, assume, incur or suffer to exist any lien of any kind (whether senior, pari passu or subordinate) on the Collateral other than those arising hereunder and under the other Loan Documents.

(d) Mortgagor will keep the Collateral in good repair, working order and condition and adequately insured at all times in accordance with the provisions of this Mortgage and the other Loan Documents.

(e) Mortgagor will, without the necessity of any request by Mortgagee, promptly make, execute, acknowledge and deliver and file and record in all proper offices and places such financing statements, continuation statements, certificates, collateral agreements and other agreements, documents or instruments as may be necessary to perfect or from time to time renew the liens arising hereunder and under the other Loan Documents, including those that may be necessary to perfect such liens in any additional Collateral hereafter acquired by Mortgagor or in any replacements or proceeds thereof, and Mortgagor will take all such action as may be deemed necessary or advisable by Mortgagee to carry out the intent and purposes of the Loan Documents or for assuring and confirming to Mortgagee the grant and perfection of the liens in the Collateral. To the extent permitted by law, Mortgagor authorizes and appoints Mortgagee to execute and file such financing statements, continuation statements, certificates, collateral agreements and other agreements, documents and instruments in its stead, with full power of substitution, as Mortgagor's attorney-in-fact, coupled with an interest. To the extent permitted by law, Mortgagor further agrees that a carbon, photographic or other reproduction of this Mortgage, or any security agreement, financing statement or continuation statement is sufficient as a financing statement or continuation statement.

3.03 Remedies. In case any one or more Events of Default (as defined herein or in any other Loan Document) under the Note, this Mortgage and/or any Loan Document shall have occurred and be continuing beyond any applicable cure period therefor, Mortgagee shall have, in addition to all other rights and remedies given to it by this Mortgage, those allowed by law, and the rights and remedies of a secured party under the Uniform Commercial Code as enacted and in effect in the applicable jurisdiction, and, without limiting the generality of the foregoing, Mortgagee may immediately, without demand of performance and without other notice (except as set forth in the Note, this Mortgage or other documents executed and delivered pursuant thereto or in connection therewith) or demand whatsoever to Mortgagor, all of which are hereby expressly waived, and without advertisement, sell at public or private sale or otherwise realize upon in the county where the Mortgaged Property is located, or elsewhere, the whole or, from time to time, any part of the Mortgaged Property (including the Collateral), or any interest which Mortgagor may have therein, and, after deducting from the proceeds of sale or other disposition

of the Mortgaged Property (including the Collateral) all expenses (including all reasonable expenses for legal services), shall apply the residue of such proceeds towards the satisfaction of the Note and any other sums secured by this Mortgage. The remainder, if any, of the proceeds after satisfaction in full of the Note and any other sums secured by this Mortgage shall be paid to Mortgagor. Notice of any sale or other disposition shall be given to Mortgagor at least ten days before the time of any intended public sale or the time any intended private sale or other disposition of the Mortgaged Property (including the Collateral) is to be made, which Mortgagor hereby agrees shall be reasonable notice of sale or other disposition. Mortgagor agrees to assemble, or cause to be assembled, at its own expense, the Mortgaged Property (including the Collateral) at such place or places as Mortgagee shall designate by written notice. At any such sale or disposition, Mortgagee may, to the extent permissible under applicable law, purchase the whole or any part of the Mortgaged Property (including the Collateral) sold, free from any right of redemption on the part of Mortgagor, which right is hereby waived and released. Without limiting the generality of any rights and remedies conferred upon Mortgagee under this Section, Mortgagee may, to the full extent permitted by law: (a) enter upon the Mortgaged Property, exclude therefrom Mortgagor or any affiliate thereof, and take immediate possession of the Mortgaged Property (including the Collateral), either personally or by means of a receiver appointed by a court of competent jurisdiction, using all lawful, necessary force to do so; (b) use, operate, manage and control the Mortgaged Property (including the Collateral) in any lawful manner; (c) collect and receive all rents, income, revenue, earnings, issues and profits therefrom; and (d) maintain, repair, renovate, alter or remove the Mortgaged Property (including the Collateral) as Mortgagee may determine in its discretion, and any monies so collected or received by Mortgagee shall be applied to, or may be accumulated for application upon, satisfaction of the Note or any other sums secured by this Mortgage.

3.04 FINANCING STATEMENT. **THIS MORTGAGE CONSTITUTES A SECURITY AGREEMENT AND SERVES AS A FIXTURE FILING IN ACCORDANCE WITH THE UNIFORM COMMERCIAL CODE.**

ARTICLE FOUR

DEFAULTS

4.01 Event of Default. The term Event of Default, wherever used in this Mortgage, shall mean any one or more of the following events:

(a) Failure to pay any payment due on the Note when due, no notice of such default being required unless otherwise provided in the Note (if any).

(b) An event of default under the Note or any other Loan Document not cured within any applicable cure period provided therein.

(c) A breach by Mortgagor of any covenants, agreements or conditions of this Mortgage not cured within thirty (30) days after written notice thereof by Mortgagee except failure to keep property insured for which there shall be no cure period.

(d) If either (A) Mortgagor, a Guarantor, or any endorser of the Note: (i) files a voluntary petition in bankruptcy, or (ii) is adjudicated as a bankrupt or insolvent, or (iii) files any petition or answer seeking or acquiescing in any reorganization, management, composition, readjustment, liquidation, dissolution or similar relief for itself under any law relating to bankruptcy, insolvency or other relief for debtors, or (iv) seeks or consents to or acquiesces in the appointment of any trustee, receiver, master or liquidator of itself or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, or (v) makes any general assignment for the benefit of creditors, or (vi) makes an admission in writing of its inability to pay its debts generally as they become due; or (B) a court of competent jurisdiction enters an order, judgment or decree approving a petition filed against Mortgagor, a Guarantor or any endorser of the Note, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state, or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive) from the date of entry thereof; or (C) any trustee, receiver or liquidator of Mortgagor, a Guarantor, or any endorser of the Note, or of all or any substantial part of the Mortgaged Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, is appointed without the prior written consent of Mortgagee, which appointment shall remain unvacated and unstayed for an aggregate of sixty (60) days (whether or not consecutive).

(e) Default by Mortgagor under any agreement or obligation of Mortgagor affecting any portion of the Mortgaged Property, or any other documents or instruments securing any other indebtedness of Mortgagor to Mortgagee, if such default is not cured within any cure period permitted therein. Mortgagor shall notify Mortgagee in writing of the occurrence of such default, specifying the nature of such default. Mortgagor acknowledges that there is a prohibition against any further liens or mortgage financing against the Mortgaged Property.

(f) Material breach of any warranty or material untruth of any representation of Mortgagor contained in the Note, this Mortgage or any other instrument securing the Note, not cured (if such breach can be cured) within ten (10) days after written notice thereof by Mortgagee.

(g) If Mortgagor suffers a material adverse change in financial condition.

(h) Death of a Guarantor or material adverse change in financial position of a Guarantor (unless Mortgagee, in its sole discretion, is provided and accepts a substitute guarantor within thirty (30) days of such death or change in financial position) or default by any Guarantor under a guaranty of the Note.

4.02 Acceleration of Maturity. If an Event of Default shall have occurred and not been cured within an applicable cure period, Mortgagee may declare the outstanding principal amount of the Note and the interest accrued thereon, and all other sums secured hereby, to be due and payable immediately, and upon such declaration such principal and interest and other sums shall immediately become and be due and payable without further demand or notice.

4.03 Mortgagee's Power of Enforcement. If an uncured Event of Default shall have occurred, Mortgagee may, either with or without entry or taking possession as hereinabove provided or otherwise, proceed by suit or suits at law or in equity or by any other appropriate proceeding or remedy: (a) to enforce payment of the Note or the performance of any term hereof or any other right; (b) to foreclose this Mortgage and to sell, as an entirety or in separate lots or parcels, the Mortgaged Property, under the judgment or decree of a court or courts of competent jurisdiction; and (c) to pursue any other remedy available to it. Mortgagee shall take action either by such proceedings or by the exercise of its powers with respect to entry or taking possession, or both, as Mortgagee may determine.

4.04 Mortgagee's Right to Enter and Take Possession, Operate and Apply Income.

(a) If an Event of Default shall have occurred, Mortgagor, upon demand of Mortgagee, shall forthwith surrender to Mortgagee the actual possession, and if and to the extent permitted by law, Mortgagee itself, or by such officers or agents as it may appoint, may enter and take possession of all the Mortgaged Property, and may exclude Mortgagor and its agent and employees wholly therefrom, and may have joint access with Mortgagor to the books, papers and accounts of Mortgagor.

(b) If Mortgagor shall for any reason fail to surrender or deliver the Mortgaged Property or any part thereof after Mortgagee's demand, Mortgagee may obtain a judgment or decree conferring on Mortgagee the right to immediate possession or requiring Mortgagor to deliver immediate possession of all or part of the Mortgaged Property to Mortgagee along with all books, papers and accounts of Mortgagor, to the entry of which judgment or decree Mortgagor hereby specifically consents.

(c) Mortgagor shall pay to Mortgagee, upon demand, all reasonable costs and expenses of obtaining such judgment or decree and reasonable compensation to Mortgagee, its attorneys and agents, and all such costs, expenses and compensation shall, until paid, be secured by the lien of this Mortgage.

(d) Upon every such entering upon or taking of possession, Mortgagee may hold, store, use, operate, manage and control the Mortgaged Property and conduct the business thereof, and, from time to time:

(i) make all necessary and proper maintenance, repairs, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personalty and other property;

(ii) insure or keep the Mortgaged Property insured;

(iii) manage and operate the Mortgaged Property and exercise all the rights and powers of Mortgagor in its name or otherwise, with respect to the same;

(iv) enter into agreements with others to exercise the powers herein

granted Mortgagee; all as Mortgagee in its reasonable judgment from time to time may determine; and Mortgagee may collect and receive all the income, revenues, rents, issues and profits of the same, including those past due as well as those accruing thereafter; and shall apply the monies so received by Mortgagee in such priority as Mortgagee may determine to (1) the reasonable compensation, expenses and disbursements of the agents and attorneys; (2) the cost of insurance, taxes, assessments and other proper charges upon the Mortgaged Property or any part thereof; (3) the deposits for taxes and assessments and insurance premiums due; and (4) the payment of accrued interest on the Note.

Mortgagee shall surrender possession of the Mortgaged Property to Mortgagor only when all that is due upon such interest, tax and insurance deposits and principal installments, and under any of the terms of this Mortgage, shall have been paid and all defaults made good. The same right of taking possession, however, shall exist if any subsequent Event of Default shall occur and be continuing.

4.05 Leases. Mortgagee, at its option, is authorized to foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property, and the failure to make any such tenants parties as defendants to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor to be, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

4.06 Purchase by Mortgagee. Upon any such foreclosure sale, Mortgagee may bid for and purchase the Mortgaged Property and, upon compliance with the terms of sale, may hold, retain and possess and dispose of such property in its own absolute right without further accountability.

4.07 Application of Indebtedness Toward Purchase Price. Upon any such foreclosure sale, Mortgagee may, if permitted by law, after allowing for the proportion of the total purchase price required to be paid in cash and for the costs and expenses of the sale, compensation and other charges, in paying the purchase price apply any portion of or all sums due to Mortgagee under the Note, this Mortgage or any other instrument securing the Note, in lieu of cash, to the amount which shall, upon distribution of the net proceeds of such sale, be payable thereon.

4.08 Waiver of Appraisement, Valuation, Stay, Extension, and Redemption Laws. Mortgagor agrees to the full extent permitted by law that in case of a default on its part hereunder, neither Mortgagor nor anyone claiming through or under it shall or will set up, claim or seek to take advantage of any appraisement, valuation, stay, extension or redemption laws now or hereafter in force, in order to prevent or hinder the enforcement or foreclosure of this Mortgage, or the absolute sale of the Mortgaged Property or the final and absolute putting in possession thereof, immediately after such sale, of the purchasers thereat, and Mortgagor, for itself and all who may at any time claim through or under it, hereby waives, to the full extent that it may lawfully so do, the benefit of all such laws, and any and all right to have the assets comprising the Mortgaged Property marshaled upon any foreclosure of the lien hereof or appraised for the purpose of reducing any deficiency judgment obtained by Mortgagee against Mortgagor and agrees that Mortgagee or any court having jurisdiction to foreclose such lien may

sell the Mortgaged Property in part or as an entirety. Mortgagor further waives, to the full extent permitted by law, the right to petition for the appointment of appraisers following foreclosure for the purpose of seeking to reduce a deficiency judgment or for any other reason.

4.09 Receiver. If an Event of Default shall have occurred, Mortgagee, to the extent permitted by law and without regard to the value or occupancy of the security, shall be entitled as a matter of right if it so elects to the appointment of a receiver to enter upon and take possession of the Mortgaged Property and to collect all rents, revenues, issues, income, products and profits thereof and apply the same as the court may direct. The receiver shall have all rights and powers permitted under the laws of the state where the Land is located and such other powers as the court making such appointment shall confer. The expenses, including receiver's fees, attorney's fees, costs and agent's compensation, incurred pursuant to the powers herein contained shall be secured by this Mortgage. The right to enter and take possession of and to manage and operate the Mortgaged Property, and to collect the rents, issues and profits thereof, whether by a receiver or otherwise, shall be cumulative to any other right or remedy hereunder or afforded by law, and may be exercised concurrently therewith or independently thereof. Mortgagee shall be liable to account only for such rents, issues and profits actually received by Mortgagee, whether received pursuant to this paragraph or paragraph 4.04. Notwithstanding the appointment of any receiver or other custodian, Mortgagee shall be entitled as secured party hereunder to the possession and control of any cash, deposits, or instruments at the time held by, or payable or deliverable under the terms of this Mortgage to, Mortgagee.

4.10 Suits to Protect the Mortgaged Property. Mortgagee shall have the power and authority to institute and maintain any suits and proceedings as Mortgagee may deem advisable (a) to prevent any impairment of the Mortgaged Property by any acts which may be unlawful or any violation of this Mortgage, (b) to preserve or protect its interest in the Mortgaged Property, and (c) to restrain the enforcement of or compliance with any legislation or other governmental enactment, rule or order that may be unconstitutional or otherwise invalid, if the enforcement of or compliance with such enactment, rule or order might impair the security hereunder or be prejudicial to Mortgagee's interest.

4.11 Proofs of Claim. In the case of any receivership, insolvency, bankruptcy, reorganization, arrangement, adjustment, composition or other judicial proceedings affecting Mortgagor, any person, partnership or corporation guaranteeing or endorsing any of Mortgagor's obligations, its creditors or its property, Mortgagee, to the extent permitted by law, shall be entitled to file such proofs of claim and other documents as may be necessary or advisable in order to have its claims allowed in such proceedings for the entire amount due and payable by Mortgagor under the Note, this Mortgage and any other instrument securing the Note, at the date of the institution of such proceedings, and for any additional amounts which may become due and payable by Mortgagor after such date.

4.12 Mortgagor to Pay the Note on Any Uncured Default in Payment; Application of Monies by Mortgagee.

(a) If default shall be made in the payment of any amount due under the Note, this Mortgage or any other instrument securing the Note, then, upon Mortgagee's demand,

Mortgagor will pay to Mortgagee the whole amount due and payable under the Note and all other sums secured hereby; and if Mortgagor shall fail to pay the same forthwith upon such demand, Mortgagee shall be entitled to sue for and to recover judgment for the whole amount so due and unpaid together with costs and expenses including the reasonable compensation, expenses and disbursements of Mortgagee's agents and attorneys incurred in connection with such suit and any appeal in connection therewith. Mortgagee shall be entitled to sue and recover judgment as aforesaid either before, after or during the pendency of any proceedings for the enforcement of this Mortgage, and the right of Mortgagee to recover such judgment shall not be affected by any taking, possession or foreclosure sale hereunder, or by the exercise of any other right, power or remedy for the enforcement of the terms of this Mortgage, or the foreclosure of the lien hereof. In case of a foreclosure sale of all or any part of the Mortgaged Property and of the application of the proceeds of sale to the payment of the sums secured hereby, Mortgagee shall be entitled to enforce payment of and to receive all amounts then remaining due and unpaid and to recover judgment for any portion thereof remaining unpaid, with interest.

(b) Mortgagor hereby agrees, to the extent permitted by law, that no recovery of any such judgment by Mortgagee and no attachment or levy of any execution upon any of the Mortgaged Property or any other property shall in any way affect the lien of this Mortgage upon the Mortgaged Property or any part thereof or any lien, rights, powers or remedies of Mortgagee hereunder, but such lien, rights, powers and remedies shall continue unimpaired as before.

(c) Any monies collected or received by Mortgagee under this paragraph shall be applied as follows:

(i) First, to the payment of reasonable compensation, expenses and disbursements of the agents and attorneys; and

(ii) Second, to payment of amounts due and unpaid under the Note, this Mortgage and all other instruments securing the Note.

4.13 Delay or Omission No Waiver. No delay or omission of Mortgagee or of any holder of the Note to exercise any right, power or remedy accruing upon any Event of Default shall exhaust or impair any such right, power or remedy or shall be construed to waive any such Event of Default or to constitute acquiescence therein. Every right, power and remedy given to Mortgagee may be exercised from time to time and as often as may be deemed expedient by Mortgagee.

4.14 No Waiver of One Default to Affect Another. No waiver of any Event of Default hereunder shall extend to or affect any subsequent or any other Event of Default than existing, or impair any rights, powers or remedies consequent thereon. If Mortgagee (a) grants forbearance or an extension of time for the payment of any sums secured hereby; (b) takes other or additional security for the payment thereof; (c) waives or does not exercise any right granted in the Note, this Mortgage or any other instrument securing the Note; (d) releases any part of the Mortgaged Property from the lien of this Mortgage or any other instrument securing the Note; (e) consents to the filing of any map, plat or replat of the Land; (f) consents to the granting of any easement on the Land; or (g) makes or consents to any agreement changing the terms of this

Mortgage or subordinating the lien or any charge hereof, no such act or omission shall release, discharge, modify, change or affect the original liability under the Note, this Mortgage or otherwise of Mortgagor, or any subsequent purchaser of the Mortgaged property or any part thereof or any maker, cosigner, endorser, surety or guarantor. No such act or omission shall preclude Mortgagee from exercising any right, power or privilege herein granted or intended to be granted in case of any Event of Default then existing or of any subsequent Event of Default nor, except as otherwise expressly provided in an instrument or instruments executed by Mortgagee, shall the lien of this Mortgage be altered thereby. In the event of the sale or transfer by operation of law or otherwise of all or any part of the Mortgaged Property, Mortgagee, without notice to any person, firm or corporation, is hereby authorized and empowered to deal with any such vendee or transferee with reference to the Mortgaged Property or the indebtedness secured hereby, or with reference to any of the terms or conditions hereof, as fully and to the same extent as it might deal with the original parties hereto and without in any way releasing or discharging any of the liabilities or undertakings hereunder.

4.15 Discontinuance of Proceedings: Position of Parties Restored. If Mortgagee shall have proceeded to enforce any right or remedy under this Mortgage by foreclosure, entry or otherwise, and such proceedings shall have been discontinued or abandoned for any reason, or shall have been determined adversely to Mortgagee, then and in every such case Mortgagor and Mortgagee shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had occurred or had been taken.

4.16 Remedies Cumulative. No right, power or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage or any other instrument securing the Note is exclusive of any other right, power or remedy, but each and every such right, power and remedy shall be cumulative and concurrent and shall be in addition to any other right, power and remedy given hereunder or under the Note or any other instrument securing the Note, or now or hereafter existing at law, in equity or by statute.

ARTICLE FIVE

MISCELLANEOUS PROVISIONS

5.01 Heirs, Successors, and Assigns Included in Parties. Whenever one of the parties hereto is named or referred to herein, the heirs, successors and assigns of such party shall be included and all covenants and agreements contained in this Mortgage, by or on behalf of Mortgagor or Mortgagee, shall bind and inure to the benefit of their respective heirs, successors and assigns, whether so expressed or not.

5.02 Addresses for Notices, Etc. Any notice, report, demand or other instrument authorized or required to be given or furnished under this Mortgage to Mortgagor or Mortgagee shall be deemed given or furnished when mailed, postage prepaid, to that party at the address first shown above. Any party hereto may change the address for said notice by appropriately notifying the other parties in writing.

5.03 Headings. The headings of the articles, sections, paragraphs and subdivisions of this Mortgage are for the convenience of reference only, are not to be considered a part hereof, and shall not limit or expand or otherwise affect any of the terms hereof.

5.04 Invalid Provisions to Affect No Others. In the event that any of the covenants, agreements, terms or provisions contained in the Note, this Mortgage or any other instrument securing the Note shall be invalid, illegal or unenforceable in any respect, the validity of the remaining covenants, agreements, terms or provisions contained herein and in the Note and any other instrument securing the Note shall be in no way affected, prejudiced or disturbed thereby.

5.05 Changes, Etc. Neither this Mortgage nor any term hereof may be changed, waived, discharged or terminated orally, or by any action or inaction, but only by an instrument in writing signed by the party against which enforcement of the change, waiver, discharge or termination is sought. Any agreement hereafter made by Mortgagor and Mortgagee relating to this Mortgage shall be superior to the rights of the holder of any intervening lien or encumbrance.

5.06 Governing Law. This Mortgage is made by Mortgagor and accepted by Mortgagee in the State of South Carolina, with reference to the laws of such State, and shall be construed, interpreted, enforced and governed by and in accordance with such laws (excluding the principles thereof governing conflicts of law).

5.07 Default Rate. The Default Rate shall be the rate of interest after default as provided in the Note; in the event no such rate is provided therein, the Default Rate shall be the maximum rate of interest permitted by law at the time of default or four percent (4%) over stated rate in the Note, whichever is less.

ARTICLE SIX

LENDING PROVISIONS

6.01 Breach of Loan Agreement and Other Documents. Notwithstanding anything to the contrary contained in this Mortgage or in the Note, or in any other instrument securing the loan evidenced by such Note, upon an uncured Event of Default, Mortgagee may at its option declare the entire indebtedness secured hereby, and all interest thereon and all advances made by Mortgagee hereunder, immediately due and payable and/or exercise all additional rights accruing to it under this Mortgage in the event of a breach by Mortgagor of any covenant contained in this Mortgage, the Note, or in any other Loan Documents. The proceeds of the loan secured hereby are to be disbursed by Mortgagee to Mortgagor in accordance with the provisions contained in the Note. All advances and indebtedness arising and accruing under the Note from time to time shall be secured hereby.

6.02 Partial Foreclosure. In the event the Mortgaged Property is comprised of more than one parcel of real property, Mortgagor hereby waives any right to require Mortgagee to foreclose or exercise any of its other remedies against all of the Mortgaged Property as a whole or to require Mortgagee to foreclose or exercise such remedies against one portion of the

Mortgaged Property prior to the foreclosure of exercise of said remedies against other portions of the Mortgaged Property.

6.03 Future Advances. Mortgagee, at its option, may make future advances to Mortgagor in accordance with the Note, provided, however, that nothing contained herein shall constitute an obligation to do so. Such future advances, with interest at the rate payable from time to time on the outstanding principal under the Note, shall be secured by this Mortgage when evidenced by the Note or by any other instrument indicating that such advances are secured by this Mortgage or when advanced under the terms of this Mortgage. Mortgagee may make such future advances (a) at the request of Mortgagor, whether or not there is any obligation to make future advances, or (b) to pay, with or without the consent or request of Mortgagor, any amounts which may be due under this Mortgage or under any other mortgage or lien affecting the Mortgaged property.

6.04 Covenants of Guarantors. As a part of the inducement to Mortgagee to make the loan evidenced by the Note, Mortgagor may have caused certain other persons, firms or corporations to enter into certain guaranty agreements with Mortgagee pertaining to the financing and payment for construction of improvements on the Land. In such event, Mortgagor covenants and agrees that such persons, firms or corporations shall fully perform, comply with and abide by such agreements. It is further understood and agreed by Mortgagor that such representations and agreements by the other persons shall constitute, for the purpose of its obligations hereunder, covenants on behalf of Mortgagor.

6.05 Instrument Under Seal. This Mortgage is intended to be and shall be construed as an instrument under seal.

6.06 WAIVER OF JURY TRIAL. MORTGAGOR WAIVES, TO THE FULL EXTENT PERMITTED BY LAW, THE RIGHT TO A JURY TRIAL IN ANY LITIGATION CONCERNING THIS AGREEMENT OR ANY DEFENSE, CLAIM, COUNTERCLAIM, CLAIM OF SET-OFF OR SIMILAR CLAIM OF ANY NATURE THAT MORTGAGOR MAY ASSERT AGAINST MORTGAGEE.

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6.08 WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. Pursuant to Section 293-680 of the Code of Laws of South Carolina, 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. Mortgagor specifically acknowledges and affirms its waiver of appraisal rights as evidenced by its signature below:

IN WITNESS WHEREOF, the undersigned have executed this Mortgage the day and year above first written.

Signed, sealed and delivered
in the presence of:

Witness 1

Witness 2

MORTGAGOR:

HSGCHG INVESTMENTS, LLC
a Delaware limited liability company

By: _____ (SEAL)
ROBERT D. HARTMAN, SR.
Its: President/Executive Chairman

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PERSONALLY appeared before me Robert D. Hartmann, Sr., as President/Executive Chairman of HSGCHG Investments, LLC, who, after being duly sworn, acknowledged his execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 22 day of January, 2015

Notary Public for South Carolina

My Commission Expires: 12/1/2018

[NOTARY SEAL]

STEPHANIE T. BROWN NOTARY PUBLIC SOUTH CAROLINA

EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. By Beasly Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and other; and on the Northeast by lands of William E. Thompson.

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, at Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.
TMS No. 085-00-00-001-000

DERIVATION: This being the identical property conveyed unto HSGCHG Investments, LLC by deed of Wells Fargo Bank, N.A. dated December 30, 2014, recorded January 23, 2015 in Book 295, at Page 1, Marion County, SC Register of Deeds.

EXHIBIT "B"

PERMITTED EXCEPTIONS

1. Taxes and assessments for the year 2015, and subsequent years, which are a lien but are not yet due and payable.

2. Easements to Carolina Power & Light Company filed of record in Deed Book A37 at page 5; Book A108 at page 83; Book A112 at page 95; Book A169 at page 253; and Book A233 at page 157, Marion County records.

3. Easement to South Carolina Public Service Authority, filed in Deed Book A186 at page 163, Marion County records.

4. Easement to the City of Marion, filed in Deed Book A472 at page 296, Marion County records.

5. Easements to BellSouth Telecommunications, Inc., dated March 27, 2003 and recorded April 3, 2003 in Deed Book 484 at page 284, and Book 484 at page 286, Marion County record



Instrument Vol Page
201500039285 OR 295 34

This Instrument Prepared By
and After Recording Return to:
Coleman Talley LLP
Attn: Harrison Coleman
3475 Lenox Road NE, Suite 400
Atlanta, Georgia 30326

201500039285
Filed for Record in
MARION COUNTY, SC
SHERRY R. RHODES, CLERK OF COURTS
01-23-2015 At 02:19 pm.
ASSIGN RENT 14.00
Vol 295 Page 34 - 42

ASSIGNMENT OF RENTS AND LEASES

THIS ASSIGNMENT OF RENTS AND LEASES (hereinafter referred to as "Assignment"), made January 22, 2015, by **HSGCHG INVESTMENTS, LLC**, a Delaware limited liability company, whose address is 114 Cascade Boulevard, Milford, Connecticut 06460, ("Assignor" and "Borrower"), in favor of **AVATAR CAPITAL FINANCE, LLC**, a Washington limited liability company, whose address is 1200 Westlake Ave N, #1006, Seattle, Washington 98109 ("Assignee").

WITNESSETH:

Borrower is obligated to Assignee (collectively the "Obligations") under a Commercial Promissory Note dated of even date herewith in the amount of Two Million Thousand and No/100 Dollars ($2,000,000.00) (the "Note"), made by Borrower payable to Assignee, this Agreement, that certain Open-End Mortgage Deed and Security Agreement of even date herewith, other loan documents as defined in the Note (the "Loan Documents"), and all other indebtedness of Borrower to Assignee whenever borrowed or incurred, and any renewals, extensions, novations, or modifications of the foregoing.

FOR VALUE RECEIVED, Assignor hereby absolutely and presently assigns and transfers to Assignee all of Assignor's right, title and interest in and to: (1) All present and future leases, subleases, licenses, or occupancy agreements of all or any portion of the real property more particularly described on EXHIBIT "A" attached hereto (the "Property"), together with any renewals, modifications or replacements thereof; and any options, rights of first refusal or guarantees of any lease now or hereafter in effect (collectively, the "Leases"); (2) all rents, income, receipts, revenues, reserves, issues and profits arising under any Lease (together with the items described in 3, 4 and 5, below, the "Rents"); (3) all security deposits and escrow accounts made by any tenant or subtenant under any Lease; (4) all awards and payments of any kind derived from or relating to any Lease including, without limitation, claims for the recovery of damages to the Property by proceeds of any insurance policy or otherwise, claims for damages resulting from acts of insolvency or bankruptcy, lump sum payments for the cancellation or termination of any Lease, awards payable by reason of condemnation action or the exercise of any right of first refusal or option to purchase, and the return of any insurance premiums or ad valorem

PL00048

tax payments made in advance and subsequently refunded; and (5) the proceeds of any rental insurance carried by Assignor on the Property. Assignor appoints Assignee as its irrevocable attorney in fact to appear in any actions and to collect any awards or payments.

TO HAVE AND TO HOLD unto Assignee, its successors and assigns forever, subject to and upon the terms and conditions set forth herein.

This Assignment is made for the purpose of securing (a) the full and prompt payment when due, whether by acceleration or otherwise, with such interest as may accrue thereon, either before or after maturity thereof, of that certain Note dated of even date herewith, made by Borrower to the order of Assignee; (b) the full and prompt payment and performance of any and all obligations of Borrower to Assignee under the terms of any and all mortgages, deeds of trust and security agreements securing the Obligations evidenced by the Note (hereinafter referred to collectively, if more than one, as the "Security Instrument"), (c) the full and prompt payment and performance of all obligations of Borrower to Assignee under the terms of the loan evidenced by the Note, and (d) the full and prompt payment and performance of any and all other obligations of Borrower to Assignee under any other instruments now or hereafter evidencing, securing, or otherwise relating to the Obligations evidenced by said Note (the Security Instrument and said other instruments are hereinafter referred to collectively as the "Loan Documents", and said Obligations are hereinafter referred to as the "Obligations").

1. Absolute Assignment; License to Collect. This Assignment is intended to be and shall constitute an unconditional, absolute and present assignment from Assignor to Assignee of all of Assignor's right, title and interest in and to the Leases and Rents (subject to the terms and conditions hereof), and not an assignment in the nature of a pledge of such Leases and Rents or the mere grant of a security interest therein. Notwithstanding that this Assignment is effective immediately, so long as there shall exist no default by Assignor in the payment and performance of the Obligations or in the performance of any obligation or agreement in any Lease (each, a "Default"), Assignor shall have the privilege under a revocable license to collect as they become due, but not prior to accrual, all Rents from the Property and to receive and hold the same. Assignor shall receive and hold such Rents in trust as a fund to be applied to the payment of real estate taxes, insurance, maintenance, repair and Lease obligations with respect to the Property and to the payment of interest and principal and other sums becoming due under the Obligations, before retaining and/or disbursing any part of the Rents for any other purpose.

2. Representations and Warranties. Assignor represents and warrants to Assignee as follows: (i) Assignor is the sole owner of the entire lessor's interest in the Leases and the Rents thereunder and such interest is free and clear of all liens and encumbrances; (ii) no other assignment of any interest in any of the Leases or Rents has been made; (iii) the Leases submitted to Assignee are true and complete copies of all of the Leases now existing, and there have been no written or oral modifications thereto; (iv) the Leases are in full force and effect and there is no existing default by Assignor or, to the best of Assignor's knowledge, by any tenant under any of the Leases; (v) Assignor has not accepted Rent under any Lease more than thirty (30) days in advance of its accrual, and payment thereof has not otherwise been forgiven, discounted or compromised; and (vi) Assignor has not received any funds or deposits from any tenant except as expressly provided for in a Lease; and (vii) to the Assignor's knowledge, no tenant has used or placed on the Property oil, petroleum products, hazardous or toxic substances, hazardous waste, regulated substances, hazardous air pollutants or other hazardous materials in violation of any federal, state and local laws and regulations intended to protect the

environment and public health and safety as the same may be amended from time to time.

3. Covenants. Assignor agrees that from the date of this Assignment and until final payment of all of the Obligations, unless Assignee shall otherwise consent in writing, Assignor will: (i) perform all of the obligations imposed upon Assignor under the Leases;; (ii) not discount any future accruing Rents; (iii) not execute any other assignment of Leases or Rents; (iv) not change the terms of or terminate the Leases, except in the normal course of business; (v) not subordinate the Leases to any mortgage or other encumbrance; and (vi) not consent to any assignment of or subletting under the Leases. Assignor further covenants and agrees to furnish to Assignee, on demand, certified true copies and/or originals of all existing Leases and any subsequent Leases, and any modifications or amendments thereto.

4. Future Assurances. Notwithstanding the automatic applicability of this Assignment to all future Leases, Assignor agrees to assign to Assignee all future Leases and to execute and/or deliver to Assignee all such Leases and, if requested by Assignee, assignments thereof in form acceptable to Assignee.

5. Assignee's Obligations and Liability. Notwithstanding any legal presumption to the contrary, Assignee shall not be obligated by reason of its acceptance of this Assignment to perform any obligation of Assignor under any of the Leases, and Assignee shall not, prior to entry upon and actually taking physical possession of the Property, be deemed a mortgagee in possession. This Assignment shall not operate to place responsibility upon Assignee for the control, care, management or repair of the Property or for the carrying out of any of the terms and conditions of the Leases or to make Assignee responsible or liable for any waste committed on the Property by any lessee or any other party, for any dangerous or defective condition of the Property, or for any negligence in the management, upkeep, repair or control of the Property. Assignee assumes no liability for any security deposited or rent prepaid by any lessee with Assignor, unless and until such deposits or prepaid rents are delivered to Assignee.

6. Indemnification. Assignor shall, and does hereby agree, to indemnify Assignee for, and to hold Assignee harmless from, any and all liability, loss or damage which may or might be incurred under the Leases or under or by reason of this Assignment and from any and all claims and demands whatsoever which may be asserted against Assignee by reason of any alleged obligation or undertaking on its part to perform or discharge any of the terms, covenants or agreements contained in the Leases. Assignor hereby agrees to defend, at its own cost and expense, any action brought against itself or Assignee relative to the Leases or this Assignment.

7. Event of Default. The term, "Event of Default", wherever used in this Assignment, shall mean any one or more of the following events:

(a) The occurrence of any default or event of default under any of the Loan Documents by the Borrower; or

(b) The failure by Assignor duly and fully to comply with any covenant, condition or agreement of this Assignment; or

(c) The breach of any warranty by Assignor contained in this Assignment; or

(d) Any sale, transfer, pledge, encumbrance, creation of a security interest in, or other hypothecation of all or any part of the Property to which the Assignee shall not have first consented in writing; or

(e) The filing of any federal tax lien against the Property; or

(f) The filing by Assignor, Borrower, or any endorser or guarantor on the Obligations, of a voluntary petition in bankruptcy or the adjudication of such as a bankrupt or insolvent, or the filing by or against Assignor, Borrower, or any endorser or guarantor on the Obligations of any petition seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or Assignor, Borrower, or any endorser or guarantor on the Obligations seeking or consenting to or acquiescing in the appointment of any trustee, receiver or liquidator of such person or entity or of substantially all of such person or entity's property or of any or all of the rents, issues, profits or revenues thereof, or the making by Assignor, Borrower, or any endorser or guarantor on the Obligations of any general assignment for the benefit of creditors, or the admission in writing by such of its inability to pay its debts generally as they become due; or

(g) The entry by a court of competent jurisdiction of an order, judgment or decree approving a petition filed against Assignor, Borrower, or any endorser or guarantor on the Obligations, seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, receiver or liquidator of such Assignor, Borrower, or endorser or guarantor on the Obligations, or of substantially all of the property such Assignor, Borrower, or endorser or guarantor on the Obligations or of any or all of the rents, issues, profits or revenues thereof without the consent or acquiescence of such Assignor, Borrower, or endorser or guarantor; or

(h) The dissolution or liquidation of Assignor, Borrower, or any endorser or guarantor on the Obligations (if a legal entity).

(i) The death of an Assignor, Borrower, or any endorser or guarantor on the Obligations (if an individual). Notwithstanding, Borrower shall have the opportunity to substitute a replacement endorser or guarantor with a net worth greater than or equal to the deceased endorser or guarantor at the time of the execution of this Agreement, within thirty (30) days of the death of the endorser or guarantor, subject to Assignee approval.

8. Remedies. Upon the occurrence of any Event of Default not cured within any applicable cure period, Assignee may at its option, with or without notice or demand of any kind, exercise any or all of the following remedies:

(a) Declare any part or all of the Obligations to be due and payable, whereupon the same shall become immediately due and payable;

(b) Perform any and all obligations of Assignor under any or all of the Leases or this Assignment and exercise any and all rights of Assignor herein or therein as fully as Assignor himself could do, including, without limiting the generality of the foregoing; enforcing, modifying, extending or terminating any or all of the Leases; collecting, modifying, compromising, waiving or increasing any or all of the rents payable thereunder; and obtaining new tenants and entering into new leases on the Property on any terms and conditions deemed desirable by Assignee, and, to the extent Assignee shall incur any costs in

connection with the performance of any such obligations of Assignor, including costs of litigation, then all such costs shall become a part of the Obligations, shall bear interest from the incurring thereof at the interest rate specified in the Note, and shall be due and payable on demand;

(c) In Assignor's or Assignee's name, institute any legal or equitable action which Assignee in its sole discretion deems desirable to collect and receive any or all of the rents, issues and profits assigned herein;

(d) Collect the rents, issues and profits and any other sums due under the Leases and with respect to the Property, and apply the same in such order as lender in its sole discretion may elect against (i) all costs and expenses, including reasonable attorneys' fees, incurred in connection with the operation of the Property, the performance of Assignor's obligations under the Leases and collection of the rents thereunder; (ii) all the costs and expenses, including reasonable attorneys' fees, incurred in the collection of any or all of the Obligations, including all costs, expenses and attorneys' fees incurred in seeking to realize on or to protect or preserve Assignee's interest in any other collateral securing any or all of the Obligations; and (iii) any or all unpaid principal and interest on the Obligations.

(e) Possession. Without regard to the adequacy of any security, and with or without appointment of a receiver, Assignee may either in person or by agent enter upon and take possession of the Property; have, hold, manage, lease and operate the same; collect and receive all Rents; and have full power to make from time to time all alterations, renovations, repairs or replacements to the Property as Assignee may deem proper. Assignee may notify the tenants under the Leases to pay all Rents directly to Assignee. Assignor hereby irrevocably authorizes and directs the tenants under the Leases, upon receipt of written notice from Assignee, to pay all Rents due under the Leases to Assignee without the necessity of any inquiry to Assignor and without any liability respecting the determination of the actual existence of any Default claimed by Assignee or any claim by Assignor to the contrary.

(f) Application of Rents. Assignee may apply such Rents to the payment of: (i) the Obligations, together with all costs and attorney's fees actually incurred at standard hourly rates; (ii) all taxes, charges, claims, assessments, water rents, sewer rents and any other liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items; and (iii) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Assignee in its sole discretion may determine.

(g) Other Remedies. Assignee may: (i) endorse as Assignor's attorney-in-fact the name of Assignor or any subsequent owner of the Property on any checks, drafts or other instruments received in payment of the Rents, and deposit the same in bank accounts, which power of attorney is coupled with an interest and shall be irrevocable; (ii) give proper receipts, releases and acquittances in relation thereto in the name of Assignor; (iii) institute, prosecute, settle or compromise any summary or legal proceedings in the name of Assignor for the recovery of the Rents, or for damage to the Property, or for the abatement of any nuisance thereon; and (iv) defend any legal proceedings brought against Assignor arising out of the operation of the Property. Any charges, expenses or fees, including reasonable attorneys' fees and costs, incurred by Assignee in connection with any of the foregoing shall be included in the Obligations, and shall be due and payable on demand, together with interest at the default rate set forth in the Note, such interest to be calculated from the date of such advance to the date of repayment thereof.

9. Assignee as Creditor of Tenants. Notwithstanding the privilege and license granted by Assignee herein, Assignee, and not Assignor, shall be deemed to be the creditor of each tenant in respect of any assignment for the benefit of creditors, bankruptcy, reorganization, insolvency, dissolution or receivership proceedings affecting such tenant. Assignee shall have the option to have any money received by Assignee as such creditor applied to reduce the Obligations or paid over to Assignor. Assignee shall have the right to file claims in any such proceedings and to otherwise pursue creditor's rights therein. If Assignor learns that any tenant has become the subject of such a proceeding, Assignor shall give Assignee prompt notice thereof

10. Notices. All notices, consents, approvals and requests required or permitted hereunder (a "*Notice*") shall be given in writing and shall be effective for all purposes if either hand delivered with receipt acknowledged, or by a nationally recognized overnight delivery service (such as Federal Express), or by certified or registered United States mail, return receipt requested, postage prepaid, in each case addressed as follows (or to such other address or person as a party shall designate from time to time by notice to the other party): If to Assignee: AVATAR CAPITAL FINANCE, LLC, 1200 Westlake Ave N, #1006, Seattle, Washington 98109; if to Assignor: HSGCHG INVESTMENTS, LLC, 114 Cascade Boulevard, Milford, Connecticut 06460. A notice shall be deemed to have been given: in the case of hand delivery, at the time of delivery; in the case of registered or certified mail, when delivered or the first attempted delivery on a Business Day; in the case of overnight delivery, upon the first attempted delivery on a Business Day. Business Day means any day other than a Saturday, Sunday or any day on which commercial banks in South Carolina are authorized or required to close.

11. Miscellaneous Provisions. Assignor agrees to the following: (i) All remedies available to Assignee with respect to this Assignment or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Assignee in exercising any remedy shall operate as a waiver of that remedy or of any default; (ii) Assignor represents that Assignor (a) is (1) an adult individual and is sui juris or (2) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such authorization (b) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Assignment and any other Loan Document to which it is a party; (iii) The provisions hereof shall be binding upon and inure to the benefit of Assignor, its heirs, personal representatives, successors and assigns including, without limitation, subsequent owners of the Property or any part thereof, and shall be binding upon and inure to the benefit of Assignee, its successors and assigns and any future holder of the Note or other Obligations; (iv) This Assignment may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (v) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Assignment; (vi) If this Assignment is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made shall be deemed to have first been applied to payment of the unsecured portion of the Obligations) prior to payment of the secured portion of the Obligations; (vii) This Assignment shall be governed by and construed under the laws of the jurisdiction where this Assignment is recorded; (viii) Assignor by execution and Assignee by acceptance of this Assignment agree to be bound by the terms and provisions

hereof; and (ix) In case of any conflict between the terms of this Assignment and the terms of any Security Instrument described in the Note, the terms of this Assignment shall prevail.

12. Tenant Security Deposits. Assignor represents and warrants that Assignor shall at all times fully and completely satisfy and comply with the applicable state law in regard to the security deposits of tenants of any leases affecting the Property.

(SIGNATURE ON FOLLOWING PAGE)

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first above written.

Signed and sealed in our presence as witnesses:

Witness

Michael W. Trigg
Print Name

Stephanie T. Brown
Witness

Stephanie T. Brown
Print Name

ASSIGNOR:

HSGCHG INVESTMENTS, LLC
a Delaware limited liability company

By: _____(SEAL)
ROBERT D. HARTMAN, SR.
Its: President/ Executive Chairman

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

PERSONALLY appeared before me Robert D. Hartmann, Sr., as President/Executive Chairman of HSGCHG Investments, LLC, who, after being duly sworn, acknowledged his execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 22 day of January, 2015

Stephanie T. Brown

Notary Public for South Carolina

My Commission Expires: 12/1/2018

[NOTARY SEAL]

STEPHANIE T. BROWN
NOTARY
PUBLIC
SOUTH CAROLINA

PL00055

EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. By Beasly Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and other; and on the Northeast by lands of William E. Thompson.

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, at Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.
TMS No. 085-00-00-001-000

DERIVATION: This being the identical property conveyed unto HSGCHG Investments, LLC by deed of Wells Fargo Bank, N.A. dated December 30, 2014, recorded January 23, 2015 in Book 295, at Page 1, Marion County, SC Register of Deeds.

Book 318 Pg 61
Instrument Vol Page
201500041221 OR 318 61

201500041221
Filed for Record in
MARION COUNTY, SC
SHERRY R. RHODES, CLERK OF COURTS
09-16-2015 At 11:00 am.
ASSIGN MTG 8.00
Vol 318 Page 61 - 63

PREPARED BY:
Avatar Capital Finance LLC
1200 Westlake Ave N. # 1006
Seattle, WA 98109

AFTER RECORDING RETURN TO:
Avatar Capital Finance LLC
1200 Westlake Ave N. # 1006
Seattle, WA 98109

PLAINTIFF'S EXHIBIT 6

PENGAD 800-631-6989

FOR RECORDER'S USE ONLY

201500041221 :: AVATAR FINANCIAL GROUP LLC

ASSIGNMENT OF MORTGAGE

FOR VALUE RECEIVED, Avatar Capital Finance LLC, a Washington Limited Liability Company ("Assignor") with an address of 1200 Westlake Ave N. # 1006, Seattle, WA 98109 hereby assigns and transfer to Parker Ferguson, as to an undivided 5.00% interest, Steven Ganeless, as to an undivided 3.750% interest, Downtime Enterprises LLC, as to an undivided 10.00% interest, Patrick Guthrie, trustee of the Guthrie Family Trust, as to an undivided 5.00% interest, Marc S. Homme APLC Defined Benefit Pension Trust, as to an undivided 2.50% interest, O. Michael Homme, Trustee of the Homme Family Trust, as to an undivided 1.250% interest, JBH Trust dated June 24, 2009, as to an undivided 1.250% interest, William R. Horton, as to an undivided 7.50% interest, MMJ Group Inc., as to an undivided 17.50% interest, Self Directed IRA Services Inc, FBO Mark Picking, IRA, as to an undivided 3.750% interest and Paul R. Verkuil and Judith Rodin as to an undivided 3.750% interest, Jay and Elaine Hazelrigg, as to an undivided 1.75% interest, Richard Kester, trustee of the Kester Family Living Trust, as to an undivided 5.00% interest, Susan Lundell, as to an undivided 2.40% interest, Patrick A Waldron and Peggy Waldron, as to an undivided 1.65% interest, James and Joyce Zevenbergen Living Trust date August 18, 2014, as to an undivided 10.00% interest, the Ronald and Sandra Loper Living Trust dated April 12, as to an undivided 10.00% interest, 2013 and Jerry Zevenbergen, as to an undivided 7.95% interest
with an address of C/O Avatar Capital Finance, 1200 Westlake Ave N. # 1006, Seattle, WA 98109 ("Assignee"), its successors and assigns, the Assignor's interest in and to that certain Mortgage from HSGCHG Investments, LLC, a Delaware Limited Liability Company, for the benefit of Avatar Capital Finance LLC, a Washington Limited Liability Company, dated as of January 22, 2015, and recorded on January 23, 2015, Instrument No. 201500039284 in Vol 295, Page 7, in the Real Property Records of Marion County, South Carolina securing the Property described more fully in Exhibit "A" hereto.

This Assignment of Mortgage is made without any recourse, representation, or warranty of any kind whatsoever, express or implied, or operation of law or otherwise.

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

[1324115/1] [SC FORM]

Instrument 201500041221 OR Vol 318 Pg 62

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Carla Stadler
Print Name

Witness

TR Hazelriss IV
Print Name

ASSIGNOR:

Avatar Capital Finance LLC, a Washington Limited Liability Company

By: _____ (SEAL)
Name: Jerry Zevenbergen
Its: Member

MICHELLE L. MITTIE
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
AUGUST 9, 2018

STATE OF Washington)
) ss.
COUNTY OF King)

On 23rd day of January, 2015, personally appeared Jerry Zevenbergen, as authorized signer of the foregoing instrument, and acknowledged the same to be his/her free act and deed, before me.

WITNESS my hand and official seal.

Notary Public in and for said County and State

My Commission Expires: 8-9-2018

[1324115/1] [NC FORM]

EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. By Beasly Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and other; and on the Northeast by lands of William E. Thompson.

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, at Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.
TMS No. 085-00-00-001-000

DERIVATION: This being the identical property conveyed unto HSGCHG Investments, LLC by deed of Wells Fargo Bank, N.A. dated December 30, 2014, recorded January 23, 2015 in Book 295, at Page 1, Marion County, SC Register of Deeds.

Instrument Vol Page
201600042647 OR 334 195

PREPARED BY:
Avatar Capital Finance LLC
1200 Westlake Ave N. # 1006
Seattle, WA 98109

AFTER RECORDING RETURN TO:
Avatar Capital Finance LLC
1200 Westlake Ave N. # 1006
Seattle, WA 98109

201600042647
Filed for Record in
MARION COUNTY, SC
SHERRY R. RHODES, CLERK OF COURTS
03-11-2016 At 09:53 am.
ASSIGN MTG 30.00
Vol 334 Page 195 - 219

FOR RECORDER'S USE ONLY

201600042647
CALLISON TIGHE

ASSIGNMENT OF MORTGAGE

FOR VALUE RECEIVED, Parker Ferguson, as to an undivided 5.00% interest, Steven Ganeless, as to an undivided 3.750% interest, Downtime Enterprises LLC, as to an undivided 10.00% interest, Patrick Guthrie, trustee of the Guthrie Family Trust, as to an undivided 5.00% interest, Marc S. Homme APLC Defined Benefit Pension Trust, as to an undivided 2.50% interest, O. Michael Homme, Trustee of the Homme Family Trust, as to an undivided 1.250% interest, JBH Trust dated June 24, 2009, as to an undivided 1.250% interest, William R. Horton, as to an undivided 7.50% interest, MMJ Group Inc., as to an undivided 17,50% interest, Self Directed IRA Services Inc, FBO Mark Picking, IRA, as to an undivided 3.750% interest and Paul R. Verkuil and Judith Rodin as to an undivided 3.750% interest, Jay and Elaine Hazelrigg, as to an undivided 1.75% interest, Richard Kester, trustee of the Kester Family Living Trust, as to an undivided 5.00% interest, Susan Lundell, as to an undivided 2.40% interest, Patrick A Waldron and Peggy Waldron, as to an undivided 1.65% interest, James and Joyce Zevenbergen Living Trust date August 18, 2014, as to an undivided 10.00% interest, the Ronald and Sandra Loper Living Trust dated April 12, 2013 as to an undivided 10.00% interest, and Jerry Zevenbergen, as to an undivided 7.95% interest with an address of C/O Avatar Capital Finance. 1200 Westlake Ave N, # 1006 Seattle, WA 98109 collectively referred to herein as ("Assignor"), hereby assigns and transfer to Avatar Capital Finance LLC, a Washington Limited Liability Company ("Assignee") with an address of 1200 Westlake Ave N, # 1006, Seattle, WA 98109 its successors and assigns, the Assignor's interest in and to that certain Mortgage from HSGCHG Investments, LLC, a Delaware Limited Liability Company, for the benefit of Avatar Capital Finance LLC, a Washington Limited Liability Company, dated as of January 22, 2015, and recorded on January 23. 2015, Instrument No. 201500039284 in Vol 295, Page 7 in the Real Property Records of Marion County, South Carolina securing the Property described more fully in **Exhibit "A"** hereto.

This Assignment of Mortgage is made without any recourse, representation, or warranty of any kind whatsoever, express or implied, or operation of law or otherwise.

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

[SIGNATURES ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Joey Rogers
Print Name

Witness

Katelyn Spiro
Print Name

ASSIGNOR:

(SEAL)
Parker Ferguson, as to an undivided 5.00% interest.

STATE OF WA
COUNTY OF King

PERSONALLY appeared before me Parker Ferguson who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 19th day of February, 2016

Notary Public for State of WA

My Commission Expires: 8/20/2017

[NOTARY SEAL]
JADE RICE
Commission Expires
NOTARY PUBLIC
08-20-2017
STATE OF WASHINGTON

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

Instrument 201600042647 OR Vol 334 Page 197

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Jake Nathan
Print Name

Witness

ANDREW OSBORNE
Print Name

ASSIGNOR:

(SEAL)
Steven Ganeless, as to an undivided 3.750% interest.

STATE OF New York
COUNTY OF New York

PERSONALLY appeared before me Steven Ganeless who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 22 day of February, 2016

Notary Public for State of New York

CLAUDIA L. GOMEZ
Notary Public, State of New York
No. 01GO6265324
Qualified in New York County
Commission Expires July 9, 2016

My Commission Expires:

[NOTARY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

[1701892/1]

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Print Name

Witness

Print Name

ASSIGNOR:

Downtime Enterprises LLC, as to an undivided 10.00% interest

By: _____ (SEAL)
Name: Patrick D Guthrie
Its: Managing Member

STATE OF _____
COUNTY OF _____

PERSONALLY appeared before me _____ who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This _____ day of _____, 2016

See attached

Notary Public for State of _____

My Commission Expires: May 2, 2018

[NOTARY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

[1701892/1]

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

State of California
County of Riverside

Subscribed and sworn to (or affirmed) before me on this 16th day of February, 2016, by Patrick Guthrie

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

C. M. DIAZ REYNOSO
Commission # 2066668
Notary Public - California
Riverside County
My Comm. Expires May 2, 2019

(Seal)

Signature C M Diaz Reynoso

Instrument 201600042647 OR Vol 334 Page 200

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Carla Stadler
Witness

Carla Stadler
Print Name

Witness

Terry Zerenbergen
Print Name

ASSIGNOR:

Patrick Guthrie (SEAL)
Patrick Guthrie, trustee of the Guthrie Family Trust, as to an undivided 5.00% interest.

STATE OF California
COUNTY OF Riverside

PERSONALLY appeared before me _____ who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 16th day of February, 2016

See attached

Notary Public for State of _____

My Commission Expires: May 2, 2018

[NOTARY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

[1701892/1]

Instrument 2016000042647 OR Vol 334 Page 201

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

State of California
County of Riverside

Subscribed and sworn to (or affirmed) before me on this 16th day of February, 2016, by Patrick Guthrie

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

C. M. DIAZ REYNOSO
Commission # 2066868
Notary Public - California
Riverside County
My Comm. Expires May 2, 2018

(Seal)

Signature C M Diaz Reynoso

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Print Name

Witness

Print Name

ASSIGNOR:

(SEAL)

Marc S. Homme APLC Defined Benefit Pension Trust, as to an undivided 2.50% interest.

STATE OF _____
COUNTY OF _____

PERSONALLY appeared before me _____ who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This _____ day of _____, 2016

Notary Public for State of _____

My Commission Expires: _____

[NOTARY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

[1701892/1]

Instrument 2016000042647 OR Vol 334 Page 203

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On February 12, 2016, before me, Teresa L. Jones, Notary Public for said State, personally appeared Marc S. Homme, who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

TERESA L. JONES
Commission # 2090878
Notary Public - California
Riverside County
My Comm. Expires Feb 12, 2019

Teresa L Jones

Teresa L. Jones, Notary Public
(My Commission Expires February 12, 2019)

Instrument 201600042647 OR Vol 334 Page 204

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Christel Lopez
Print Name

Witness

Cecilia M. Diaz
Print Name

ASSIGNOR:

(SEAL)
O. Michael Homme, Trustee of the Homme Family Trust, as to an undivided 1.250% interest.

STATE OF California
COUNTY OF Riverside

PERSONALLY appeared before me O. Michael Homme who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 12 day of February, 2016

See attached

Notary Public for State of CA.

My Commission Expires: May 2, 2018

[NOTARY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

[1701892/1]

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

State of California
County of Riverside

Subscribed and sworn to (or affirmed) before me on this 12th day of February, 2016, by O. Michael Homme

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

C. M. DIAZ REYNOSO
Commission # 2066668
Notary Public - California
Riverside County
My Comm. Expires May 2, 2018

(Seal) Signature C M Diaz Reynoso

Instrument 201600042647 OR Vol 334 Page 206

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Christel Lopez
Print Name

Witness

Cecilia M. Diaz
Print Name

ASSIGNOR:

(SEAL)
JBH Trust dated June 24, 2009, as to an undivided 1.250% interest.

STATE OF California
COUNTY OF Riverside

PERSONALLY appeared before me O. Michael Hamm who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 12 day of February, 2016

See attached

Notary Public for State of California

My Commission Expires: May 2, 2018

[NOTARY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

[1701892/1]

Book 334 Pg 207

Instrument 201600042647 OR Vol 334 Page 207

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

State of California
County of Riverside

Subscribed and sworn to (or affirmed) before me on this 12th day of February, 2016, by O. Michael Homme

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

C. M. DIAZ REYNOSO
Commission # 2066668
Notary Public - California
Riverside County
My Comm. Expires May 2, 2018

(Seal)

Signature C M Diaz Reynoso

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Melissa Pawlyk
Witness

Melissa Pawlyk
Print Name

Mary R. Major
Witness

Mary R. Major
Print Name

ASSIGNOR:

William R. Horton (SEAL)
William R. Horton, as to an undivided 7.50% interest.

STATE OF South Carolina
COUNTY OF Charleston

PERSONALLY appeared before me William R. Horton who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 12th day of February, 2016

Melissa Pawlyk
Notary Public for State of South Carolina

My Commission Expires: May 14, 2023

MELISSA PAWLYK NOTARY PUBLIC SOUTH CAROLINA MY COMMISSION EXPIRES MAY 14, 2023

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

[1701892/1]

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Kristy Blanchard
Print Name

Witness

Nicole Bihm
Print Name

ASSIGNOR:

MMJ Group Inc., as to an undivided 17.50% interest

By: _____ (SEAL)

Name: Peter Paul Barrios

Its: Authorized representative

STATE OF LOUISIANA
~~COUNTY~~ PARISH OF EAST BATON ROUGE

PERSONALLY appeared before me PETER P. BARRIOS who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 18TH day of FEBRUARY, 2016

ROBERT STAUGHN JR 11745
Notary Public for State of LOUISIANA

My Commission Expires: Life

[NOTARY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

[1701892/1]

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

DAVID CLENDENNEN
Print Name

Witness

Whitney Dawson
Print Name

ASSIGNOR:

Self Directed IRA Services Inc., FBO Mark Picking, IRA, as to an undivided 3.750% interest

By: _____ (SEAL)
Name: Camron Berger
Its: Operations Manager

Read and Approved by:

Mark Picking

STATE OF Texas
COUNTY OF Milennan

PERSONALLY appeared before me Camron Berger who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 24th day of February, 2016

Notary Public for State of Texas

My Commission Expires: 6/5/19

[NOTARY SEAL]

MANDY BRANNEN
Notary Public, State of Texas
My Commission Expires
June 05, 2019

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

[1701892/1]

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Print Name

Witness

Print Name

ASSIGNOR:
Paul R. Verkuil and Judith Rodin, as to an undivided 3.750% interest.

Paul R. Verkuil (SEAL)

Judith Rodin (SEAL)

~~STATE OF~~ _____
COUNTY OF _____

PIS see attached loose certificate (cm) 2/17/16

PERSONALLY appeared before me _____ who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This ____ day of _____, 2016

Notary Public for State of _____

My Commission Expires: _____

[NOTARY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

Instrument 201600042647 OR Vol 334 Page 212

JURAT

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

State of California

County of San Francisco

Subscribed and ~~sworn~~ to (or ~~affirmed~~) before me on this 17th day of February, 20 16 by Paul R. Verkuil and Judith Rodin

proved to me on the basis of satisfactory evidence to be the ~~person(s)~~ who appeared before me.

CHERYL MERIL
Commission No. 1990475
NOTARY PUBLIC-CALIFORNIA
SAN FRANCISCO COUNTY
My Comm. Expires OCTOBER 3, 2018

Signature (Seal)

OPTIONAL INFORMATION

DESCRIPTION OF THE ATTACHED DOCUMENT

Assignment of Mortgage -

(Title or description of attached document)

(Title or description of attached document continued)

Number of Pages 2 Document Date

Additional Information

INSTRUCTIONS

The wording of all Jurats completed in California after January 1, 2015 must be in the form as set forth within this Jurat. There are no exceptions. If a Jurat to be completed does not follow this form, the notary must correct the verbiage by using a jurat stamp containing the correct wording or attaching a separate jurat form such as this one with does contain the proper wording. In addition, the notary must require an oath or affirmation from the document signer regarding the truthfulness of the contents of the document. The document must be signed AFTER the oath or affirmation. If the document was previously signed, it must be re-signed in front of the notary public during the jurat process.

- State and county information must be the state and county where the document signer(s) personally appeared before the notary public.
- Date of notarization must be the date the signer(s) personally appeared which must also be the same date the jurat process is completed.
- Print the name(s) of the document signer(s) who personally appear at the time of notarization.
- Signature of the notary public must match the signature on file with the office of the county clerk.
- The notary seal impression must be clear and photographically reproducible. Impression must not cover text or lines. If seal impression smudges, re-seal if a sufficient area permits, otherwise complete a different jurat form.
  - Additional information is not required but could help to ensure this jurat is not misused or attached to a different document.
  - Indicate title or type of attached document, number of pages and date.
- Securely attach this document to the signed document with a staple.

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Carla Stadler
Print Name

Witness

Terry Zevenbergen
Print Name

ASSIGNOR:
Jay Hazelrigg and Elaine Hazelrigg, as to an undivided 1.76% interest.

(SEAL)
Jay Hazelrigg

(SEAL)
Elaine Hazelrigg

STATE OF Washington
COUNTY OF King

PERSONALLY appeared before me Jay Hazelrigg and Elaine Hazelrigg who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 18th day of February, 2016

MICHELLE L. MITTIE
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
AUGUST 9, 2018

Notary Public for State of Washington

My Commission Expires: 8-9-2018

[NOTARY SEAL]

[1701892/1]

Instrument 201600042647 OR Vol 334 Page 214

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Print Name

Witness

Jerry Zevenbergen
Print Name

ASSIGNOR:

(SEAL)
Richard Kester, trustee of the Kester Family Living Trust, as to an undivided 5.00% interest.

STATE OF Washington
COUNTY OF King

PERSONALLY appeared before me Richard Kester who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 17th day of February, 2016

Notary Public for State of Washington

My Commission Expires: 8-9-2018

MICHELLE L. MITTIE
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
AUGUST 9, 2018

[NOTARY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

[1701892/1]

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Richard C. Lundell
Print Name

ASSIGNOR:

Susan Lundell (SEAL)
Susan Lundell, as to an undivided 2.40% interest

Witness

ANNA MARIE TIMCHAK
Print Name

STATE OF ARIZONA
COUNTY OF MARICOPA

PERSONALLY appeared before me SUSAN LUNDELL who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 13 day of FEB., 2016

Notary Public for State of ARIZONA

My Commission Expires: 01/24/2018

[NOTARY SEAL]

SEAN DEGENHART
Notary Public - Arizona
Maricopa County
Commission# 330144
Expires February 24, 2018

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

[1701892/1]

Instrument 201600042647 OR Vol 334 Page 216

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Print Name

Witness

Print Name

ASSIGNOR:

James Zevenbergen (SEAL)
James and Joyce Zevenbergen Living Trust dated August 18, 2014, as to an undivided 10.00% interest.

STATE OF Washington
COUNTY OF King

PERSONALLY appeared before me James Zevenbergen who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 16th day of February, 2016

Notary Public for State of Washington

My Commission Expires: 8-9-2018

MICHELLE L. MITTIE
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
AUGUST 9, 2018

[NOTARY SEAL]

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

[1701892/1]

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Print Name

Witness

Print Name

ASSIGNOR:

(SEAL)
Ronald and Sandra Loper Living Trust dated April 12, 2013, as to an undivided 10.00% interest.

STATE OF Washington
COUNTY OF King

PERSONALLY appeared before me Ronald Loper Sandra Loper who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 18th day of February, 2016

Notary Public for State of Washington

My Commission Expires: 8-9-2018

[NOTARY SEAL]

MICHELLE L. MITTIE
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
AUGUST 9, 2018

[SIGNATURES CONTINUE ON FOLLOWING PAGES]

[1701892/1]

Instrument 201600042647 OR Vol 334 Page 218

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first written.

Signed and sealed in our presence as witnesses:

Witness

Carla Stadler
Print Name

Witness

Michelle L. Mittie
Print Name

ASSIGNOR:

(SEAL)
Jerry Zevenbergen, as to an undivided 7.5% interest.

STATE OF Washington
COUNTY OF King

PERSONALLY appeared before me Jerry Zevenbergen who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 11th day of February, 2016

Notary Public for State of Washington

My Commission Expires: 8-9-2018

[NOTARY SEAL]

MICHELLE L. MITTIE
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
AUGUST 9, 2018

[1701892/1]

Instrument 2016000042647 OR Vol 334 Page 219

SCHEDULE "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. By Beasly Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and other; and on the Northeast by lands of William E. Thompson.

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, at Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.

TMS No. 085-00-00-001-000

DERIVATION: This being the identical property conveyed unto HSGCHG Investments, LLC by deed of Wells Fargo Bank, N.A. dated December 30, 2014, recorded January 23, 2015, in Book 295, at Page 1, Marion County, SC Register of Deeds.

[7013932/1]

Requested By: rbb 12/06/2019

Instrument Vol Page
201900051522 OR 444 266

PREPARED BY:
Avatar Capital Finance LLC
1200 Westlake Ave N. # 1006
Seattle, WA 98109

AFTER RECORDING RETURN TO:
Avatar Capital Finance LLC
1200 Westlake Ave N. # 1006
Seattle, WA 98109

201900051522
Filed for Record in
MARION COUNTY, SC
CHRISTY M. GRAY, CLERK OF COURTS
02-27-2019 At 12:41 pm.
ASSIGN MTG 9.00
Vol 444 Page 266 - 269

201900051522
AVATAR FINANCIAL GROUP

FOR RECORDER'S USE ONLY

ASSIGNMENT OF MORTGAGE

FOR VALUE RECEIVED, Marc S. Homme APLC Defined Benefit Pension Plan ("Assignor") with an address of C/O Avatar Capital Finance, 1200 Westlake Ave N, # 1006, Seattle, WA 98109 hereby assigns and transfer to Equity Trust Company Custodian FBO Marc Homme, IRA, as to an undivided 2.8571% interest, with an address of C/O Avatar Capital Finance, 1200 Westlake Ave N, # 1006, Seattle, WA 98109 ("Assignee"), its successors and assigns, the Assignor's interest in and to that certain Mortgage from HSGCHG Investments, LLC, a Delaware Limited Liability Company , for the benefit of Avatar Capital Finance LLC, a Washington Limited Liability Company, dated as of January 22, 2015, and recorded on January 23, 2015, Instrument No. 201500039284 in Vol 295, Page 7, modification dated March 11, 2016 and recorded March 11, 2016, Instrument No. 201600042648 in Vol 334 page 220-227 in the Real Property Records of Marion County, South Carolina securing the Property described more fully in Exhibit "A" hereto.

This Assignment of Mortgage is made without any recourse, representation, or warranty of any kind whatsoever, express or implied, or operation of law or otherwise.

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

[1324115/1] [SC FORM]

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, Assignor has signed and sealed this Assignment as of the day and year first above written.

Signed and sealed in our presence as witnesses:

Witness

DAVID SIEGFRIED
Print Name

Witness

Print Name

ASSIGNOR:

Marc S. Homme APLC Defined Benefit Pension Plan

By: _____(SEAL)
Name: Marc S. Homme
Its: Trustee

Date: 9/27/17

STATE OF _____
COUNTY OF _____

PERSONALLY appeared before me Marc S. Homme, as Trustee of the Marc S. Homme APLC Defined Benefit Pension Plan, who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This _____ day of _____, 2017.

_____

Notary Public for State of Washington

My Commission Expires:

[NOTARY SEAL]

[1324115/1] [SC FORM]

Requested By: rbb 12/06/2019

ACKNOWLEDGMENT

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

STATE OF CALIFORNIA)
) ss.
COUNTY OF RIVERSIDE)

On September 27, 2017, before me, Teresa L. Jones, Notary Public for said State, personally appeared Marc S. Homme who proved to me on the basis of satisfactory evidence to be the person whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his authorized capacity, and that by his signature on the instrument the person, or the entity upon behalf of which the person acted, executed the instrument.

I certify under penalty of perjury under the laws of the State of California that the foregoing paragraph is true and correct.

WITNESS my hand and official seal.

TERESA L. JONES
Commission # 2099876
Notary Public - California
Riverside County
My Comm. Expires Feb 12, 2019

Teresa L. Jones

Teresa L. Jones, Notary Public
(My Commission Expires February 12, 2019)

Attached to: Assignment of Mortgage

Requested By: rbb 12/06/2019

Instrument 201500039625 OR Vol 399 Page 7

Instrument 201900051522 OR Vol 444 Page 269

EXHIBIT "A"

LEGAL DESCRIPTION

BORROWER: **HSGCHG INVESTMENTS, LLC**

LENDER: **AVATAR CAPITAL FINANCE, LLC**

All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. By Beasly Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and other; and on the Northeast by lands of William E. Thompson.

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, at Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.

TMS No. 085-00-00-001-000

[1364184/1]

Requested By: rbb 12/06/2019

Instrument 201900054040 OR Vol 476 Page 292

201900054040
Filed for Record in
MARION COUNTY, SC
CHRISTY M. GRAY, CLERK OF COURTS
11-13-2019 At 03:37 pm.
ASSIGN MTG 10.00
Vol 476 Page 292 - 325

201900054040
FINKEL LAW FIRM LLC

AFTER RECORDING RETURN TO:
BRAUCHER & AMANN, PLLC
65 MARKET STREET
MANCHESTER, NH 03101

RECORDER'S USE ONLY

ASSIGNMENT OF MORTGAGE

FOR VALUE RECEIVED, Dr. Christopher L. Barley , as to an undivided 1.4286% interest, Parker Ferguson, as to an undivided 4.2857% interest, RealTrust IRA Alternatives, LLC, a WA Limited Liability Co., Fbo Michael Fotheringill IRA #22199-TR-11, as to an undivided 0.7143% interest, Steven Ganeless, as to an undivided 2.1429% interest, STRATA Trust Company Custodian FBO Philip H. Geier Jr IRA #201525269, as to an undivided 2.1429% interest, Patrick Guthrie Family Partnership, as to an undivided 11.4286% interest, Downtime Enterprises LLC, as to an undivided 5.7143% interest, The Guthrie Family Trust dated July 12,1993, as to an undivided 5.7143% interest, Jay and Elaine Hazelrigg, as to an undivided 1.0000% interest, Equity Trust Company, Custodian, FBO James Holobaugh, IRA, as to an undivided 1.4286% interest, Equity Trust Company, Custodian, FBO Marc Homme, IRA, as to an undivided 2.8571% interest, William R. Horton, as to an undivided 8.5714% interest, MMJ Group, Inc, as to an undivided 10.0000% interest, Kester Family Living Trust, as to an undivided 4.2857% interest, The Ronald and Sandra Loper Living Trust dated April 12, 2013, as to an undivided 8.5714% interest, Equity Trust Company, Custodian, FBO Richard Lundell, IRA, as to an undivided 1.4286% interest, Susan M. Lundell, as to an undivided 1.3714% interest, PS Funding Inc, a Delaware Corporation, as to an undivided 11.4286% interest, STRATA Trust Company Custodian FBO Mark Picking, IRA #201102273, as to an undivided 2.8571% interest, STRATA Trust Company Custodian FBO Theodore B. Smith, III IRA #201525268, as to an undivided 0.0000% interest, Paul R. Verkuil & Judith Rodin, as to an undivided 3.5714% interest, Patrick A Waldron & Peggy C. Waldron, as to an undivided 0.9429% interest, Jerry Zevenbergen, as to an undivided 1.6857% interest, James and Joyce Zevenbergen Living Trust dated August 18, 2014, as to an undivided 5.7143% interest, ("Assignors"), with an address of C/O Avatar Capital Finance, 1200 Westlake Ave. N . #1006, Seattle, WA 98109, hereby assigns and transfers to AVATAR PARTNERS CT, LLC with an address of 2389 Main Street, Ste.100 Glastonbury CT 06033 ("Assignee"), its successors and assigns, the Assignors' interest in and to that certain mortgage from **HSGCHG Investments, LLC.**, a Delaware Limited Liability Company, for the benefit of Avatar Capital Finance, LLC, a Washington Limited Liability Company dated as of January 22, 2015 and recorded on January 23, 2015, Instrument No. 201500039284 in Vol 295, Page 7, modification dated March 11, 2016, recorded March 11, 2016, Instrument No. 201600042648 in Vol 334, Page 220-227 in the Real Property Records of Marion County, South Carolina securing the property described more folly in Exhibit "A" hereto.

This Assignment of Mortgage is made without any recourse, representation, or warranty of any kind whatsoever, express or implied, or operation of law or otherwise.

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

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Rosibel Ringling
Print Name

ASSIGNOR:

Dr. Christopher L. Barley

Name: Dr. Christopher L. Barley

Witness

Sara Alcbashev
Print Name

STATE/COMMONWEALTH OF: New York
COUNTY OF Rockland

PERSONALLY appeared before me Dr. Christopher L. Barley who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 27th day of February 2019

Notary Public
Print Name: Katherine Iannaci
My Commission Expires: 12/8/20

[NOTARY SEAL]

KATHERINE IANNACI
NOTARY PUBLIC-STATE OF NEW YORK
No. 01IA6197919
Qualified in Rockland County
My Commission Expires 12-08-2020

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Ashleigh Sundet
Print Name

ASSIGNOR:

Parker Ferguson

Name: Parker Ferguson

Witness

Katelynn Hennessy
Print Name

STATE/COMMONWEALTH OF: WA
COUNTY OF King

PERSONALLY appeared before me Parker Ferguson who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 14th day of February 2019

Notary Public
Print Name: Jade Rice
My Commission Expires: 6/23/2021

[NOTARY SEAL]

JADE RICE
NOTARY PUBLIC
COMM. EXPIRES
JUNE 23, 2021
STATE OF WASHINGTON

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Sarah Molina
Witness

Sarah Molina
Print Name

Amy C. Holmes
Witness

Amy C Holmes
Print Name

ASSIGNOR:

RealTrust IRA Alternatives, LLC, a WA Limited Liability Co., Fbo Michael Fotheringill IRA #22199-TR-11

By: _____
Name: Dana Gross
Its: Authorized Signatory

STATE/COMMONWEALTH OF: Washington
COUNTY OF Chelan

PERSONALLY appeared before me Dana Gross who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 25th day of Feb 2019

Wendy Wilfong
Notary Public
Print Name: Wendy Wilfong
My Commission Expires: March 19, 2022

[NOTARY SEAL]

WENDY WILFONG
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
MARCH 19, 2022

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Alison Potter
Witness

Alison Potter
Print Name

ASSIGNOR:

Steven Ganeless

Name: Steven Ganeless

Witness

Print Name

STATE/COMMONWEALTH OF: Washington
COUNTY OF King

PERSONALLY appeared before me Steven Ganeless who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 22 day of February 2019

Notary Public
Print Name: TANYA Cohen
My Commission Expires: 7.9.22

[NOTARY SEAL]

TANYA COHEN NOTARY PUBLIC 201142 COMMISSION EXPIRES 7-09-22 STATE OF WASHINGTON

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Christine Kling
Witness

Christine Kling
Print Name

ASSIGNOR:

STRATA Trust Company Custodian FBO Philip H. Geier Jr IRA #201525269

By: Melissa Coffman
Name: Melissa Coffman

Stephanie Keenan
Witness

Its: Corporate Alternate Signer

Stephanie Keenan
Print Name

STATE/COMMONWEALTH OF: Texas
COUNTY OF McLennan

PERSONALLY appeared before me Melissa Coffman who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 25 day of February 2019

Crissy D. Forrester
Notary Public
Print Name: Crissy D. Forrester
My Commission Expires: 07-31-2022

[NOTARY SEAL]

CRISSY D. FORRESTER
Notary Public, State of Texas
Comm. Expires 07-31-2022
Notary ID 124568263

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Andrew Romatko
Print Name

ASSIGNOR:

Patrick Guthrie Family Partnership

By: Patrick D Guthrie
Name: Patrick D. Guthrie, Managing Partner

Witness

Shirley Partee
Print Name

STATE/COMMONWEALTH OF: California
COUNTY OF Riverside

PERSONALLY appeared before me Patrick D. Guthrie who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 15th day of February 2019

* See attached *
Notary Public
Print Name: Cm Diaz Reynoso
My Commission Expires: cmay 19, 2022

[NOTARY SEAL]

Requested By: rbb 12/06/2019

Instrument 201900054040 OR Vol 476 Page 299

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

State of California
County of California

Subscribed and sworn to (or affirmed) before me on this 15 day of February, 2019, by Patrick D. Guthrie,

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

C. M. DIAZ REYNOSO
Notary Public - California
Riverside County
Commission # 2243173
My Comm. Expires May 19, 2022

(Seal) Signature C M Diaz Reynoso

re: assignment of mortgage.

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Andrew Romatko
Print Name

ASSIGNOR:

Downtime Enterprises LLC

By: Patrick D. Guthrie
Name: Patrick D. Guthrie, Managing Member

Shirley Partee
Witness

Shirley Partee
Print Name

STATE/COMMONWEALTH OF: California
COUNTY OF Riverside

PERSONALLY appeared before me Patrick D. Guthrie who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 15 day of February 2019

* See attached *
Notary Public
Print Name: Cm Diaz Reynoso
My Commission Expires: May 19, 2022

[NOTARY SEAL]

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

State of California
County of California

Subscribed and sworn to (or affirmed) before me on this 15 day of February, 2019, by Patrick D. Guthrie,

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

C. M. DIAZ REYNOSO
Notary Public - California
Riverside County
Commission # 2243173
My Comm. Expires May 19, 2022

(Seal)

Signature C M Diaz Reynoso

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Andrew Romatko
Print Name

ASSIGNOR:

The Guthrie Family Trust dated July 12,1993

By: Patrick D Guthrie
Name: Patrick D. Guthrie, Trustee

Witness

Shirley Partee
Print Name

STATE/COMMONWEALTH OF: California
COUNTY OF Riverside

PERSONALLY appeared before me Patrick D. Guthrie who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 15th day of February 2019

* see attached *
CM Diaz Reynoso
Notary Public
Print Name:
My Commission Expires: May 19, 2022

[NOTARY SEAL]

Requested By: rbb 12/06/2019

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

State of California
County of California

Subscribed and sworn to (or affirmed) before me on this 15 day of February, 2019, by Patrick D. Guthrie,

proved to me on the basis of satisfactory evidence to be the person(s) who appeared before me.

C. M. DIAZ REYNOSO
Notary Public - California
Riverside County
Commission # 2243173
My Comm. Expires May 19, 2022

(Seal)

Signature C M Diaz Reynoso

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Print Name

Witness

Print Name

ASSIGNOR: Jay Hazelrigg

Name: Jay Hazelrigg

STATE/COMMONWEALTH OF: California
COUNTY OF San Diego

PERSONALLY appeared before me Jay Hazelrigg who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 27th day of February 2019

Notary Public
Print Name: Claudia Castaneda
My Commission Expires: 1/13/2021

[NOTARY SEAL]

CLAUDIA CASTANEDA
Notary Public - California
San Diego County
Commission # 2175826
My Comm. Expires Jan 13, 2021

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

ASSIGNOR:

Elaine Hazelrigg

Print Name

Name: Elaine Hazelrigg

Witness

Print Name

STATE/COMMONWEALTH OF: California
COUNTY OF San Diego

PERSONALLY appeared before me Elaine Hazelrigg who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 27th day of February 2019

Notary Public
Print Name: Claudia Castaneda
My Commission Expires: 1/31/2021

[NOTARY SEAL]

CLAUDIA CASTANEDA
Notary Public - California
San Diego County
Commission # 2175826
My Comm. Expires Jan 13, 2021

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Print Name

ASSIGNOR:

Equity Trust Company, Custodian FBO
James Holobaugh, IRA

By: _____
Name: RACHEL CAIN
Its: Corporate Alternate Signer

Witness

Print Name

STATE/COMMONWEALTH OF: Ohio
COUNTY OF Cuyahoga

PERSONALLY appeared before me RACHEL CAIN who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 21 day of March 2019

Notary Public
Print Name: _____
My Commission Expires: _____

[NOTARY SEAL]

NOTARIAL SEAL
STATE OF OHIO

JENNIFER GIBBONS
NOTARY PUBLIC
FOR THE
STATE OF OHIO
My Commission Expires
May 4, 2022

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Print Name

Witness

Print Name

ASSIGNOR:

Equity Trust Company, Custodian, FBO Marc Homme, IRA

By: _____

Name: RACHEL CAIN

Corporate Alternate Signer

Its: _____

STATE/COMMONWEALTH OF: Ohio

COUNTY OF Cuyahoga

PERSONALLY appeared before me RACHEL CAIN who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 21 day of March 2019

Notary Public

Print Name:

My Commission Expires:

[NOTARY SEAL]

NOTARIAL SEAL STATE OF OHIO

JENNIFER GIBBONS
NOTARY PUBLIC
FOR THE
STATE OF OHIO
My Commission Expires
May 4, 2022

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Jessica Taylor
Witness

Jessica Taylor
Print Name

ASSIGNOR:

William R. Horton

William R. Horton
Name: William R. Horton

Witness

Michael P. Velasco
Print Name

STATE/COMMONWEALTH OF: South Carolina
COUNTY OF Richland

PERSONALLY appeared before me William R. Horton who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 20 day of February 2019

Rachel J Shuler Long
Notary Public
Print Name: Rachel J Shuler Long
My Commission Expires: 2.4.2026

[NOTARY SEAL]

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Allison Potter
Witness

Allison Potter
Print Name

ASSIGNOR:

MMJ Group, Inc

Name: Gordon F. Jumonville, President

Witness

Print Name

STATE/COMMONWEALTH OF: _____
COUNTY OF _____

PERSONALLY appeared before me Gordon F. Jumonville who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This _____ day of _____ 2019

See attached certificate
Notary Public
Print Name: _____
My Commission Expires: _____

[NOTARY SEAL]

Requested By: rbb 12/06/2019

Instrument 201900054040 OR Vol 476 Page 310

CALIFORNIA ALL-PURPOSE ACKNOWLEDGMENT CIVIL CODE § 1189

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

State of California
County of Riverside }

On February 15, 2019 before me, Tanya Vigil, Notary Public
Date *Here Insert Name and Title of the Officer*

personally appeared Gordon F. Timonville
Name(s) of Signer(s)

who proved to me on the basis of satisfactory evidence to be the person~~(s)~~ whose name~~(s)~~ is/~~are~~ subscribed to the within instrument and acknowledged to me that he/~~she/they~~ executed the same in his/~~her/their~~ authorized capacity~~(ies)~~, and that by his/~~her/their~~ signature~~(s)~~ on the instrument the person(s), ~~or~~ the entity upon behalf of which the person~~(s)~~ acted, executed the instrument.

TANYA VIGIL
Notary Public – California
Riverside County
Commission # 2183216
My Comm. Expires Mar 11, 2021

Place Notary Seal and/or Stamp Above

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

WITNESS my hand and official seal.

Signature _____
Signature of Notary Public

OPTIONAL

Completing this information can deter alteration of the document or fraudulent reattachment of this form to an unintended document.

Description of Attached Document
Title or Type of Document: Assignment of Mortgage
Document Date: 2/15/19 Number of Pages: 2
Signer(s) Other Than Named Above: _____

Capacity(ies) Claimed by Signer(s)

Signer's Name: _____	Signer's Name: _____
☐ Corporate Officer – Title(s): _____	☐ Corporate Officer – Title(s): _____
☐ Partner – ☐ Limited ☐ General	☐ Partner – ☐ Limited ☐ General
☐ Individual ☐ Attorney In Fact	☐ Individual ☐ Attorney In Fact
☐ Trustee ☐ Guardian of Conservator	☐ Trustee ☐ Guardian of Conservator
☐ Other: _____	☐ Other: _____
Signer is Representing: _____	Signer is Representing: _____

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M1304-09 (09/17)

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

MICHAEL A. CAPLICE
Print Name

ASSIGNOR:

~~Kester~~ Family Living Trust

By:
Name: Richard Kester, Trustee

Witness

Jennifer Boyle
Print Name

STATE/COMMONWEALTH OF: Arizona
COUNTY OF Maricopa

PERSONALLY appeared before me Richard Kester who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 22 day of February 2019

Notary Public
Print Name: Christina S Triguero
My Commission Expires: 7/5/2021

[NOTARY SEAL]

Christina S Triguero Notary Public Com. Exp. 07-05-2021 Maricopa County, Arizona

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Print Name

ASSIGNOR:

The Ronald and Sandra Loper Living Trust dated April 12, 2013

By:

Name: Ronald E. Loper

Witness

Dorene Evans
Print Name

STATE/COMMONWEALTH OF: Arizona
COUNTY OF Maricopa

PERSONALLY appeared before me Ronald E. Loper who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 19th day of Feb. 2019

Notary Public
Print Name: Debra Jauregui
My Commission Expires: 4/2/2020

[NOTARY SEAL]

DEBRA JAUREGUI
Notary Public - Arizona
Maricopa County
Expires 04/02/2020

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

RONALD K EVANS
Print Name

ASSIGNOR:

The Ronald and Sandra Loper Living Trust dated April 12, 2013

By: Sandra M Loper
Name: Sandra M. Loper

Dorene Evans
Witness

Dorene Evans
Print Name

STATE/COMMONWEALTH OF: Arizona
COUNTY OF Maricopa

PERSONALLY appeared before me Sandra M. Loper who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 19th day of Feb. 2019

Debra Jauregui
Notary Public
Print Name: Debra Jauregui
My Commission Expires: 4/2/2020

[NOTARY SEAL]

DEBRA JAUREGUI
Notary Public - Arizona
Maricopa County
Expires 04/02/2020

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Print Name

Witness

Print Name

ASSIGNOR:

Equity Trust Company, Custodian, FBO Richard Lundell, IRA

By: _____

Name: RACHEL CAIN

Its: Corporate Alternate Signer

STATE/COMMONWEALTH OF: Ohio

COUNTY OF Cuyahoga

PERSONALLY appeared before me RACHEL CAIN who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 21 day of March 2019

Notary Public

Print Name: _____

My Commission Expires: _____

[NOTARY SEAL]

NOTARIAL SEAL STATE OF OHIO

JENNIFER GIBBONS
NOTARY PUBLIC
FOR THE
STATE OF OHIO
My Commission Expires
May 4, 2022

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Allison Potter
Witness

Allison Potter
Print Name

ASSIGNOR:

Susan M. Lundell

Susan M. Lundell
Name: Susan M. Lundell

Witness

Print Name

STATE/COMMONWEALTH OF: Washington
COUNTY OF King

PERSONALLY appeared before me Susan M. Lundell who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 23 day of February 2019

Notary Public
Print Name: TANYA Cohen
My Commission Expires: 7.9.22

[NOTARY SEAL]

TANYA COHEN NOTARY PUBLIC 201142 COMMISSION EXPIRES 7-09-22 STATE OF WASHINGTON

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Print Name

ASSIGNOR:

PS Funding, Inc, a Delaware Corporation

By:
Name: John K Chi
Its: Secretary

Witness

Print Name

STATE/COMMONWEALTH OF: _____
COUNTY OF _____

PERSONALLY appeared before me _____ who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This _____ day of _____ 2019

_____
Notary Public
Print Name: _____
My Commission Expires:

[NOTARY SEAL]

See attached

Requested By: rbb 12/06/2019

ACKNOWLEDGMENT

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

State of California
County of Los Angeles)

On 02/21/2019 before me, Joyce Yuan
(insert name and title of the officer)

personally appeared John Y. Chi
who proved to me on the basis of satisfactory evidence to be the person(s) whose name(s) is/are subscribed to the within instrument and acknowledged to me that he/she/they executed the same in his/her/their authorized capacity(ies), and that by his/her/their signature(s) on the instrument the person(s), or the entity upon behalf of which the person(s) acted, executed the instrument.

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

WITNESS my hand and official seal.

JOYCE YUAN
COMM. #2146156
Notary Public - California
San Diego County
My Comm. Expires Mar. 13, 2020

Signature _____ (Seal)

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Christine Kling
Witness

Christine Kling
Print Name

ASSIGNOR:

STRATA Trust Company Custodian FBO Mark Picking
IRA #201102273

BY: M Hoffman
Name: Melissa Coffman

Stephanie Keenan
Witness

Its: Corporate Alternate Signer

Stephanie Keenan
Print Name

STATE/COMMONWEALTH OF: Texas
COUNTY OF McLennan

PERSONALLY appeared before me Melissa Coffman who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 25 day of February 2019

Crissy D Forrester
Notary Public
Print Name: Crissy D. Forrester
My Commission Expires: 07-31-2022

[NOTARY SEAL]

CRISSY D. FORRESTER
Notary Public, State of Texas
Comm. Expires 07-31-2022
Notary ID 124568263

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Christine Kling
Witness

Christine Kling
Print Name

ASSIGNOR:

STRATA Trust Company Custodian FBO Theodore B. Smith, III IRA #201525268

By: M Coffman
Name: Melissa Coffman

Stephanie Keenan
Witness

Its: Corporate Alternate Signer

Stephanie Keenan
Print Name

STATE/COMMONWEALTH OF: Texas
COUNTY OF McLennan

PERSONALLY appeared before me Melissa Coffman who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 25 day of February 2019

Crissy D Forrester
Notary Public
Print Name: Crissy D. Forrester
My Commission Expires: 07-31-2022

[NOTARY SEAL]

CRISSY D. FORRESTER
Notary Public, State of Texas
Comm. Expires 07-31-2022
Notary ID 124568253

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Michael Ernst
Print Name

ASSIGNOR:

Judith Rodin

Judith Rodin
Name: Judith Rodin

Witness

John DeMaio
Print Name

STATE/COMMONWEALTH OF: New York
COUNTY OF New York

PERSONALLY appeared before me Judith Rodin who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 21 day of February 2019

Notary Public
Print Name: Xiao Wen Chen
My Commission Expires: 01-23-2021

[NOTARY SEAL]

CHEN XIAO WEN
Comm. Exp. 1-23-2021
NOTARY PUBLIC
Comm. No. 01CH6353350
NEW YORK COUNTY, STATE OF NEW YORK

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

STEVEN NEVINS
Print Name

ASSIGNOR:

Paul R. Verkuil

Name: Paul R. Verkuil

Witness

Judith Rodin
Print Name

STATE/COMMONWEALTH OF: New York
COUNTY OF New York

PERSONALLY appeared before me Paul R. Verkuil who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 25th day of February 2019

Notary Public
Print Name: Ivan Delacruz
My Commission Expires: 09/28/2022

[NOTARY SEAL]

IVAN MANUEL DELACRUZ
NOTARY PUBLIC
STATE OF NEW YORK
Reg. # 01DE6306529
My Comm. Exp. 09-26-2022

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Allison Potter
Witness

Allison Potter
Print Name

ASSIGNOR:

Patrick A. Waldron

Patrick A Waldron
Name: Patrick A. Waldron

Witness

Print Name

STATE/COMMONWEALTH OF: Washington
COUNTY OF King

PERSONALLY appeared before me Patrick A. Waldron who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 24 day of Feb. 2019

Tanya Cohen
Notary Public
Print Name: Tanya Cohen
My Commission Expires: 7-9-22

[NOTARY SEAL]

TANYA COHEN NOTARY PUBLIC 201142 COMMISSION EXPIRES 7-09-22 STATE OF WASHINGTON

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Print Name

ASSIGNOR:

Peggy C. Waldron

Name: Peggy C. Waldron

Witness

Print Name

STATE/COMMONWEALTH OF: Washington
COUNTY OF King

PERSONALLY appeared before me Peggy C. Waldron who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 24 day of Feb 2019

Notary Public
Print Name: Tanya Cohen
My Commission Expires: 7.9.22

[NOTARY SEAL]

TANYA COHEN NOTARY PUBLIC 201142 COMMISSION EXPIRES 7-09-22 STATE OF WASHINGTON

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Print Name

Witness

Print Name

ASSIGNOR:

Jerry Zevenbergen

Name: Jerry Zevenbergen

STATE/COMMONWEALTH OF: Washington
COUNTY OF King

PERSONALLY appeared before me Jerry Zevenbergen who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 14 day of February, 2019

Notary Public
Print Name: Tanya Cohen
My Commission Expires: 07-09-2022

[NOTARY SEAL]

TANYA COHEN NOTARY PUBLIC 201142 COMMISSION EXPIRES 7-09-22 STATE OF WASHINGTON

Requested By: rbb 12/06/2019

IN WITNESS WHEREOF, the said Assignor has duly executed this Assignment of Mortgage as a sealed instrument as of the date set forth above.

Signed and sealed in our presence as witnesses:

Witness

Jerry Zevenbergen
Print Name

ASSIGNOR:

James and Joyce Zevenbergen Living Trust

By: Joyce Zevenbergen
Name:
Its:

Witness

Carla Stadler
Print Name

STATE/COMMONWEALTH OF: WA
COUNTY OF King

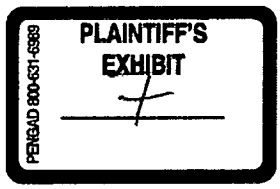
PERSONALLY appeared before me Joyce Zevenbergen who, after being duly sworn, acknowledged his/her execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

This 28 day of January 2019

Notary Public Tanya Cohen
My Commission Expires: 7-9-22

[NOTARY SEAL]

TANYA COHEN NOTARY PUBLIC 201142 COMMISSION EXPIRES 7-09-22 STATE OF WASHINGTON



[SPACE ABOVE THIS LINE RESERVED FOR CLERK'S USE]

This Instrument Prepared by and
after Recording Return to:
Harrison Coleman
Coleman Talley LLP
3475 Lenox Road NE
Suite 400
Atlanta, Georgia 30326

CROSS REFERENCE TO:
Instrument No. 201500039284, in Volume 295, Page 7
Instrument No. 201500039285, in Volume 295, Page 34
Marion County, South Carolina Clerk of Court's Office

FIRST MODIFICATION TO COMMERCIAL MORTGAGE OF REAL PROPERTY, SECURITY AGREEMENT AND FIXTURE FILING

THIS FIRST MODIFICATION TO COMMERCIAL MORTGAGE OF REAL PROPERTY, SECURITY AGREEMENT AND FIXTURE FILING (hereinafter referred to as this "First Mortgage Modification"), is made and entered into as of this, the 11 day of March, 2016, by and between **HSGCHG INVESTMENTS, LLC**, a Delaware limited liability company (hereinafter referred to as the "Mortgagor"), and **AVATAR CAPITAL FINANCE, LLC**, a Washington limited liability company (hereinafter referred to as the "Mortgagee"), whose address is 1220 Westlake Avenue N., #1006, Seattle, Washington 98109, for the purpose of modifying and amending that certain Commercial Mortgage of Real Property, Security Agreement and Fixture Filing from Mortgagor to Mortgagee dated January 22, 2015, filed for record on January 23, 2015, and being recorded as Instrument No. 201500039284, in Volume 295, Page 7 of the Marion County, South Carolina Clerk of Court's Office (hereinafter referred to as the "Mortgage"), and that certain Assignment of Rents and Leases from Mortgagor to Mortgagee dated January 22, 2015, filed for record on January 23, 2015, and being recorded as Instrument No. 201500039285, in Volume 295, Page 34, aforesaid records (hereinafter referred to as the "Assignment of Rents") (the Mortgage and the Assignment of Rents being hereinafter collectively referred to as the "Security Instrument").

WITNESSETH:

WHEREAS, the Security Instrument was given by Mortgagor to secure a loan made by Mortgagee as more particularly referenced and described therein (hereinafter referred to as the "Loan"); and

PL00070

WHEREAS, the Loan is further secured by that certain tract or parcel of improved real property located in the County of Marion, State of South Carolina, and being more particularly described on **Exhibit "A"**, which is attached hereto and incorporated herein by specific reference thereto (hereinafter referred to as the "Property"); and

WHEREAS, in connection with the Loan, Mortgagor made, executed and delivered that certain Commercial Promissory Note dated January 22, 2015, made by Mortgagor and being payable to the order of Mortgagee (hereinafter referred to as the "Note"); the Security Instrument; and certain other documents and instruments relating to and/or connected with the Loan for the purpose of further evidencing and/or securing the Loan (the Note, the Security Instrument, and said other documents and instruments being hereinafter referred to collectively as the "Existing Loan Documents"); and

WHEREAS, Mortgagee is presently the holder of the Note, the Security Instrument, and all of the other Existing Loan Documents; and

WHEREAS, Borrower and Lender are desirous of modifying the Loan (hereinafter referred to the "First Modification") for the purpose of providing for an increase in the principal amount of the Loan to THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($3,500,000.00) (hereinafter referred to the "Modified Principal Balance"); and

WHEREAS, Borrower and Lender are desirous of modifying the Loan for the purpose of establishing the Maturity Date (as that term is defined in the Note and the Security Instrument) of the Note as no later than June 30, 2018 ("Modified Maturity Date"); and

WHEREAS, Mortgagee and Mortgagor are simultaneously herewith executing this First Mortgage Modification; that certain First Modification to Commercial Promissory Note dated of even date herewith (hereinafter referred to as the "First Note Modification"); and certain other documents and instruments evidencing and relating to the First Modification as contemplated and provided for hereunder (this First Mortgage Modification, the First Note Modification, and all other documents and instruments executed in connection with the First Modification being hereinafter referred to collectively as the "First Loan Modification Documents") (the Existing Loan Documents and the First Loan Modification Documents being hereinafter referred to collectively as the "Loan Documents"); and

WHEREAS, the First Loan Modification Documents have been and are being executed by Mortgagor and Mortgagee, as applicable, for the purposes of: (i) stipulating, acknowledging, and agreeing that the maximum principal amount of the Loan shall be in the amount of the Modified Principal Balance; (ii) stipulating, acknowledging, and agreeing that the unpaid principal advances made by Mortgagor to Mortgagee, and any interest accrued thereon, shall be due in full by no later than the Modified Maturity Date; and (iii) amending and modifying certain of the other terms and provisions of the Existing Loan Documents, all as provided for in the First Loan Modification Documents; and

WHEREAS, the parties hereto are desirous of modifying the terms of the Security Instrument so as to reflect the Modified Principal Balance of the Loan and the Modified Maturity Date of the Loan as set forth herein.

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100 DOLLARS ($10.00), the premises and covenants herein contained, and other good and valuable consideration in hand received by each party from the other, the receipt, adequacy and sufficiency of which is hereby acknowledged, Mortgagor and Mortgagee hereby covenant and agree as follows:

1.
EFFECTIVE DATE

Mortgagor and Mortgagee hereby expressly covenant and agree that the effective date of this First Mortgage Modification shall for all purposes be deemed to be the date as set forth on the first page hereof (hereinafter referred to as the "Effective Date"), and that, except as may be expressly provided herein to the contrary, the modifications and amendments to the Security Instrument as contained herein shall be effective and enforceable by the parties hereto as of said Effective Date.

2.
MODIFIED PRINCIPAL BALANCE

Mortgagor and Mortgagee hereby stipulate, acknowledge and agree that the maximum principal amount of the Loan, as increased by the amount of the Additional Loan Proceeds (as that term is defined in the First Note Modification), shall be in the amount of the Modified Principal Balance, and that the Modified Principal Balance, once disbursed, shall be repaid by Mortgagor to Mortgagee without offset, defense or deduction pursuant to the terms of the Note, as modified and amended by the First Note Modification and this First Mortgage Modification.

3.
MODIFIED MATURITY DATE

Mortgagor and Mortgagee hereby stipulate, acknowledge and agree that the unpaid principal advances made by Mortgagor to Mortgagee, and any interest accrued thereon, shall be due in full by no later than the Modified Maturity Date.

4.
CONTINUING SECURITY

The Property shall continue to secure the Loan, and the Security Instrument, as hereby modified and amended, shall continue to secure the unpaid indebtedness evidenced by the Note. It is hereby acknowledged and agreed that the execution and delivery of the First Loan Modification Documents shall not in any way affect the lien or existing priority of either the Security Instrument or any of the other Existing Loan Documents.

5.
MORTGAGOR'S CONTINUING OBLIGATIONS

Except as otherwise expressly set forth herein to the contrary, Mortgagor hereby acknowledges, ratifies and confirms all of its obligations as set forth in the Security Instrument and the other Existing Loan Documents and hereby agrees to perform, comply with and abide by each and every one of the covenants, agreements, conditions, stipulations, terms and provisions contained therein, as amended and modified by the First Loan Modification Documents, and nothing contained herein shall otherwise invalidate, impair or release any covenant, condition, agreement or stipulation contained in the Security Instrument or the other Existing Loan Documents. Mortgagor hereby fully and unconditionally waives any and all defenses to payment and performance, all rights of set-off and any and all counterclaims that Mortgagor may have against or with respect to Mortgagee or with respect to the Security Instrument, the other Existing Loan Documents or the indebtedness evidenced and secured thereby, arising from any actions, omissions or circumstances occurring or existing prior to the Effective Date of this First Mortgage Modification, whether the same be choate or inchoate, vested or not vested or now known or unknown to Mortgagor. Upon execution, this First Mortgage Modification shall be incorporated into, shall be annexed to, and shall become a part of the Security Instrument, and, as of the Effective Date hereof, all references to the Security Instrument contained in any of the Existing Loan Documents shall thereafter be deemed to refer to the Security Instrument, as amended and modified by this First Mortgage Modification. Mortgagee has not waived, and does not hereby expressly or implicitly waive, any existing breach, failure or Default on the part of Mortgagor under the Security Instrument or under any of the other Existing Loan Documents, whether currently known or unknown to Mortgagee.

6.
MISCELLANEOUS

A. Capitalized terms used herein shall have the same meaning ascribed to them in the Security Instrument and the other Existing Loan Documents, unless otherwise defined herein.

B. The recitals set forth hereinabove are hereby agreed to be true and correct in each and every respect and are incorporated herein by this specific reference thereto.

C. Mortgagor shall pay or reimburse Mortgagee upon demand for any and all costs and expenses paid or incurred by Mortgagee in connection with this First Modification including reasonable fees of attorneys, auditors, appraisers and inspectors.

D. This First Mortgage Modification and the other First Loan Modification Documents shall be binding upon and shall inure to the benefit of Mortgagor, Mortgagee and their respective heirs, successors, successors-in-title and assigns.

E. This First Mortgage Modification shall be interpreted, construed, governed and enforced in accordance with the laws of the State of South Carolina, whereas the other First Loan Modification Documents shall be interpreted, construed, governed and enforced in accordance with the laws of the State of Washington.

F. This First Mortgage Modification may be executed in multiple counterparts, each of which shall constitute an original, but all of which shall constitute one and the same instrument.

G. The headings in this First Mortgage Modification are provided for convenience only, and do not limit the scope, effect or intent of any provision of this First Mortgage Modification.

H. Time is of the essence of the Security Instrument, as amended and modified by this First Mortgage Modification, and the other Loan Documents, and each and every provision thereof, as the same may have been or may simultaneously or hereafter be amended.

[SIGNATURES COMMENCE ON FOLLOWING PAGE]

[Counterpart Signature Page to First Mortgage Modification]

IN WITNESS WHEREOF, Mortgagor has executed and delivered this First Mortgage Modification under seal as of the day, month, and year first above written.

WITNESSES:

Signed, sealed, and delivered in the presence of:

Witness

Name: Nicole Hurst

Witness

Name: M. A. MCDANIEL

MORTGAGOR:

HSGCHG INVESTMENTS, LLC
a Delaware limited liability company

By: _____ (SEAL)
Robert D. Hartmann, Sr.
Its: President/Executive Chairman

STATE OF FL)
) ss.
COUNTY OF Palm Beach)

On 2 day of March, 2016, personally appeared Robert D. Hartmann, Sr., President/Executive Chairman of HSGCHG Investments, LLC, who, after being duly sworn, acknowledged his execution of the within instrument, in the said capacity, and for the uses and purposes mentioned within.

WITNESS my hand and official seal.

Notary Public in and for said County and State

My Commission Expires: 8/13/17

M A MCDANIEL
MY COMMISSION #FF042736
EXPIRES August 13, 2017
(407) 398-0153 FloridaNotaryService.com

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

[1695913/1]

PL00075

[Counterpart Signature Page to First Mortgage Modification]

MORTGAGEE:

Signed, sealed and delivered
in the presence of:

Witness
Print Name: Thomas Ray Hazelrigg IV

Witness
Print Name: Michelle Mittie

AVATAR CAPITAL FINANCE, LLC
a Washington limited liability company

By: _____ (SEAL)
Name: Jerry Zeuenbergen
Its: Managing Member

STATE OF Washington)
) ss.
COUNTY OF King)

On 1st day of MARCH, 2016, personally appeared Jerry Zeuenbergen, the Managing Member of AVATAR CAPITAL FINANCE, LLC, as authorized signer of the foregoing instrument, and acknowledged the same to be his/her free act and deed, before me.

WITNESS my hand and official seal.

Notary Public in and for said County and State

My Commission Expires: 8-9-2018

MICHELLE L. MITTIE
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
AUGUST 9, 2018

[1695913/1]

PL00076

EXHIBIT "A"

LEGAL DESCRIPTION

All that certain piece, parcel or tract of land lying and being situate South of the City of Marion, Marion Township, Marion County, South Carolina, containing 248.52 acres, more or less, as shown on plat prepared for New World Entertainment, Inc. By Beasly Land Surveying, Inc., dated February 14, 2001 and revised March 26, 2002. The said map as revised is recorded in the Office of the Clerk of Court for Marion County on June 13, 2002 in Plat Book 303 at Page 3 and is incorporated herein by reference. The said tract being bounded as follows, now or formerly, to wit: on the North by lands now or formerly of William H. Lide; on the Northeast and East by lands now or formerly of Paul J. Graves and William L. Cheezem, and others; on the South by lands now or formerly of Cheezem and others; on the Southwest by US Highway 501 and lands of Atkinson and other; and on the Northeast by lands of William E. Thompson.

LESS AND EXCEPT: All that certain piece, parcel or lot of land containing .066 acres as shown on survey prepared for the City of Marion recorded in the Office of the Clerk of Court for Marion County in Plat Book 304, at Page 6 and a fifty (50) foot temporary easement for construction, the said lot and easement being more fully and completely described in a certain deed of Donald D. Godwin and Jack H. Jones to the City of Marion recorded in the Office of the Clerk of Court for Marion County on April 20, 2002 in Deed Book A-472 at Page 296.

TMS No. 085-00-00-001-000

DERIVATION: This being the identical property conveyed unto HSGCHG Investments, LLC by deed of Wells Fargo Bank, N.A. dated December 30, 2014, recorded January 23, 2015 in Book 295, at Page 1, Marion County, SC Register of Deeds.

FIRST MODIFICATION OF RECOURSE GUARANTY AND GUARANTOR'S ACKNOWLEDGMENT AND RATIFICATION OF RECOURSE GUARANTY

THIS FIRST MODIFICATION OF RECOURSE GUARANTY AND GUARANTOR'S ACKNOWLEDGMENT AND RATIFICATION OF RECOURSE GUARANTY (this "First Guaranty Modification") is made and executed on this 11 day of March, 2016, by ROBERT D. HARTMANN, SR. (the "Guarantor"), in favor of and for the benefit of AVATAR CAPITAL FINANCE, LLC, a Washington limited liability company (hereinafter referred to as the "Lender").

WITNESSETH:

WHEREAS, PARTNERS 95, L.L.C., a Connecticut limited liability company, OIL BARONS, INC., a Connecticut corporation, and HSGCHG INVESTMENTS, LLC, a Delaware limited liability company (collectively, the "Borrower"), is the Borrower with regard to a loan from Lender in the original principal amount of TWO MILLION AND NO/100 DOLLARS ($2,000,000.00) (the "Loan"); and

WHEREAS, the Loan is evidenced and secured by that certain Commercial Promissory Note dated January 22, 2015 made by Borrower and being payable to the order of Lender (the "Note"); that certain Commercial Mortgage of Real Property, Security Agreement and Fixture Filing dated January 22, 2015 and recorded January 23, 2015 as Instrument No. 201500039284, Volume 295, Page 7, in the Office of the Marion County, South Carolina Clerk of Courts, that certain Open-End Mortgage Deed and Security Agreement dated January 22, 2015 and recorded January 23, 2015 as Document ID 001913150035, Book 1170, Page 1021, in the Branford, Connecticut Land Records, and that certain Open-End Mortgage Deed and Security Agreement dated January 23, 2015 and recorded January 23, 2015 as Instrument No. 223, Volume 2408, Page 148, in the East Haven, Connecticut Land Records (the "Security Instruments"); and that certain Recourse Guaranty dated January 22, 2015 by Guarantor (the "Guaranty") (the Note, the Security Instruments, the Guaranty and all other documents and instruments executed in connection with the Loan are referred to collectively as the "Existing Loan Documents"); and

WHEREAS, Lender is the current holder of the Existing Loan Documents; and

WHEREAS, at the request of Borrower, Lender has agreed to modify the terms and conditions of the Loan (the "First Loan Modification") for the purposes of increasing the principal amount of the Loan to THREE MILLION FIVE HUNDRED THOUSAND AND NO/100 DOLLARS ($3,500,000.00) and extending the Maturity Date of the Note pursuant to the terms and provisions of certain documents and instruments evidencing, securing and otherwise relating to the First Loan Modification ("First Loan Modification Documents") (the Existing Loan Documents and the First Loan Modification Documents being hereinafter referred to collectively as the "Loan Documents"); and

WHEREAS, as a condition of Lender's agreement to modify the Loan in accordance with the First Loan Modification, Lender has required that Guarantor execute and deliver this First Guaranty Modification, thereby acknowledging and ratifying the First Loan Modification Documents and Guarantor's full and continued liability under the Guaranty.

NOW, THEREFORE, for and in consideration of the sum of TEN AND NO/100THS DOLLARS ($10.00), the consent of Lender to the modification of the Loan Documents as referenced hereinabove, the premises and covenants herein contained, and other good and valuable consideration in hand received, the receipt, adequacy and sufficiency of which is hereby acknowledged, Guarantor hereby acknowledges, consents and agrees as follows:

1.

Guarantor hereby stipulates, acknowledges and agrees that no modification to the Loan Documents contained in or provided for under the First Loan Modification Documents shall in any way release, diminish or impair the liability of Guarantor to Lender as provided for under the terms of the Guaranty, and that all of the terms, provisions, conditions and obligations of Guarantor as contained in the Guaranty shall remain in full force and effect hereafter and shall be fully applicable to the Existing Loan Documents, as modified and amended by the First Loan Modification Documents. In this regard, Guarantor hereby further expressly agrees to continue to be bound by all of said terms, provisions, conditions and obligations set forth under the Guaranty with regard to the Existing Loan Documents as so amended, to the same extent as if the Guaranty were set forth herein in its entirety but the terms and conditions as provided for in the First Loan Modification Documents.

2.

Guarantor hereby further ratifies, acknowledges and confirms the execution, delivery and enforceability of the Loan Documents in each and every respect as of the date of this First Guaranty Modification in accordance with the express terms and provisions thereof, and hereby further fully and unconditionally waives any and all defenses to payment and performance, all rights of set-off and any and all counterclaims that Guarantor may have against or with respect to Lender or with respect to the Guaranty, the Note, the Security Instrument or any of the other Existing Loan Documents, or the indebtedness evidenced and secured thereby, arising from any actions, omissions or circumstances occurring or existing prior to the date of this First Guaranty Modification, whether the same be choate or inchoate, vested or not vested or now known or unknown to Guarantor.

3.

Guarantor hereby represents, warrants and certifies that Guarantor possesses full power and authority to execute this First Guaranty Modification without the necessity of the joinder or consent of any other person, party or entity.

[SIGNATURES CONTAINED ON FOLLOWING PAGE]

[Signature Page to First Guaranty Modification]
]

IN WITNESS WHEREOF, Guarantor has caused this First Guaranty Modification to be executed under seal effective as of the day and year first above written.

Signed, sealed and delivered
in the presence of:

Witness

ROBERT D. HARTMANN, SR.

Name: Nicole Hurst

Witness

Name: M. A. MCDANIEL

STATE OF FL)
) ss.
COUNTY OF Palm Beach)

On 2nd day of March, 2016, personally appeared Robert D. Hartmann, Sr., as authorized signer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me.

WITNESS my hand and official seal.

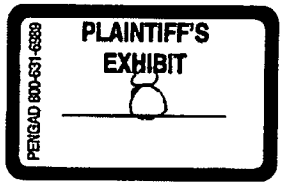
Notary Public in and for said County and State

My Commission Expires: 8/13/17

M A MCDANIEL
MY COMMISSION #FF042736
EXPIRES August 13, 2017
(407) 398-0153 FloridaNotaryService.com

[1695912/1]

PL00080



SECOND NOTE MODIFICATION AGREEMENT

July 1, 2018 Columbia, SC

RECITALS

A. Partners 95, L.L.C., a Connecticut Limited Liability Company, Oil Barons, Inc., a Connecticut Corporation and HSGCHG INVESTMENTS, LLC., a Delaware Limited Liability Company, are the maker's (hereinafter "Maker") and Avatar Capital Finance LLC a Washington Limited Liability Company, as servicing agent for the investors listed on Exhibit A attached, are the holder's (hereinafter "Holder"), of a Promissory Note (hereinafter "Note") dated January 22, 2015 and Modified March 11, 2016 in the original sum of $2,000,000.00, and Modified to $2,500,000 said Note being secured by 3 Mortgages (hereinafter "MTG") First Mortgage By Oil Barons Inc., a Connecticut Corporation recorded in New Haven County, Connecticut, January 23, 2015 in Book 1170, Page 1021-1055, Modification dated March 11, 2016, recorded March 11, 2106 in Book 1194, page 1073-1081 Doc Id 2016-00001645, on the property commonly known as 49 Leetes Island Rd, Branford, CT. Second Mortgage By Partners 95, LLC., a Connecticut Limited Liability Company dated as of January 22, 2015, and recorded on January 23, 2015 in Vol 2408, Page 148-181, Modification dated March 11, 2016, recorded March 11, 2016 in Vol 2471, page 53, Instrument 941, in the Real Property Records of New Haven County, Connecticut, on the property commonly known as 96 Frontage Rd, East Haven, CT. Third Mortgage HSGCHG Investments, LLC, a Delaware Limited Liability Company , dated as of January 22, 2015, and recorded on January 23, 2015, Instrument No. 201500039284 in Vol 295, Page 7, modification dated March 11, 2016 and recorded March 11, 2016, Instrument No. 201600042648 in Vol 334 page 220-227 in the Real Property Records of Marion County, South Carolina on the property commonly known as 1548 US Hwy 501, Marion, SC (hereinafter the "Property").

B. Maker and Holder mutually agree to modify the above described Note as hereinafter provided. A copy of the Note is attached hereto as Exhibit 1.

AGREEMENT

FOR VALUABLE CONSIDERATION, the undersigned parties, for themselves and their respective successors and assigns, do hereby agree that the terms of the Note referenced above are modified as follows:

1. The maturity date on the Note is extended to July 1, 2019

2. Maker agrees to pay an extension fee of 3% ($105,000.00) as an exit fee, which shall be due upon payoff of the Note or the maturity date, whichever occurs first.

PL00552

3. Robert D. Hartman, SR hereby consents to the foregoing modification and any corresponding modification of the MTG's and reaffirms his continuing obligations as Guarantor under that certain Unconditional Guaranty of Payment and Performance dated as of January 22, 2015 executed by him in favor of Holder and under any other documents executed by Robert D. Hartman, Sr as security for or in connection with the Note.

4. This modified note remains secured by the MTG's described above.

5. Borrower hereby acknowledges, ratifies and confirms all of its obligations as set forth in the Note and hereby agrees to perform, comply with and abide by each and every one of the covenants, agreements, conditions, stipulations, terms and provisions contained therein, as amended and modified by this Second Note Modification, and nothing contained herein shall otherwise invalidate, impair or release any covenant, condition, agreement or stipulation contained in the Note. Upon execution of this Second Note Modification, this Second Note Modification shall be incorporated into, shall be annexed to, and shall become a part of the Note, and, as of such date, all references to the Note contained in the Security Deed and the other Loan Documents shall thereafter be deemed to refer to the Note, as amended and modified by this Second Note Modification.

6. NO DEFENSES OR OFFSETS. Borrower hereby represents and warrants to Lender that Borrower has no existing claims, defenses, or offsets against Lender, whether pursuant to the Loan Documents or otherwise.

IN WITNESS WHEREOF, Borrower and Lender have caused this Second Note Modification to be duly executed under seal effective as of the 6th day of August 2018

Signed, sealed and delivered
in the presence of:

Witness

Name:

Witness

Name: PAT HORN

BORROWER:

PARTNERS 95, L.L.C.
a Connecticut limited liability company

By: (SEAL)
PAUL R. GREENBERG
Its: Managing Member

PL00553

STATE OF Connecticut)
) ss.
COUNTY OF Fairfield)

On 14 day of August, 2018, personally appeared Paul R. Greenberg, Managing Member of Partners 95, L.L.C., as authorized signer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me.

WITNESS my hand and official seal.

Donna M Misur
Notary Public in and for said County and State

Donna M Misur
Notary Public-Connecticut
My Commission Expires
February 29, 2020

My Commission Expires: 2/29/2020

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

PL00554

COUNTERPART SIGNATURE PAGE TO SECOND NOTE MODIFICATION

Signed, sealed and delivered
in the presence of:

Witness

Name: Christine G. Mahon

Witness

Name: Alfredo Tirado

BORROWER:

OIL BARONS, INC.
a Connecticut corporation

By: _____ (SEAL)
ROBERT D. HARTMANN, SR.
Its: President

STATE OF Connecticut)
) ss.
COUNTY OF New Haven)

On 7 day of August, 2018, personally appeared Robert D. Hartmann, Sr., President of Oil Barons, Inc., as authorized signer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me.

WITNESS my hand and official seal.

Notary Public in and for said County and State

My Commission Expires: 03-31-2020

ALFREDO TIRADO JR
My Commission Expires
NOTARY PUBLIC
03-31-2020
CONNECTICUT

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

PL00555

COUNTERPART SIGNATURE PAGE TO SECOND NOTE MODIFICATION

Signed, sealed and delivered
in the presence of:

Witness

Name: Robert G. Phillips

Witness

Name: Alfredo Tirado

BORROWER:

HSGCHG INVESTMENTS, LLC
a Delaware limited liability company

By: _____(SEAL)
ROBERT D. HARTMAN, SR.
Its: President/Executive Chairman

STATE OF Connecticut)
) ss.
COUNTY OF New haven)

On 7 day of August, 2018, personally appeared Robert D. Hartmann, Sr., President/Executive Chairman of HSGCHG INVESTMENTS, LLC, as authorized signer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me.

WITNESS my hand and official seal.

Notary Public in and for said County and State

My Commission Expires: 03-31-2020

ALFREDO TIRADO JR. My Commission Expires NOTARY PUBLIC 03-31-2020 CONNECTICUT

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

PL00556

COUNTERPART SIGNATURE PAGE TO SECOND NOTE MODIFICATION

Signed, sealed and delivered
in the presence of:

GUARANTOR

Witness

By: _____
ROBERT D. HARTMANN, SR.

Name: [illegible]

Witness

Name: Alfredo Tirado

STATE OF Connecticut)
) ss.
COUNTY OF New Haven)

On 7 day of August, 2018, personally appeared Robert D. Hartmann, as signer of the foregoing instrument, and acknowledged the same to be his free act and deed, before me.

WITNESS my hand and official seal.

Notary Public in and for said County and State

My Commission Expires: 03-31-2020

ALFREDO TIRADO JR
My Commission Expires
NOTARY PUBLIC
03-31-2020
CONNECTICUT

[SIGNATURES CONTINUE ON FOLLOWING PAGE]

PL00557

COUNTERPART SIGNATURE PAGE TO SECOND NOTE MODIFICATION

Signed, sealed and delivered
in the presence of:

Witness

Name: DAVID SIEGFRIED

Witness

Name: TANYA Cohen

LENDER:

AVATAR CAPITAL FINANCE, LLC
a Washington limited liability company

By:
(SEAL)

Name: Terry Zevenbergen

Its: CEO

STATE OF Washington)
) ss.
COUNTY OF King)

On 16th day of August, 2018, personally appeared Terry Zevenbergen the CEO of AVATAR CAPITAL FINANCE, LLC, as authorized signer of the foregoing instrument, and acknowledged the same to be his/her free act and deed, before me.

WITNESS my hand and official seal.

Notary Public in and for said County and State

My Commission Expires: 3-19-19

CARLA A. STADLER
NOTARY PUBLIC
STATE OF WASHINGTON
COMMISSION EXPIRES
3-19-19

PL00558

BORROWER STATEMENT OF ACCOUNT

Avatar Capital Finance
1200 Westlake Ave N
Suite 1006
Seattle, WA 98109
206 728-5900 | 888 896-0078

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT 10

ACCOUNT NO.	IV068
STATEMENT DATE	9/14/2018

STATEMENT SUMMARY	
Statement Period	1/1/2015 - 9/14/2018
Principal Balance	$3,500,000.00
Reserve Balance	$40,165.82
Impound Balance	$0.00
Unpaid Late Charges	$46,620.00
Unpaid Charges	$105,000.00
Unpaid Interest	$0.00
Regular Payment	$38,908.25
Note Rate	9.990%
Interest Paid in 2018	$262,237.50
Property: 49 Leets Island Rd Branford CT 06405	

BORROWER

Partners 95 LLC
Oil Barons Inc
HSGCHG
114 Cascade Blvd
Milford CT 06460

This statement of account is NOT to be used as an official payoff statement. Please advise us immediately if you disagree with any transaction noted on this statement of account. We urge you to keep this statement in your records.

ACCOUNT ACTIVITY

Transaction Date	Pmt Due Date	Reference	Description	Transaction Amount	Distribution					Principal Balance
					Interest	Principal	Late Chgs	Other	Trust	
			Balance Forward							$0.00
1/23/2015			Funds Advanced	($2,000,000.00)	$0.00	($2,000,000.00)	$0.00	$0.00	$0.00	$2,000,000.00
2/1/2015	2/1/2015		Payment - Thank You	$54,792.02	$3,995.52	$0.00	$0.00	$0.00	$50,796.50	$2,000,000.00
3/2/2015	3/1/2015		Payment - Thank You	$24,754.08	$14,983.33	$0.00	$0.00	$0.00	$9,770.75	$2,000,000.00
4/1/2015	4/1/2015		Payment - Thank You	$24,754.08	$14,983.33	$0.00	$0.00	$0.00	$9,770.75	$2,000,000.00
5/5/2015	5/1/2015		Payment - Thank You	$24,754.08	$14,983.33	$0.00	$0.00	$0.00	$9,770.75	$2,000,000.00
6/2/2015	6/1/2015		Payment - Thank You	$24,754.08	$14,983.33	$0.00	$0.00	$0.00	$9,770.75	$2,000,000.00
7/3/2015	7/1/2015		Payment - Thank You	$24,754.08	$14,983.33	$0.00	$0.00	$0.00	$9,770.75	$2,000,000.00
8/3/2015	8/1/2015		Payment - Thank You	$24,754.08	$14,983.33	$0.00	$0.00	$0.00	$9,770.75	$2,000,000.00
8/31/2015	9/1/2015		Payment - Thank You	$24,754.08	$14,983.33	$0.00	$0.00	$0.00	$9,770.75	$2,000,000.00
10/5/2015	10/1/2015		Payment - Thank You	$24,754.08	$14,983.33	$0.00	$0.00	$0.00	$9,770.75	$2,000,000.00
11/3/2015	11/1/2015		Payment - Thank You	$24,754.08	$14,983.33	$0.00	$0.00	$0.00	$9,770.75	$2,000,000.00
12/3/2015	12/1/2015		Payment - Thank You	$26,420.75	$16,650.00	$0.00	$0.00	$0.00	$9,770.75	$2,000,000.00
1/4/2016	1/1/2016		Payment - Thank You	$26,420.75	$16,650.00	$0.00	$0.00	$0.00	$9,770.75	$2,000,000.00
2/5/2016	2/1/2016		Payment - Thank You	$26,420.75	$16,650.00	$0.00	$0.00	$0.00	$9,770.75	$2,000,000.00
3/10/2016			Payment - Other	$20,801.10	$20,801.10	$0.00	$0.00	$0.00	$0.00	$2,000,000.00
3/11/2016			Funds Advanced	($1,500,000.00)	$0.00	($1,500,000.00)	$0.00	$0.00	$0.00	$3,500,000.00
4/1/2016	4/1/2016		Payment - Thank You	$40,909.00	$21,367.50	$0.00	$0.00	$0.00	$19,541.50	$3,500,000.00
5/16/2016	5/1/2016		Payment - Thank You	$0.00	$29,137.50	$0.00	$0.00	$0.00	($29,137.50)	$3,500,000.00
5/16/2016			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
6/14/2016	6/1/2016		Payment - Thank You	$77,816.50	$29,137.50	$0.00	$0.00	$0.00	$48,679.00	$3,500,000.00
6/14/2016			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
7/5/2016	7/1/2016		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
8/8/2016	8/1/2016		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
8/8/2016			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
9/2/2016	9/1/2016		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
10/4/2016	10/1/2016		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
11/14/2016	11/1/2016		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
11/14/2016			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
12/1/2016	12/1/2016		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
1/9/2017	1/1/2017		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
1/9/2017			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
2/6/2017	2/1/2017		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
3/8/2017	3/1/2017		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
3/8/2017			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
4/5/2017	4/1/2017		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
5/4/2017	5/1/2017		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
6/13/2017	6/1/2017		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
6/13/2017			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00

ACCOUNT ACTIVITY

Transaction Date	Pmt Due Date	Reference	Description	Transaction Amount	Distribution					Principal Balance
					Interest	Principal	Late Chgs	Other	Trust	
7/5/2017	7/1/2017		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
9/1/2017	8/1/2017		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
9/1/2017			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
9/5/2017	9/1/2017		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
10/9/2017	10/1/2017		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
10/9/2017			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
11/15/2017	11/1/2017		Payment - Thank You	$0.00	$29,137.50	$0.00	$0.00	$0.00	($29,137.50)	$3,500,000.00
11/15/2017			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
11/30/2017			Payment - Other	$38,908.25	$0.00	$0.00	$0.00	$0.00	$38,908.25	$3,500,000.00
12/4/2017	12/1/2017		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
1/3/2018	1/1/2018		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
2/5/2018	2/1/2018		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
3/12/2018	3/1/2018		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
3/12/2018			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
4/6/2018	4/1/2018		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
4/6/2018			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
5/3/2018	5/1/2018		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
6/11/2018	6/1/2018		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
6/11/2018			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
7/1/2018			Extension Fee	($105,000.00)	$0.00	$0.00	$0.00	($105,000.00)	$0.00	$3,500,000.00
7/9/2018	7/1/2018		Payment - Thank You	$16,128.83	$29,137.50	$0.00	$0.00	$0.00	($13,008.67)	$3,500,000.00
7/9/2018			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
8/14/2018	8/1/2018		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
8/14/2018			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
9/14/2018	9/1/2018		Payment - Thank You	$38,908.25	$29,137.50	$0.00	$0.00	$0.00	$9,770.75	$3,500,000.00
9/14/2018			Late Charge	($2,913.75)	$0.00	$0.00	($2,913.75)	$0.00	$0.00	$3,500,000.00
					$1,075,951.59	($3,500,000.00)	$46,620.00	($105,000.00)	$448,159.33	

TRUST ACCOUNT ACTIVITY

Transaction Date	Check# or Reference	From Whom Received or To Whom Paid	Description / Memo	Amount Paid Out	Amount Received	Daily Balance
			Balance Forward			$0.00
2/1/2015		Partners 95 LLC	Borrower Payment		$50,796.50	$50,796.50
3/2/2015		Partners 95 LLC	Borrower Payment		$9,770.75	$60,567.25
3/30/2015		Partners 95 LLC	Borrower Payment		$9,770.75	$70,338.00
5/5/2015		Partners 95 LLC	Borrower Payment		$9,770.75	$80,108.75
6/9/2015		Partners 95 LLC	Borrower Payment		$9,770.75	$89,879.50
6/24/2015	3067	Tax Collector-Branford	List No. 2014 01 0003009-Oil Barron	$9,550.73		$80,328.77
7/3/2015		Partners 95 LLC	Borrower Payment		$9,770.75	$90,099.52
7/8/2015	3071	Collector of Taxes-East Haven	List No. 2014 01 0007689	$22,085.00		$68,014.52
7/8/2015	3073	Selective Insurance	Policy renewal A1938599	$5,376.00		$62,638.52
8/6/2015		Partners 95 LLC	Borrower Payment		$9,770.75	$72,409.27
8/31/2015		Partners 95 LLC	Borrower Payment		$9,770.75	$82,180.02
10/6/2015		Partners 95 LLC	Borrower Payment		$9,770.75	$91,950.77
11/3/2015		Partners 95 LLC	Borrower Payment		$9,770.75	$101,721.52
12/3/2015		Partners 95 LLC	Borrower Payment		$9,770.75	$111,492.27
12/10/2015	3191	Tax Collector-Branford	2014010003009	$9,550.73		$101,941.54
12/10/2015	3192	Collector of Taxes-East Haven	2014010007689	$22,085.00		$79,856.54
1/4/2016		Partners 95 LLC	Borrower Payment		$9,770.75	$89,627.29
1/5/2016	3226	Marion County Auditor	085-00-00-001-000	$23,192.85		$66,434.44
2/5/2016		Partners 95 LLC	Borrower Payment		$9,770.75	$76,205.19
4/1/2016		Partners 95 LLC	Borrower Payment		$19,541.50	$95,746.69
5/16/2016		Partners 95 LLC	Borrower Payment	$29,137.50		$66,609.19
6/14/2016		Partners 95 LLC	Borrower Payment		$48,679.00	$115,288.19
6/21/2016	3394	Tax Collector-Branford	2015010003009	$9,720.96		$105,567.23
7/6/2016		Partners 95 LLC	Borrower Payment		$9,770.75	$115,337.98
7/6/2016	3399	Collector of Taxes-East Haven	List NO. 2015010007687	$22,292.76		$93,045.22
8/1/2016	3433	Vermont Mutual Insurance Co	bp11045638	$4,729.00		$88,316.22
8/8/2016		Partners 95 LLC	Borrower Payment		$9,770.75	$98,086.97
9/2/2016		Partners 95 LLC	Borrower Payment		$9,770.75	$107,857.72
10/4/2016		Partners 95 LLC	Borrower Payment		$9,770.75	$117,628.47
11/14/2016		Partners 95 LLC	Borrower Payment		$9,770.75	$127,399.22

TRUST ACCOUNT ACTIVITY

Transaction Date	Check# or Reference	From Whom Received or To Whom Paid	Description / Memo	Amount Paid Out	Amount Received	Daily Balance
11/14/2016		Partners 95 LLC	Borrower Payment		$9,770.75	$137,169.97
12/19/2016	3597	Tax Collector-Branford	Bill No's 2015-1-003009 & 2015-2-00	$10,760.35		$126,409.62
12/19/2016	3599	Collector of Taxes-East Haven	Bill #2015-1-007687	$22,292.76		$104,116.86
12/19/2016	3600	Marion County Auditor	REceipts 12149 & 947	$23,882.71		$80,234.15
1/9/2017		Partners 95 LLC	Borrower Payment		$9,770.75	$90,004.90
2/8/2017		Partners 95 LLC	Borrower Payment		$9,770.75	$99,775.65
3/8/2017		Partners 95 LLC	Borrower Payment		$9,770.75	$109,546.40
4/5/2017		Partners 95 LLC	Borrower Payment		$9,770.75	$119,317.15
5/4/2017		Partners 95 LLC	Borrower Payment		$9,770.75	$129,087.90
6/6/2017	3831	Vermont Mutual Insurance Co	BP11045638	$5,764.00		$123,323.90
6/13/2017		Partners 95 LLC	Borrower Payment		$9,770.75	$133,094.65
6/28/2017	3825	Tax Collector-Branford	List No's 2016020041591 & 2016010	$22,892.74		$110,201.91
6/28/2017	3826	Collector of Taxes-East Haven	List 2016010007687	$45,558.84		$64,643.07
6/30/2017	3823	Vermont Mutual Insurance Co	Blanket	$475.00		$64,168.07
7/5/2017		Partners 95 LLC	Borrower Payment		$9,770.75	$73,938.82
9/1/2017		Partners 95 LLC	Borrower Payment		$9,770.75	$83,709.57
9/5/2017		Partners 95 LLC	Borrower Payment		$9,770.75	$93,480.32
10/10/2017		Partners 95 LLC	Borrower Payment		$9,770.75	$103,251.07
11/15/2017		Partners 95 LLC	Borrower Payment	$29,137.50		$74,113.57
12/1/2017		Partners 95 LLC	Borrower Payment		$38,908.25	$113,021.82
12/4/2017		Partners 95 LLC	Borrower Payment		$9,770.75	$122,792.57
12/18/2017	4069	Marion County Auditor	Receipt 12105 & 905	$24,036.89		$98,755.68
1/3/2018		Partners 95 LLC	Borrower Payment		$9,770.75	$108,526.43
1/8/2018	000	Flanagan & Associates	Marion SC Insurance	$45,342.00		$63,184.43
2/8/2018		Partners 95 LLC	Borrower Payment		$9,770.75	$72,955.18
3/12/2018		Partners 95 LLC	Borrower Payment		$9,770.75	$82,725.93
4/9/2018		Partners 95 LLC	Borrower Payment		$9,770.75	$92,496.68
5/3/2018		Partners 95 LLC	Borrower Payment		$9,770.75	$102,267.43
5/8/2018	4269	Flangan Associates	wind Policy Invoice No. 11693	$1,766.70		$100,500.73
6/8/2018	4309	Vermont Mutual Insurance Co	CU11003338	$475.00		$100,025.73
6/11/2018		Partners 95 LLC	Borrower Payment		$9,770.75	$109,796.48
6/18/2018	4345	Vermont Mutual Insurance Co	BP11045638	$6,212.00		$103,584.48
6/28/2018	0	Tax Collector-Branford		$23,090.53		$80,493.95
6/28/2018	0	Collector of Taxes-East Haven		$46,860.96		$33,632.99
7/12/2018		Partners 95 LLC	Borrower Payment	$13,008.67		$20,624.32
8/14/2018		Partners 95 LLC	Borrower Payment		$9,770.75	$30,395.07
9/14/2018		Partners 95 LLC	Borrower Payment		$9,770.75	$40,165.82
				$479,277.18	$519,443.00	

OUTSTANDING CHARGES AND ADVANCES

Date of Charge	Reference	Description	Interest Rate	Original Amount	Unpaid Balance	Accrued Interest	Total Amount Due
7/1/2018		Extension Fee	0.000%	$105,000.00	$105,000.00	$0.00	$105,000.00
				$105,000.00	$105,000.00	$0.00	$105,000.00

Partners 95 LLC-Oil Barons Inc-HSGCHG Investments LLC
Income & Expense by Month
January through December 2019

	Jan 19	Feb 19	Mar 19	Apr 19	May 19	Jun 19	Jul 19	Aug 19	Sep 19	Oct 19	Nov 19	Dec 19	TOTAL
Income													
Rental Income													
Cell Tower	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	14,319.00	0.00	0.00	0.00	14,319.00
Dunkin Donuts	0.00	5,957.33	5,957.33	5,957.33	5,957.33	5,957.33	5,957.33	5,957.33	12,377.03	0.00	6,661.62	6,540.66	67,280.62
Boston Market	0.00	0.00	0.00	0.00	51,837.32	12,959.33	25,918.66	0.00	12,959.33	12,959.33	12,959.33	12,959.33	142,552.63
Total Rental Income	0.00	5,957.33	5,957.33	5,957.33	57,794.65	18,916.66	31,875.99	5,957.33	39,655.36	12,959.33	19,620.95	19,499.99	224,152.25
Total Income	0.00	5,957.33	5,957.33	5,957.33	57,794.65	18,916.66	31,875.99	5,957.33	39,655.36	12,959.33	19,620.95	19,499.99	224,152.25
Cost of Goods Sold													
Property Expenses													
Utilities													
Garbage	0.00	0.00	0.00	2,013.26	1,073.39	1,006.63	2,113.93	1,107.30	1,107.30	1,107.30	1,107.30	1,107.30	11,743.71
Power	0.00	0.00	0.00	474.25	477.97	1,246.88	75.25	441.59	479.65	466.52	0.00	968.20	4,630.31
Wastewater	0.00	0.00	0.00	4,791.52	71.87	4,791.52	0.00	2,885.79	0.00	0.00	2,885.79	0.00	15,426.49
Water	0.00	0.00	0.00	982.98	14.74	1,226.71	0.00	1,319.36	0.00	0.00	0.00	5,700.03	9,243.82
Total Utilities	0.00	0.00	0.00	8,262.01	1,637.97	8,271.74	2,189.18	5,754.04	1,586.95	1,573.82	3,993.09	7,775.53	41,044.33
Maintenance & Repairs													
Electrical	0.00	0.00	0.00	0.00	0.00	2,961.85	0.00	0.00	0.00	0.00	0.00	0.00	2,961.85
HVAC	0.00	0.00	0.00	480.17	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	480.17
Landscaping	0.00	0.00	0.00	6,572.43	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6,572.43
Parking Lot	0.00	0.00	0.00	4,081.18	175.48	935.91	584.95	818.92	233.98	0.00	643.44	2,407.50	9,881.36
Plumbing	0.00	0.00	0.00	0.00	0.00	4,812.34	0.00	1,542.08	0.00	0.00	0.00	0.00	6,354.42
Total Maintenance & Repairs	0.00	0.00	0.00	11,133.78	175.48	8,710.10	584.95	2,361.00	233.98	0.00	643.44	2,407.50	26,250.23
Taxes	0.00	0.00	0.00	0.00	0.00	0.00	28,608.64	0.00	0.00	26,545.38	0.00	0.00	55,154.02
Insurance	44,775.86	0.00	0.00	0.00	0.00	7,188.00	0.00	0.00	0.00	0.00	0.00	0.00	51,963.86
Total Property Expenses	44,775.86	0.00	0.00	19,395.79	1,813.45	24,169.84	31,382.77	8,115.04	1,820.93	28,119.20	4,636.53	10,183.03	174,412.44
Total COGS	44,775.86	0.00	0.00	19,395.79	1,813.45	24,169.84	31,382.77	8,115.04	1,820.93	28,119.20	4,636.53	10,183.03	174,412.44
Gross Profit	-44,775.86	5,957.33	5,957.33	-13,438.46	55,981.20	-5,253.18	493.22	-2,157.71	37,834.43	-15,159.87	14,984.42	9,316.96	49,739.81
Expense													
Legal & Appraisal													
Appraisals	0.00	0.00	0.00	0.00	0.00	0.00	0.00	6,000.00	0.00	0.00	0.00	0.00	6,000.00
Legal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	17,522.99	3,042.51	426.96	5,527.38	3,492.50	30,012.34
Total Legal & Appraisal	0.00	0.00	0.00	0.00	0.00	0.00	0.00	23,522.99	3,042.51	426.96	5,527.38	3,492.50	36,012.34
Total Expense	0.00	0.00	0.00	0.00	0.00	0.00	0.00	23,522.99	3,042.51	426.96	5,527.38	3,492.50	36,012.34
Net Income	-44,775.86	5,957.33	5,957.33	-13,438.46	55,981.20	-5,253.18	493.22	-25,680.70	34,791.92	-15,586.83	9,457.04	5,824.46	PL00934727.47

PENGAD 800-631-6989
PLAINTIFF'S EXHIBIT
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Partners 95 LLC-Oil Barons Inc-HSGCHG Investments LLC
Income & Expense by Month
January through December 2020

	Jan 20	Feb 20	Mar 20	Apr 20	May 20	Jun 20	Jul 20	Aug 20	Sep 20	Oct 20	Nov 20	Dec 20	TOTAL
Income													
Rental Income													
Cell Tower	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	14,700.00	0.00	0.00	0.00	14,700.00
Dunkin Donuts	6,540.66	6,540.66	6,540.66	0.00	6,540.66	0.00	0.00	0.00	6,540.66	6,540.66	6,540.66	0.00	45,784.62
Boston Market	12,959.33	0.00	12,959.33	0.00	0.00	0.00	13,806.33	13,806.33	0.00	13,806.33	13,806.33	13,806.33	94,950.31
Total Rental Income	19,499.99	6,540.66	19,499.99	0.00	6,540.66	0.00	13,806.33	13,806.33	21,240.66	20,346.99	20,346.99	13,806.33	155,434.93
Total Income	19,499.99	6,540.66	19,499.99	0.00	6,540.66	0.00	13,806.33	13,806.33	21,240.66	20,346.99	20,346.99	13,806.33	155,434.93
Cost of Goods Sold													
Property Expenses													
Utilities													
Garbage	1,107.30	1,107.30	1,107.30	1,107.30	1,107.30	1,107.30	2,314.26	0.00	0.00	1,157.13	1,157.13	2,314.26	13,586.58
Power	477.38	566.91	548.38	474.19	535.62	579.21	0.00	817.65	484.40	354.43	343.00	0.00	5,181.17
Wastewater	0.00	2,885.79	0.00	0.00	0.00	2,885.79	0.00	5,383.00	0.00	0.00	0.00	5,383.00	16,537.58
Water	0.00	0.00	5,465.11	0.00	0.00	0.00	5,105.18	2,058.79	0.00	0.00	0.00	1,174.61	13,803.69
Total Utilities	1,584.68	4,560.00	7,120.79	1,581.49	1,642.92	4,572.30	7,419.44	8,259.44	484.40	1,511.56	1,500.13	8,871.87	49,109.02
Maintenance & Repairs													
Electrical	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	2,869.32	0.00	0.00	2,869.32
Landscaping	0.00	0.00	0.00	0.00	7,423.23	0.00	0.00	0.00	0.00	0.00	2,127.00	0.00	9,550.23
Parking Lot	1,055.53	202.07	0.00	0.00	0.00	733.84	409.46	350.97	526.45	0.00	0.00	0.00	3,278.32
Plumbing	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	3,650.47	0.00	0.00	0.00	3,650.47
Total Maintenance & Repairs	1,055.53	202.07	0.00	0.00	7,423.23	733.84	409.46	350.97	4,176.92	2,869.32	2,127.00	0.00	19,348.34
Taxes	28,610.64	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	58,570.10	0.00	0.00	87,180.74
Insurance	29,884.00	0.00	0.00	0.00	0.00	7,586.00	0.00	0.00	0.00	0.00	0.00	0.00	37,470.00
Total Property Expenses	61,134.85	4,762.07	7,120.79	1,581.49	9,066.15	12,892.14	7,828.90	8,610.41	4,661.32	62,950.98	3,627.13	8,871.87	193,108.10
Total COGS	61,134.85	4,762.07	7,120.79	1,581.49	9,066.15	12,892.14	7,828.90	8,610.41	4,661.32	62,950.98	3,627.13	8,871.87	193,108.10
Gross Profit	-41,634.86	1,778.59	12,379.20	-1,581.49	-2,525.49	-12,892.14	5,977.43	5,195.92	16,579.34	-42,603.99	16,719.86	4,934.46	-37,673.17
Expense													
Legal & Appraisal													
Legal	872.82	16,180.60	378.80	32,432.88	51,082.72	34,430.58	50,563.22	1,441.48	8,272.50	21,036.00	27,723.24	0.00	244,414.84
Legal & Appraisal - Other	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	0.00	8,943.00	8,943.00
Total Legal & Appraisal	872.82	16,180.60	378.80	32,432.88	51,082.72	34,430.58	50,563.22	1,441.48	8,272.50	21,036.00	27,723.24	8,943.00	253,357.84
Total Expense	872.82	16,180.60	378.80	32,432.88	51,082.72	34,430.58	50,563.22	1,441.48	8,272.50	21,036.00	27,723.24	8,943.00	253,357.84
Net Income	-42,507.68	-14,402.01	12,000.40	-34,014.37	-53,608.21	-47,322.72	-44,585.79	3,754.44	8,306.84	-63,639.99	-11,003.38	-4,008.54	-291,031.01

Partners 95 LLC-Oil Barons Inc-HSGCHG Investments LLC
Income & Expense
September 14, 2018 through December 3, 2020

	Partners 95	Oil Barons	HSGCHG	Legal & Appraisal	TOTAL
Income					
Rental Income					
Cell Tower	29,019.00	0.00	0.00	0.00	29,019.00
Dunkin Donuts	113,065.24	0.00	0.00	0.00	113,065.24
Boston Market	237,502.94	0.00	0.00	0.00	237,502.94
Total Rental Income	379,587.18	0.00	0.00	0.00	379,587.18
Total Income	379,587.18	0.00	0.00	0.00	379,587.18
Cost of Goods Sold					
Property Expenses					
Utilities					
Garbage	25,330.29	0.00	0.00	0.00	25,330.29
Power	9,811.48	0.00	0.00	0.00	9,811.48
Wastewater	31,964.07	0.00	0.00	0.00	31,964.07
Water	23,047.51	0.00	0.00	0.00	23,047.51
Total Utilities	90,153.35	0.00	0.00	0.00	90,153.35
Maintenance & Repairs					
Electrical	5,831.17	0.00	0.00	0.00	5,831.17
HVAC	480.17	0.00	0.00	0.00	480.17
Landscaping	16,122.66	0.00	0.00	0.00	16,122.66
Parking Lot	13,159.68	0.00	0.00	0.00	13,159.68
Plumbing	10,004.89	0.00	0.00	0.00	10,004.89
Total Maintenance & Repairs	45,598.57	0.00	0.00	0.00	45,598.57
Taxes	83,936.64	31,852.74	26,545.38	0.00	142,334.76
Insurance	14,774.00	0.00	74,659.86	0.00	89,433.86
Total Property Expenses	234,462.56	31,852.74	101,205.24	0.00	367,520.54
Total COGS	234,462.56	31,852.74	101,205.24	0.00	367,520.54
Gross Profit	145,124.62	-31,852.74	-101,205.24	0.00	12,066.64
Expense					
Legal & Appraisal					
Appraisals	0.00	0.00	0.00	6,000.00	6,000.00
Legal	0.00	0.00	0.00	283,370.18	283,370.18
Total Legal & Appraisal	0.00	0.00	0.00	289,370.18	289,370.18
Total Expense	0.00	0.00	0.00	289,370.18	289,370.18
Net Income	145,124.62	-31,852.74	-101,205.24	-289,370.18	-277,303.54

Partners 95 LLC-Oil Barons Inc-HSGCHG Investments LLC
Income & Expense by Month
September through December 2018

	Sep 18	Oct 18	Nov 18	Dec 18	TOTAL
Net Income	0.00	0.00	0.00	0.00	0.00

490



FINKEL
LAW FIRM LLC

MAGALIE A. CREECH
MCREECH@FINKELLAW.COM

REPLY TO:
CHARLESTON LITIGATION

December 7, 2020

Louis H. Lang, Esq.
Callison Tighe & Robinson LLC
P.O. Box 1390
Columbia, SC 29202
Attorneys for Defendants

Re.: Avatar Partners CT, LLC v. HSGCHG Investments, LLC, *et al.*
Case No.: 2019-CP-33-00853
Our File No.: 90039.54728

Dear Louis:

Our firm has been instructed to provide you with a quote for the amount required to pay off the above-referenced loan as of December 14, 2020.

As of December 14, 2020, the payoff amount on the loan totals: $5,839,616.99.

Additionally, as of the date of this letter, the Plaintiff owes $440.00 in outstanding attorney fees and costs associated with the foreclosure referral.

Our firm anticipates that additional attorney fees and costs will accrue due to case activities occurring from December 7, 2020 to December 14, 2020. If your clients pay off the loan prior to December 14, 2020, please contact our office at least 24 hours before remitting funds to request confirmation of the actual fees and costs incurred at that time.

Payoff amount:	$5,389.616.99
Outstanding attorney fees and costs through December 7, 2020	$440.00
Total Due as of December 7, 2020 to pay off loan as of December 14, 2020	**$5,840,056.99**

These figures are believed to be accurate but are subject to verification and approval by the plaintiff. Please make cashier's checks payable to Finkel Law Firm LLC or contact us for wiring instructions, as we will accept payment **only by cashier's check or wire transfer.** Payment of the total due must reach our Charleston Foreclosure Office no later than 2:00 p.m., on the above due date. This quote expires at that time. **Neither personal checks nor attorney trust account checks will be accepted.**

If you choose to wire the funds to us, you must notify us in writing that you have done so in order to have the funds credited to your loan. **We must receive written notification of the wire transfer from you and confirmation of receipt from our bank in order to have the loan reinstated.**

Please contact our Quotes department by phone at 843-577-5460; by facsimile to 866-755-3844; or by email to quotes@finkellaw.com should you need additional information concerning this quote.

/S/ Magalie A. Creech, Esquire

THIS IS AN ATTEMPT TO COLLECT A DEBT, AND ANY INFORMATION OBTAINED WILL BE USED FOR THAT PURPOSE.

* Please note that this sum represents the total that the Plaintiff has indicated will pay off your account as of the due date, in an amount sufficient to prompt the dismissal of any pending foreclosure action or to prevent the filing of a foreclosure action. However, the sum may not include all of the total fees, charges, and advances that may be due on your account as of the payoff due date, such as escrow advances, late charges, and other fees and charges. Accordingly, following payoff, there may be certain outstanding fees, charges, and/or advances remaining on your account. Please refer to your account statement, or contact your servicer's customer service department, with any questions about any balances remaining on your account following payoff.

If the Debtor has received a discharge of the debt described in paragraph one pursuant to the United States Bankruptcy Code, neither Creditor nor its law firm is seeking to collect any portion of the debt and all information contained herein is supplied for informational purposes only. Any pending or ensuing legal action by Creditor's law firm will undertake to foreclose a valid security interest only and neither is intended nor will operate as any effort to collect upon any debt that has been so discharged.

Principal Balance				$ 3,500,000.00
Interest	9/1/2018 to 12/14/2020		835	$ 810,993.75
Default Interest	11/1/2018 to 12/14/2020		774	$ 752,498.28
Late Charges	Accrued as of 9/14/2018 [B4]			$ 46,620.00
Late Charges	10/15/2018 to 7/1/2019		9	$ 26,223.75
Extension Fee				$ 105,000.00
Due in Full Fee 7/1/2019				$ 350,000.00
Reserve Balance				$ (40,165.82)
Rents Received		$ 379,587.18		
Tax		$ (142,334.76)		
Insurance		$ (89,433.86)		
Property Expenses		$ (135,751.92)		
Legal Fees		$ (283,370.18)		
Appraisal		$ (6,000.00)		
Expenses less Rental Income 9/14/18 to 12/3/20		$ (277,303.54)		$ 277,303.54
Interest on Tax & Insurance Advanced				$ 11,143.49
Due 12/14/2020				**$ 5,839,616.99**
Per Diem	$ 971.25			
Default Per Diem	$ 972.22			

COLDWELL BANKER
McMILLAN AND ASSOCIATES

419 SOUTH COIT STREET
FLORENCE, SC 29501
OFFICE (843) 667-1100
FAX (843) 669-6965
CBFlorence.com

Broker's Opinion of Value

January 21, 2020

Prepared for:

Hartmann Development, LLC

Prepared by:

Joe McMillan

Coldwell Banker McMillan

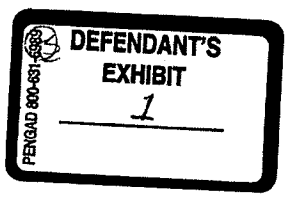
And

Associates

419 S. Coit Street

Florence, SC 29501

843-601-7710



Each Office Is Independently Owned And Operated.

I Property Profile

II Property Positive and Negative Attributes

III Property Valuation

IV Pictures, Street Map and Aerial Map

Address: Carolina Entertainment Complex
1548 US Highway 501 Marion SC.

Description: 248.52 Acre tract of land with proposed improvements,
Located at 1548 US Highway 501 Marion SC.

Land Area: 248.52 acres

Positive Attributes:

Highway 501 Marion, SC on the main thoroughfare to Myrtle Beach, SC, about 40 minutes away, and Florence, SC about 20 minutes away. Myrtle Beach one of the east coast's tourist destination and retirement towns. Florence is at the intersection of I-20 and I-95.

Negative Attributes:

A development of 1,800 homes and commercial has not been attempted in Marion County.

Property Valuation:

11.34 Acres Highway Commercial @ $10.00/Ft	$4,920,000
8.42 Acres Entertainment Venue @ $3.00/Ft	$1,100,000
7.42 Acres Community Village @ $5.00/Ft	$1,616,000
285 Single 1 Cottage Lots @ $20,000 ea	$5,700,000