

IN THE CIRCUIT COURT IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY, FLORIDA,
a political subdivision of the State of Florida,

Plaintiff,

v.

Case No.: _____

KATHY F. COLLINS, INDIVIDUALLY AND
AS PERSONAL REPRESENTATIVE OF
THE ESTATE OF FAYETTE DENNISON;
AND INNERARITY ISLAND
DEVELOPMENT CORPORATION,
a Florida Corporation,

Defendants.

_____ /

COMPLAINT TO SET ASIDE TRANSFERS AND OBLIGATIONS

Plaintiff, Escambia County, Florida (County), in its role as joint receiver sues Kathy F. Collins, Individually and as Personal Representative of the Estate of Fayette Dennison, and Innerarity Island Development Corporation, a Florida Corporation, to set aside and avoid certain transfers and obligations, and alleges:

General Allegations

1. The Estate of Fayette Dennison probate is pending in the Escambia County Circuit Court, Case No. 2013 CP 000025 (hereinafter "The Estate").
2. Kathy F. Collins is the Personal Representative of the Estate and a daughter of the deceased, Fayette Dennison.
3. Kathy F. Collins is the President, Secretary and Treasurer of Innerarity Island Development Corporation.

4. Innerarity Island Development Corporation (hereinafter "IIDC") is a Florida Corporation with its principal place of business in Escambia County, Florida.

5. The Estate of Fayette Dennison is the sole owner and shareholder of IIDC.

6. IIDC owned and operated a water and wastewater utility and associated real and personal property constituting a system (hereinafter "Utility").

7. IIDC served Notice of Abandonment of the Utility upon the County and the Public Service Commission on or about January 27, 2014.

8. As required by Florida Statutes, the County petitioned the Court to appoint a receiver for the Utility in Escambia County Circuit Court, Case No. 2014 CA 000237.

9. The Court granted that petition and appointed the County as receiver for the Utility by Order entered on March 21, 2014. Attached as **Exhibit "A"** is a true copy of that Order. A subsequent motion by County to appoint Emerald Coast Utilities Authority as joint receiver was granted on September 8, 2014.

10. County's duties pursuant to the Court Order and under Florida Statutes include duties to operate the Utility, make repairs, replacements and improvements to the Utility and to dispose of the real and personal property of IIDC.

11. The County's duties also include accumulating and disposing of the assets of IIDC, and disposing them in a manner that generates monies to be used to repair, upgrade and operate the Utility for the benefit of IIDC's creditors and the Utility.

12. The Utility is in need of upgrade and repairs.

13. In order for the Utility to be disposed of and brought into compliance with current operating standards, it will cost an estimated \$3.7 million to \$7.0 million dollars.

14. IIDC owns real property in Escambia County, Florida, consisting of 118 lots (hereinafter "Lots").

15. These Lots have an approximate tax assessed value of \$2,027,149.00.

16. These Lots are assets of and property of IIDC that the County can use to generate monies to be used to maintain, repair, upgrade and operate the Utility.

17. Certain transfers were made by IIDC and obligations incurred by IIDC, which County seeks to avoid so that the assets generated from that avoidance can be used to maintain, repair, upgrade and operate the Utility.

18. The Order appointing County as receiver provides that IIDC is not and will not be entitled to any benefits or proceeds from the disposition of property or monies associated with the Utility.

19. County as receiver has the right to bring suit and to seek all legal and equitable relief.

20. County is a Creditor of IIDC.

21. This Court has jurisdiction over these matters.

22. County is entitled to relief under Fla. Stat. § 726.108.

23. County is entitled to the recovery of fees and costs in bringing these actions.

COUNT I – AS TO MORTGAGE

24. This is an action for equitable and other relief pursuant to the Uniform Fraudulent Transfer Act, Fla. Stat. § 726.101, et seq. as it relates to a Mortgage described below.

25. County re-alleges paragraphs one (1) through twenty-three (23) as if more fully set forth herein.

26. The Lots were free and clear of any lien for years up and until November 5, 2013.

27. On November 5, 2013, IIDC gave a Mortgage and Security Agreement to Kathy F. Collins, Personal Representative of the Estate of Fayette Dennison (hereinafter "Estate") for the face amount of \$750,000.00 purportedly to secure advances that had been previously made and that were subsequently made by the Estate allegedly to and/or for IIDC. Attached as **Exhibit "B"** is a copy of this Mortgage. The Mortgage has attached to it the legal descriptions of the Lots.

28. The advances made by the Estate which are purportedly secured by the Mortgage total approximately \$675,592.50.

29. This purported loan intended to be secured by the Mortgage was represented by a Line of Credit Promissory Note (hereinafter "Note") and Loan Agreement, both dated November 5, 2013 (cumulatively referred to as "Loan"). A copy of the Note and Loan Agreement are attached as **Exhibits "C" and "D"** respectively.

30. This Loan was not a traditional line of credit transaction whereby the loan documents were signed, and thereafter draws made by IIDC on the line of credit.

31. This Loan was comprised by approximately 68 different checks issued by the Estate from January, 2013 to March, 2014 to third parties and to IIDC.

32. It was only after approximately 11 months of checks being issued by the Estate that these checks (and subsequent checks) were documented in the form of the line of credit Loan and the Loan secured by a Mortgage.

33. Of the 68 checks issued by the Estate between January 2013 to March 2014, 47 of those checks were payable to third parties and totaled \$278,787.13. Of the checks totaling \$278,787.13, \$258,165.53 were issued prior to the Mortgage (November 5, 2013).

34. Of the 68 checks, the Estate issued only 21 checks directly payable to IIDC totaling \$396,805.37, of which \$359,925.37 were after November 5, 2013 (the date of the Mortgage).

35. Prior to the November 5, 2013 Mortgage, the Estate was issuing checks directly to third parties, which checks were added together and characterized in November 2013 as part of a line of credit Loan owing by IIDC secured by the assets (the Lots) of IIDC.

36. The Mortgage was a transfer made by IIDC and obligation incurred by IIDC, which County seeks to avoid.

37. This Mortgage was fraudulent as to creditors.

38. This Mortgage was made by IIDC:

(a) With actual intent to hinder, delay, or defraud a creditor of IIDC; or

(b) Without receiving a reasonably equivalent value in exchange for the transfers or obligations.

39. This Mortgage was given to an insider.

40. This Mortgage pledged the Lots which were substantially all IIDC's assets,

41. This Mortgage was made when IIDC was insolvent or IIDC became insolvent shortly after the Mortgage.

42. This Mortgage was made shortly before and/or shortly after a substantial debt was incurred.

43. This Mortgage transferred to the Estate, an insider, essentially all assets of IIDC.

44. It was clear at the time of the Mortgage and well prior thereto, that IIDC was engaged or was about to engage in a business or a transaction for which the remaining assets of IIDC were unreasonably small in relation to the business or transaction; and that IIDC incurred, or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due.

45. This Mortgage was given for antecedent debt.

46. The insider Estate had reasonable cause to believe that IIDC was insolvent.

WHEREFORE, Plaintiff requests this Court avoid the Mortgage and that the Court award to Plaintiff costs and reasonable attorneys fees and such other relief as just and appropriate.

COUNT II – AS TO MONIES PAID TO THE ESTATE AND MS. COLLINS

47. This is an action for equitable and other relief pursuant to the Uniform Fraudulent Transfer Act, Fla. Stat. § 726.101, et seq. as it relates to certain transfers and obligations described below, seeking to avoid and set aside certain transfers and, for turnover of assets.

48. County re-alleges paragraphs one (1) through twenty-three (23) as if more fully set forth herein.

49. On November 5, 2013, IIDC gave a Mortgage and Security Agreement to Kathy F. Collins, Personal Representative of the Estate of Fayette Dennison (hereinafter "Estate") for the face amount of \$750,000.00 purportedly to secure advances that had been previously made and that were subsequently made by the Estate allegedly to and/or for IIDC. Attached as **Exhibit "B"** is a copy of this Mortgage. The Mortgage has attached to it the legal descriptions of the Lots.

50. The advances made by the Estate which are purportedly secured by the Mortgage total approximately \$675,592.50.

51. This purported loan intended to be secured by the Mortgage was represented by a Line of Credit Promissory Note (hereinafter "Note") and Loan Agreement, both dated November 5, 2013 (cumulatively referred to as "Loan"). A copy of the Note and Loan Agreement are attached as **Exhibits "C" and "D"** respectively.

52. This Loan was not a traditional line of credit transaction whereby the loan documents were signed, and thereafter draws made by IIDC on the line of credit.

53. This Loan was comprised by approximately 68 different checks issued by the Estate from January, 2013 to March, 2014 to third parties and to IIDC.

54. Of the 68 checks issued by the Estate between January 2013 to March 2014, 47 of those checks were payable to third parties and totaled \$278,787.13. Of the checks totaling \$278,787.13, \$258,165.53 were issued prior to the Mortgage (November 5, 2013).

55. Of the 68 checks, the Estate issued only 21 checks directly payable to IIDC totaling \$396,805.37, of which \$359,925.37 were after November 5, 2013 (the date of the Mortgage).

56. Of the 21 checks the Estate issued payable directly to IIDC, IIDC turned around and used some of these monies to pay the Estate plus interest and to pay Ms. Collins a salary.

57. The following checks were issued by the Estate to Ms. Collins or the Estate:

<u>Payee</u>	<u>Amount</u>	<u>Date</u>	<u>Memo Notation on Check</u>
Kathy Collins	\$42,027.50	11-19-13	Salary
Kathy Collins	\$4,002.75	11-29-13	November salary
Kathy Collins	\$4,002.75	12-13-13	December salary
Kathy Collins	\$4,002.75	1-27-14	January salary
Kathy Collins	\$4,002.75	2-24-14	February salary
Kathy Collins	\$4,002.75	3-19-14	March salary
Estate of Dennison	\$16,090.16	12-31-13	interest
Estate of Dennison	\$70,000.00	12-09-13	loan repayment PR fee
Estate of Dennison	\$11,859.00	12-9-13	loan repayment/ legal fees
Estate of Dennison	\$10,845.86	3-20-14	interest on mortgage

58. The payments from IIDC to Ms. Collins were transfers that are fraudulent.

59. The payments from IIDC to the Estate were transfers that are fraudulent.

60. Ms. Collins as Personal Representative of the Estate is responsible for administering Estate assets.

61. The Estate assets include the IIDC stock belonging to her deceased father.

62. Any services performed by Ms. Collins were in her role as either a Personal Representative of the Estate or as beneficiary of the Estate.

63. Ms. Collins should not have been compensated in the form of salary by IIDC.

64. To the extent that Ms. Collins was entitled to any compensation it would have been from the Estate directly.

65. Even if it was appropriate for Ms. Collins to receive some monies from IIDC in the form of salary, the amount received well exceeded a reasonable salary.

66. The Estate as the sole shareholder of IIDC should not have been repaid any monies.

67. County is seeking herein to avoid and set aside the transfers of these payments from IIDC to the Estate and to Ms. Collins.

68. These transfers were fraudulent as to creditors.

69. These transfers was made by IIDC:

(a) With actual intent to hinder, delay, or defraud a creditor of IIDC; or

(b) Without receiving a reasonably equivalent value in exchange for the transfers.

70. These transfers were given to the Estate and to Ms. Dennison, both of whom are insiders.

71. These transfers were substantial assets of IIDC, and these transfers to the Estate and Ms. Collins, along with the Mortgage on the Lots transferred to the Estate

and Ms. Collins, both insiders, and other transfers described herein, were essentially all assets of IIDC.

72. These transfers were made when IIDC was insolvent or IIDC became insolvent shortly thereafter.

73. At the time these transfers were made, the Estate and Ms. Collins had reasonable cause to believe that IIDC was insolvent or would become insolvent shortly thereafter.

74. These transfers were made shortly before and shortly after a substantial debt was incurred.

75. It was clear at the time of these transfers and well prior thereto, that IIDC was engaged or was about to engage in a business or a transaction for which the remaining assets of the IIDC were unreasonably small in relation to the business or transaction; and that IIDC incurred, or reasonably should have believed that it would incur debts beyond its ability to pay as they became due.

76. To the extent that these transfers were given for a debt of IIDC, it was antecedent debt.

WHEREFORE, Plaintiff request this Court avoid and set aside these transfers, directing that the Estate and Ms. Collins turnover and return these monies to IIDC forthwith, and that the Court award to Plaintiff costs and reasonable attorneys fees and such other relief as just and appropriate.

**COUNT III – AS TO THE CHARACTERIZATION
OF MONIES AS A DEBT OF IIDC**

77. This is an action for equitable and other relief pursuant to the Uniform Fraudulent Transfer Act, Fla. Stat. § 726.101, et seq. as it relates to the characterization of monies as debt of IIDC.

78. County re-alleges paragraphs one (1) through twenty-three (23) as if more fully set forth herein.

79. On November 5, 2013, IIDC gave a Mortgage and Security Agreement to Kathy F. Collins, Personal Representative of the Estate of Fayette Dennison (hereinafter "Estate") for the face amount of \$750,000.00 purportedly to secure advances that had been previously made and that were subsequently made by the Estate allegedly to and/or for IIDC. Attached as **Exhibit "B"** is a copy of this Mortgage. The Mortgage has attached to it the legal descriptions of the Lots.

80. The advances made by the Estate which are purportedly secured by the Mortgage total approximately \$675,592.50.

81. This purported loan intended to be secured by the Mortgage was represented by a Line of Credit Promissory Note (hereinafter "Note") and Loan Agreement, both dated November 5, 2013 (cumulatively referred to as "Loan"). A copy of the Note and Loan Agreement are attached as **Exhibits "C" and "D"** respectively.

82. The Estate of Dennison claims to be owed monies by IIDC as evidenced by **Exhibits "C" and "D"** Loan and **Exhibit "B"** Mortgage all dated November 5, 2013.

83. The **Exhibit "D"** Loan Agreement has attached to it marked as Exhibit A, a list of checks totaling \$376,149.70 that were issued by the Estate to the various

parties indicated thereon dating from January 24, 2013 through September 26, 2013, all prior to the November 5, 2013 Loan and Mortgage.

84. Subsequent to those checks described, the Estate issued additional checks to IIDC and third parties that were added on by the Estate to the debt represented by the Loan and Mortgage.

85. Between January 2013 and March 2014 the Estate issued 68 checks that IIDC agreed to pay back to the Estate.

86. Of these 68 checks, 47 of those checks were payable to third parties and totaled \$278,787.13. Of the checks totaling \$278,787.13, \$258,165.53 were issued prior to the Mortgage (November 5, 2013).

87. The Estate as the sole shareholder of IIDC has obligations to contribute capital in order for the Utility to continue to operate.

88. All monies advanced by the Estate that were for the benefit of IIDC should be characterized as a capital contribution and not as a loan.

89. In the chart below are examples of some payments directly from the Estate that are included in the calculation of loan claimed to be owed by IIDC to the Estate under the Loan. These should have been capital contributions.

<u>Payee</u>	<u>Amount</u>	<u>Date</u>	<u>Memo Notation on Check</u>
Southern Utility Co. Inc.	\$70,329.38	1-23-13	11-21-13/1-9-13 Invoice
Innerarity Island Association, Inc.	\$6,880.00	1-23-13	86 lots Innerarity Island
Technologies for Tomorrow	\$1,405.64	2-4-13	??
Dennison & Associates, P.A.	\$3,720.00	3-3-13	Innerarity Island Development
Kenneth Horne &	\$6,200.00	3-15-13	IIDC

Assoc., Inc.			
Florida Public Service Commission	\$1,971.00	3-26-13	2012 Innerarity Island Development
Florida Public Service Commission	\$2,165.08	3-26-13	2012 Innerarity Island
Merrill Parker Shaw, Inc.	\$48,150.00	7-25-13	invoice
Kenneth Horne & Associates	\$4,910.00	8-12-13	invoice
Kenneth Horne & Associates	\$8,938.75	8-13-13	invoice
Kenneth Horne & Associates	\$5,367.50	9-5-13	invoice
SBP	\$57,600.00	9-26-13	Invoice IIDC
Saltmarsh, Cleveland & Gund	\$20,621.50	4-17-14	?

90. Some of the checks issued by the IIDC and some of the checks issued by the Estate were used to pay debts of the Estate, and therefore should not be considered as part of any debt owing by IIDC to the Estate. These include the Saltmarsh, Cleaveland & Gund payment above.

91. Below is a chart that shows examples of payments direct from IIDC that were not for debts of IIDC or that benefitted the Utility, but instead were obligations of the Estate.

Saltmarsh, Cleveland & Gund	\$5,775.00	6-27-13	invoice
Saltmarsh Cleveland & Gund	\$9,770.00	2-18-14	invoice
Clerk of Court	\$4,245.50	11-5-13	Recording Fee, Doc. Stamps & Intangible Tax on Mortgage

Shell, Fleming, Davis	\$1,500.00	11-5-13	Closing Fee for Mortgage
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92. Historical records reflect that Saltmarsh, Cleaveland & Gund in May 2013 was being consulted about the Estate Tax Return and tax matters affecting the Estate. The assets of IIDC should not have been used to pay what more properly should be a debt of the Estate.

93. IIDC assets should not have been used to pay the Clerk of Court for the Mortgage recording, documentary stamps and intangible tax and Shell, Fleming for preparing the Mortgage because the monies given by the Estate should not have been characterized as a loan.

94. The characterization of these and other payments from IIDC and the Estate to third parties as a loan owing by IIDC to the Estate are fraudulent.

95. County is seeking to avoid these obligations from IIDC to the Estate.

96. These obligations were fraudulent as to creditors.

97. These obligations were made by IIDC:

(a) With actual intent to hinder, delay, or defraud a creditor of IIDC; or

(b) Without receiving a reasonably equivalent value in exchange for the transfers.

98. These monies were treated as loan obligations owing by IIDC to the Estate, who is an insider.

99. These monies were treated as loan obligations which used substantial assets of IIDC that should have been used for the benefit of IIDC's creditors and the Utility.

100. These obligations were made when IIDC was insolvent or IIDC became insolvent shortly thereafter and the Estate had reasonable cause to believe that IIDC was insolvent

101. These obligations were either direct obligations of the Estate, or were capital contribution obligations of the Estate to IIDC, and therefore less than reasonably equivalent value was given in exchange for the obligations.

102. These obligations were made shortly before and/or shortly after a substantial debt was incurred.

103. These obligations to the Estate, along with the Mortgage on the Lots transferred to the Estate, and the payments to the insiders, the Estate and Ms. Collins, set forth above, were essentially all assets of IIDC.

104. It was clear at the time of these obligations and well prior thereto, that IIDC was engaged or was about to engage in a business or a transaction for which the remaining assets of the IIDC were unreasonably small in relation to the business or transaction; and that IIDC incurred, or reasonably should have believed that it would incur, debts beyond its ability to pay as they became due.

105. To the extent that these obligations constituted a loan owing by IIDC to the Estate, it was antecedent debt.

106. IIDC had creditors whose claims arose before the transfers were made or the obligations were incurred.

WHEREFORE, Plaintiff request this Court determine that all or a portion of the debt alleged to be owed by the Estate from IIDC is not debt of IIDC, or alternatively that all or a portion of that alleged debt be characterized as capital contribution, and that the

Court award to Plaintiff costs and reasonable attorneys fees and such other relief as just and appropriate.

Respectfully submitted,

/s Sally Bussell Fox

Sally Bussell Fox

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Co-Counsel for Plaintiff

IN THE CIRCUIT COURT OF
THE FIRST JUDICIAL CIRCUIT
IN AND FOR ESCAMBIA COUNTY, FLORIDA

ESCAMBIA COUNTY, FLORIDA, a
political subdivision of the State of Florida,

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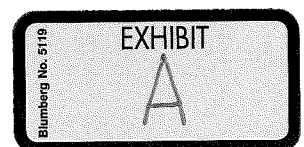
INNERARITY ISLAND DEVELOPMENT
CORPORATION, a Florida corporation,

Respondent.

ORDER APPOINTING RECEIVER

THIS MATTER having come before the Court on March 21, 2014 upon the Petition of Escambia County to appoint a Receiver pursuant to a Notice of Abandonment and the Court having heard argument of counsel and being fully advised in the premises, hereby finds:

1. Respondent owns and operates a water and wastewater utility and associated real and personal property constituting a system (hereinafter "System") within the jurisdictional boundaries of Escambia County, Florida. Respondent is a utility as defined by § 367.021(12), Fla. Stat. and owns and operates a system as defined by § 367.021(11), Fla. Stat.
2. Respondent purchases water and wastewater services from Emerald Coast Utilities Authority which is then resold and billed to the customers of System.
3. On or about January 27, 2014, Respondent formally filed a Notice of Abandonment pursuant to § 367.165(1), Fla. Stat. and Escambia County subsequently filed its Petition to Appoint a Receiver (the "Petition") to take possession of and operate



Respondent's System and utility.

ACCORDINGLY, IT IS HEREBY ORDERED AND ADJUDGED:

A. The County's Petition is hereby granted.

B. Appointment of Receiver and Term. Escambia County is hereby appointed as the Receiver for Respondent's System. The term of this receivership shall begin on a date mutually agreeable to the Receiver and Respondent, but no later than March 28, 2014. It shall terminate when the Receiver disposes of the real and personal property of Respondent as provided in § 367.165(2), Fla. Stat., in a manner designed to continue the efficient and effective operation of utility service. In light of Respondent's abandonment of the System, Respondent is not, nor will be, entitled to any benefits or proceeds, specifically including any proceeds from disposition of property or distribution of monies, that result from, or which are associated with, the disposal of all, or a part of, the System by the Receiver. Upon termination of the receivership as provided, the Receiver shall be released from all further obligations to operate and maintain the System.

C. Surrender of Property, Assets, Documents, and Facilities. All real and personal property, assets, documents, and facilities comprising and necessary to the System shall be transferred to the custody and possession of Receiver after entry of this Order. In this respect, Respondent shall: (1) transfer to and produce to the Receiver all customer account records, contracts, agreements, non-privileged correspondence, business records, easements, construction drawings, record drawings, O&M manuals, permits, operating protocol, and any other documents related to the System, to include the real and personal property, assets and liabilities associated therewith in order that the Receiver may then operate and maintain said System, and (2) surrender possession of all

real and personal property comprising the System and owned by Respondent to the custody of Receiver. Upon entry of this Order, Respondent shall transfer and produce all bank accounts, bank account records, customer deposits, cash, and accounts receivable balances to the custody of Receiver, which relate to the subject abandoned property and System. However, the Receiver shall maintain all documents in accordance with its record retention policy and subject to all applicable federal, state or local laws. At Respondent's cost and expense, Respondent may retain, or make arrangements for the duplication of records in the possession of the Receiver to be disposed of. To the extent that the System is sold or otherwise disposed of, the Receiver shall include a provision in the instrument effectuating the transfer for the maintenance of records as provided herein.

D. Receiver's Powers. Once the documents maintained and possessed by Respondent together with the real and personal property owned by Respondent are surrendered and transferred to the custody and possession of Receiver in accordance with Paragraph C above, the Receiver shall send written notice of receipt thereof to this Court and shall continue the lawful operation and maintenance of the utility service to the customers of Respondent. In order to discharge its responsibilities under this Order and by statute, the Receiver shall have the following powers and authority:

- (1) To provide and maintain water and wastewater utility service within the designated service area, in compliance with all applicable permits, regulations, local laws, and statutes;
- (2) To make extensions, expansions, repairs, replacements, and improvements to the System as appropriate and necessary;
- (3) To collect rates, fees and charges, and deposits for all utility service

provided by the System in accordance with all applicable state and local laws;

(4) To increase rates charged to customers served by the System or to impose special assessments in accordance with law upon real property owners benefitted by the System to pay for costs of operation, maintenance and upgrade of the System;

(5) To borrow money and to pledge or encumber the facilities, assets and revenues of the System for the repayment thereof;

(6) To enter into contracts or agreements with any other public agency or private entity providing for or relating to the operation and maintenance of the System or the connection of the customers to any other public or private water and wastewater utility;

(7) To accept any gifts, grants, or contributions in kind in connection with the management, operation, and maintenance of the System;

(8) To retain and pay the fees, costs, and salaries of accountants, architects, engineers, attorneys, employees, or other professional consultants as necessary or desirable in the management, operation, or maintenance of the System and to ensure compliance with all provisions of this Order for the rates, fees and charges authorized under this paragraph;

(9) To pay from the revenues collected from the customers of the System, all necessary and reasonable operating expenses (including the costs and expenses contemplated in this paragraph) in a manner designed to continue the efficient and effective operation of said System. Furthermore, Receiver may expend such reasonable amounts as prudent, necessary, and advisable, in the professional judgment of Receiver, in order to effectuate the efficient and effective operation of the System.

(10) To sue or be sued, to implead or to be impleaded, to complain and defend in any court, and to seek all legal or equitable relief in accordance with applicable state law;

(11) To apply for and obtain any applicable federal, state, and local governmental permits, certificates, licenses, or other approvals in order to operate and maintain the System;

(12) To perform generally any other lawful acts necessary or desirable to carry out the express powers and authority granted and imposed herein.

(13) To seek further instructions and/or guidance from this Court concerning the operation and maintenance of the System during any part of the time frame that the receivership exists.

E. Continuing Jurisdiction. This Court shall retain jurisdiction in this cause to enter such further orders or take any action as it deems appropriate. Nothing in this Order is intended to determine what entity or person may be ultimately and permanently responsible for the operation and maintenance of the System, except as provided in Paragraph B, above. As Receiver did not operate or own a water and wastewater utility or system prior to entry of this Order, it is contemplated that Receiver will be endeavoring to dispose of the System in compliance with statute and in furtherance of its police power. Further, Respondent contends that certain parcels of real property are not part of the System and are not necessary for its effective and efficient operation. Receiver contends that the statutory definition of System set forth in § 367.021(11) provides that real property used or useful in providing service would encompass all real property owned by Respondent. In the event that Receiver and Respondent are not able to reach an

agreement concerning the extent of real property owned by Respondent which should be ultimately disposed of as part of Receiver's obligation under § 367.165(2), Fla. Stat., then the Court retains jurisdiction to make a determination as to the extent of real property either necessary or useful for the efficient and effective operation of the System.

F. Immunity from Liability and Violations. As consideration for Receiver assuming the responsibility for the continued operation and maintenance of the System, the Receiver and its agents and employees are hereby declared to be held harmless and not legally responsible for any or all claims, liability, demands, damages, expenses, fees, fines, penalties, suits, proceedings, actions and fees, including attorneys' fees, that have arisen or may arise out of (or be the result of) the past design, construction, operation, and maintenance of the System. This immunity shall include, but is not limited to: immunity from injury to persons, damage to property or property rights, or violation of any governmental law, rule, regulation or requirement that may arise from the design, construction, operation, or maintenance of the System occurring prior to the effective date of abandonment of March 28, 2014, or during the period of receivership, if such injury, damage or violation is the direct result of design, construction, operation or maintenance of the System occurring prior to the effective date of abandonment of March 28, 2014.

G. Respondent's Liability. Respondent shall remain liable under all applicable laws for any claims, violations, demands, penalties, suits, proceedings, actions or fees occurring on or prior to the effective date of abandonment of March 28, 2014. To the extent that any such claim, violation, demand, penalty, suit, proceeding, action, or fee is presented, Receiver, or its successors or assigns, shall make available to Respondent all documents surrendered pursuant to Paragraph C herein.

H. Receiver's Separation of Funds. Escambia County, as Receiver, is hereby directed by this Court to maintain separate accounts and records for the management of the Respondent's System. Additionally, this Court hereby directs that the revenues from the Respondent's System are not to be considered the revenues of the Receiver, nor are the revenues of the Receiver to be considered those of Respondent.

I. Receiver's Obligations for Operation. The Receiver in this cause is hereby directed to operate the System until disposed of as provided by this Order. The System shall be operated by the Receiver in such a manner so as to provide efficient and effective continuous service to the customers of the System during the term of this receivership and as can be provided from the revenues of the System.

J. Receiver's Accounting to the Court. Upon request and subject to the Florida Public Records Act, Receiver shall submit to the Court and to Respondent financial and operational reports for the System for the duration of its receivership.

DONE AND ORDERED in Chambers at Pensacola, Escambia County, Florida this 21st day of March, 2014.

ISI JAN SHACKELFORD

Jan Shackelford, Circuit Court Judge

Copies to: Charles V. Pepler, Deputy County Attorney
Ron Nelson, Attorney for Respondent

Prepared by:
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STATE OF FLORIDA
COUNTY OF ESCAMBIA

MORTGAGE AND SECURITY AGREEMENT

This Mortgage and Security Agreement ("Mortgage") is made and executed as of the 5 day of November, 2013, by Innerarity Island Development Corporation, a Florida corporation ("Mortgagor" or "Borrower"), to Kathy F. Collins, Personal Representative of the Estate of Fayette Dennison, as mortgagee ("Lender" or "Mortgagee") whose address is 1921 Seville Drive, Pensacola, Florida 32503.

WITNESSETH:

WHEREAS, Lender has agreed to make a loan to Mortgagor in the principal amount of Seven Hundred Fifty Thousand Dollars (\$750,000.00) (the "Loan");

WHEREAS, the Loan is evidenced by a Revolving Line of Credit Promissory Note from Mortgagor and all renewals, modifications and amendments thereto (the "Note") of even date herewith from Mortgagor to Lender in the original principal amount of \$750,000.00;

WHEREAS, Lender will not make the Loan unless Mortgagor give to Lender this Mortgage as security for the Note and related loan documents set forth hereinafter.

NOW, THEREFORE, for and in consideration of the Loan and to secure the prompt payment of the Note, with interest thereon, and any and all extensions, renewals, replacements, consolidations and modifications thereof, and further to secure the punctual performance of all covenants, conditions and agreements set forth herein or in the other instruments securing the Note, Mortgagor do hereby irrevocably mortgage, grant, bargain, sell, alien, remise, release, confirm, pledge, assign, transfer and convey to Lender, his successors and assigns, the following described property (all of which as described in (A) through (E) below is referred to herein as the "Mortgaged Property"):

(A) Those parcels of land (the "Property") situated and lying in Escambia County, Florida and described as follows:

See Exhibit A

(B) All structures, buildings, improvements, sewage and utility lines and equipment, appurtenances and fixtures of every nature whatsoever now or hereafter situated in, on, above or under the Property (the "Improvements");

(C) All building materials, equipment, fixtures and fittings of every kind or character now owned or hereafter acquired by the Mortgagor for the purpose of being used or useful in the construction of the Improvements located or to be located on the Property, whether such materials, equipment, fixtures and fittings are actually located on or adjacent to the Property or not, and whether in storage or otherwise, wheresoever the same may be located, including without limitation all lumber and lumber products, bricks, building stones and building blocks, sand and cement, roofing material, paint, doors, windows, hardware, nails, wires and wiring, plumbing and plumbing fixtures, sewer lines and pumping stations and fixtures and equipment, heating and air-conditioning equipment and appliances, electrical and gas equipment and appliances, pipes and piping, ornamental and decorative fixtures, furniture, ranges, refrigerators, dishwashers and disposals;

(D) All fixtures, appliances, machinery, furniture, furnishings, apparatus, equipment and other articles of personal property of any nature whatsoever owned by Mortgagor now or at any time hereafter and now or hereafter installed in, attached to or situated in or upon the Property or the Improvements, or used or intended to be used in connection with the Property or in the operation, occupancy, use, maintenance or enjoyment of any of the Improvements now or hereafter erected thereon or relating or appertaining thereto, whether or not such personal property is or shall be affixed thereto, including without limitation all furniture, furnishings, apparatus, machinery,

motors, elevators, fittings, radiators, ranges, ovens, ice boxes, refrigerators, awnings, shades, screens, blinds, office equipment, carpeting and other furnishings, and all plumbing, heating, lighting, cooking, laundry, ventilating, refrigerating, incinerating, air-conditioning and sprinkler equipment and fixtures and appurtenances thereto; and all proceeds thereof (including without limitation condemnation awards and insurance proceeds), all extensions, betterments and accessions thereto, all renewals and replacements thereof and all articles in substitution therefor, whether or not the same are or shall be attached to the Property or Improvements in any manner; it being mutually agreed that all the aforesaid property shall, so far as permitted by law, be deemed to be fixtures and a part of the Property, and as to the balance of said Property, this Mortgage is hereby deemed to be as well a Security Agreement for the purpose of creating a security interest in said property and securing the Loan for the benefit of Lender. Notwithstanding this subparagraph (D), this Mortgage is only secures the fixtures and attached appliances and attached equipment described in this subparagraph (D);

(E) All easements, rights-of-way, gores of land, vaults, streets, ways, alleys, passages, sewer rights, waters, water courses, water rights and powers, riparian rights, water stock, development rights, air rights, public places, and all estates, rights, titles, interests, privileges, liberties, tenements, hereditaments and appurtenances whatsoever, in any way belonging, relating to or appertaining to the Property, or any part thereof, 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 and remainder and remainders thereof, and all rents, royalties, issues, profits, revenues and income with respect to the Property (including without limitation all condemnation awards, insurance proceeds, payments under leases and tenancies, sale proceeds, purchase deposits, tenant security deposits, escrow funds, and all proceeds, claims, causes of action and recoveries arising on account of any damage to or taking of, or for any loss or diminution in the value of, the Property or any Improvements, or any part thereof or interest therein), 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;

TO HAVE AND TO HOLD the Mortgaged Property and all parts thereof, together with all rights, privileges and appurtenances thereunto belonging, unto the Lender, his successors and assigns, forever, subject however to the terms and conditions herein.

ARTICLE I
COVENANTS AND AGREEMENTS OF MORTGAGOR

1.01 Secured Obligations. This instrument secures:

(a) The payment and performance of the indebtedness and obligations under the Note, including all extensions, renewals, consolidations and modifications of the Note.

(b) The payment and performance of the Mortgagor's obligations under this Mortgage.

(c) The payment of all sums advanced or paid out by the Lender under any provision of this Mortgage or to protect the security of this Mortgage.

(d) The payment of the principal and interest on all other or future loans or advances made by the Lender, at Lender's option, to the Mortgagor (or any successor in interest to the Mortgagor as the owner of all or any part of the Mortgaged Property), when the promissory note evidencing the loan or advance specifically states that it is secured by the Mortgage ("Future Advances"), including all extensions, renewals and modifications of any Future Advances, provided that such Future Advances are made within twenty (20) years from the date of this Mortgage or within such lesser period of time as may be hereafter provided by law as a prerequisite for the sufficiency of actual notice or record notice of such optional Future Advances as against the rights of creditors or subsequent purchasers for a valuable consideration, although there may be no advance made at the time of the execution of this Mortgage and although there may be no indebtedness outstanding at the time any Future Advance is made. It is intended that the lien of this Mortgage shall be valid as to all such indebtedness and Future Advances from the time this Mortgage is filed for record. The total amount of indebtedness that may be secured by this Mortgage may decrease or increase from time to time, provided, however, that the total unpaid balance secured at any time shall not exceed a maximum principal amount of One Million Dollars (\$1,000,000.00) plus interest thereon, and any disbursements made by Lender for the payment of taxes, levies or insurance on the property covered by this Mortgage, together with interest thereon, plus reasonable attorney's fees and court costs incurred in the collection of any or all of said sums of money. To the extent that this Mortgage may secure more than one note, a default in the payment of one note shall

constitute a default in the payment of all other notes. However, this provision as to Future Advances shall not be construed to obligate Lender to make any additional advances or loans.

(e) The payment and performance of the Borrower's obligations under the Loan Agreement and other Loan Documents (as defined in the Loan Agreement) and under all other present and future agreements executed by the Borrower or Mortgagor in favor of the Lender and relating to the Loan.

1.02 Warranty of Title. Mortgagor warrant that they are presently seized and possessed of an unencumbered, indefeasible fee simple estate in the Property, free and clear of all liens, claims and encumbrances and subject only to the exceptions, if any, listed in the title commitment issued in connection with this Loan; that it has good right, full power and lawful authority to mortgage, pledge and encumber the Mortgaged Property; and that they own the personal property and fixtures subject to this Mortgage free and clear of all liens and encumbrances. Further, Mortgagor warrant that they shall preserve such title to the Mortgaged Property and shall forever warrant and defend the same unto Lender and its successors and assigns against the claims of all persons and parties whomsoever.

1.03 Assignment of Rents. All of the existing and future rents, royalties, income, profits, issues, revenues and accounts of or related to the Mortgaged Property that arise from its use or occupancy are hereby absolutely and presently assigned to the Lender. Upon the occurrence of any Event of Default under this Mortgage, Lender may in its discretion at any time without notice to the Mortgagor collect the rents, royalties, income, profits, issues, revenues and accounts itself or by an agent or receiver. Mortgagor hereby authorizes and directs all lessees, sublessees and occupants of the Mortgaged Property or any part thereof to pay any and all amounts due Mortgagor pursuant to their respective leases, subleases and occupancy agreements to Lender or such nominee as Lender may designate in writing upon receipt of written notice from Lender that an Event of Default under this Mortgage or the other Loan Documents has occurred, and all such lessees, sublessees and occupants are expressly relieved of any and all duty, liability or obligation to Mortgagor in respect of all payments so made. No action taken by the Lender to collect any rents, royalties, income, profits issues, revenues and accounts shall make the Lender a "mortgagee-in-possession" of the Mortgaged Property. Possession by a court-appointed receiver shall not be considered possession by the Lender. All rents, royalties, income, profits, issues, revenues and accounts collected by the Lender or a receiver shall be applied to pay all expenses of collection (including without limitation attorneys' fees), all costs of operation and management of the Mortgaged Property, and all indebtedness and obligations secured by this Mortgage in whatever order the Lender directs in its absolute discretion and without regard to the adequacy of its security.

1.04 Transfer of Title. It is specifically agreed and understood that Mortgagor shall not sell, contract to sell, grant an option to purchase, transfer or otherwise convey all or any part of the Mortgaged Property, or any interest therein, nor transfer the benefit of the Loan evidenced by the Note and secured by the Mortgage or the interest rate specified in the Note to any person acquiring title from the Mortgagor. Unless Lender gives its prior consent in writing, the violation or attempted violation of any of the foregoing prohibitions or restrictions shall be an Event of Default under this Mortgage and the Note secured hereby. No cure period will apply to this default. Any consent given by Lender hereunder shall pertain only to the proposed transfer of title for which the consent was requested and shall not obligate Lender to approve any further or future transfers.

1.05 Intentionally omitted.

1.06 Use and Operation. Mortgagor warrant and represent to Lender that the proposed use of the Mortgaged Property, complies with all existing development orders, development of regional impact orders, zoning, future land use maps, comprehensive plans, land use regulations, growth management regulations and concurrency regulations of all federal, state and local governmental bodies and agencies having jurisdiction with respect to the Mortgaged Property which are applicable to the Mortgaged Property and with all other federal, state and local laws, rules and regulations which are applicable to the Mortgaged Property or the use thereof. Without the prior written consent of Lender, Mortgagor shall not seek, make or consent to any change in any existing development order or development of regional impact order or in the zoning, comprehensive plan classification, future land use classification or conditions of use of the Mortgaged Property which would impair the ability of Mortgagor to use and operate the Property for residential condominium purposes. Mortgagor shall comply with all existing and future requirements of all governmental authorities having jurisdiction over the Mortgaged Property.

1.07 Security Agreement. This Mortgage constitutes a Security Agreement under the Florida Uniform Commercial Code and creates a security interest in all that property (and the proceeds thereof) included in the

Mortgaged Property which might otherwise be deemed "personal property". Mortgagor hereby irrevocably authorize Lender to execute, deliver and file such instruments as are necessary to perfect the security interest granted to Lender herein without further consent from Mortgagor. Mortgagor shall execute, deliver, file and refile, any financing statements, continuation statements and other security agreements Lender may require from time to time to confirm the lien of this Mortgage with respect to such property. Without limiting the foregoing, Mortgagor hereby irrevocably appoints Lender attorney-in-fact for Mortgagor to execute, deliver and file such instruments for and on behalf of Mortgagor, provided that an Event of Default exists hereunder. For purposes of the foregoing sentence only, an affidavit by an officer of Lender shall be sufficient evidence of the existence of an Event of Default by Mortgagor. Notwithstanding any release of any or all of that property included in the Mortgaged Property which is deemed "real property", any proceedings to foreclose this Mortgage or its satisfaction of record, the terms hereof shall survive as a security agreement with respect to the security interests created hereby and referred to above until the repayment or satisfaction in full of the obligations of Mortgagor as are now or hereafter evidenced by the Note.

1.08 Hazardous Substances. Mortgagor shall not cause or permit the presence, use, disposal, storage, or release of any Hazardous Substances (hereinafter defined) on or in the Mortgaged Property. Mortgagor shall not do, nor allow anyone else to do, anything affecting the Mortgaged Property that is in violation of any Environmental Law (hereinafter defined). Mortgagor shall promptly give Mortgagee written notice of any investigation, claim, demand, lawsuit or other action by any governmental or regulatory agency or private party involving the Mortgaged Property and any Hazardous Substance or Environmental Law of which Mortgagor have actual knowledge. If Mortgagor learn, or is notified by any governmental or regulatory authority, that any removal or other remediation of any Hazardous Substance affecting the Mortgaged Property is necessary, Mortgagor shall promptly take all necessary remedial actions in accordance with Environmental Law at Mortgagor's expense. As used in this paragraph, "Hazardous Substances" are those substances defined as toxic or hazardous substances by Environmental Law, and the following substances: (i) gasoline, kerosene, other flammable or toxic petroleum products, toxic pesticides and herbicides and volatile solvents (other than such small quantities thereof as are generally recognized as being appropriate to normal use and to maintenance of the Mortgaged Property), and (ii) materials containing asbestos or formaldehyde, and radioactive materials. As used in this paragraph, "Environmental Law" means federal laws and laws of the jurisdiction where the Mortgaged Property are located that relate to health, safety or environmental protection. To the maximum extent permitted by applicable law, Mortgagor shall indemnify Mortgagee and Mortgagee's successors, assigns, officers, directors, shareholders, employees, affiliates and agents (collectively, the "Indemnitees") against any and all liabilities, losses, damages or expenses suffered or incurred by Indemnitees as the result of Mortgagor's failure to observe or perform any of the provisions of this paragraph, as a result of the failure of Mortgagor or any other person to comply with any Environmental Law affecting the Mortgaged Property or as a result of the presence, storage, disposal or treatment on the Mortgaged Property of any Hazardous Substance. The indemnification obligations of Mortgagor under this paragraph shall survive payment or satisfaction of the Secured Indebtedness and any acquisition of the Mortgaged Property by Mortgagee by foreclosure of this Mortgage, by conveyance in lieu of foreclosure or otherwise, and such provisions shall remain in full force and effect as long as the possibility exists that Indemnitees may suffer or incur any such liabilities, losses, damages or expenses.

1.09 No Secondary Financing. Without the prior written consent of Lender, Mortgagor shall not create or cause or permit to exist in favor of any party other than Mortgagee any lien on, or security interest in, the Mortgaged Property, including any furniture, fixtures, appliances, equipment and other items of personal property now or hereafter owned by Mortgagor which are intended to be or become part of the Mortgaged Property. Mortgagor shall promptly discharge, at Mortgagor's cost and expense, all liens, encumbrances and charges upon the Mortgaged Property, or any part thereof or interest therein, except such liens, encumbrances and charges specifically approved by Lender in writing. In any event, Mortgagor shall have no right to permit the holder of any subordinate mortgage or other subordinate lien, whether or not consented to by Lender, to terminate any lease of all or any portion of the Mortgaged Property whether or not such lease is subordinate (whether by law or the terms of such lease or a separate agreement) to the lien of this Mortgage without first obtaining the prior written consent of Lender. The holder of any subordinate mortgage or other subordinate lien shall have no such right, whether by foreclosure of its mortgage or lien or otherwise, to terminate any such lease, whether or not permitted to do so by Mortgagor or as a matter of law, and any such attempt to terminate any such lease shall be ineffective and void.

1.10 Subrogation. To the extent of the Secured Indebtedness, Mortgagee is hereby subrogated to the lien or liens and to the rights of the owners and holders thereof of each and every mortgage, lien or other encumbrance on the Mortgaged Property which is paid or satisfied, in whole or in part, from the proceeds of the loan

evidenced by the Secured Indebtedness or from the proceeds of any future or additional advances, and the liens of said mortgages or other encumbrances, shall be and the same and each of them hereby are preserved and shall pass to and be held by Mortgagee herein as security for the Secured Indebtedness, to the same extent that it would have been preserved and would have been passed to and been held by Mortgagee had it been duly and regularly assigned, transferred, set over and delivered unto Mortgagee by separate deed of assignment, notwithstanding the fact that the same may be satisfied and cancelled of record, it being the intention that the same will be satisfied and cancelled of record by the holders thereof at or about the time of the recording of this Mortgage.

ARTICLE II
DEFAULT AND REMEDIES

2.01 Default. In addition to all other "Events of Default" specified elsewhere in this Mortgage or the other Loan Documents, an Event of Default under this Mortgage shall exist if:

(a) Mortgagor fails to make any monetary payment required to be made to Lender by the Note or other Loan Documents; or

(b) Mortgagor fails to perform any other covenant contained in this Mortgage and fails to commence the cure of such failure within fifteen (15) days after Lender gives Mortgagor written notice of such failure (unless such default, if curable, requires work to be performed, acts to be done, or conditions to be remedied that by their nature cannot be performed, done or remedied, as the case may be, within such fifteen (15)-day period and Borrower shall diligently and continuously process the same to completion, or unless Lender's security reasonably will be materially impaired if Borrower do not perform in less than fifteen (15) days, in which event Borrower shall have only such period following demand in which to perform as Lender may specify), provided that Mortgagor shall have no grace period or right to cure any default under Sections 1.04, 1.06 or 1.09; or

(c) Any other Event of Default or default occurs under any of the Loan Documents or any other agreement which evidences, guarantees or secures any part of the indebtedness or obligations evidenced by the Note or secured by this Mortgage; or

(d) A default occurs under any other mortgage now or hereafter encumbering all or any part of the Mortgaged Property; or

(e) Any representation or disclosure made to the Lender by or on behalf of Mortgagor or by any guarantor of any indebtedness or obligation secured by this Mortgage proves to be materially false or misleading on the date as of which made, whether or not that representation or disclosure appears in this Mortgage; or

(f) Mortgagor, or any guarantor of the Note files a voluntary petition in bankruptcy or any petition or answer seeking or acquiescing in any reorganization, rehabilitation, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors; or an order for relief is entered in an involuntary bankruptcy case filed against the Mortgagor; or the Mortgagor seek or consent to or acquiesce in the appointment of any trustee, custodian, receiver or liquidator of itself or of all or any part of the Mortgaged Property or any interest therein or all or any of the rents, revenues, issues, earnings, profits or income thereof; or Mortgagor shall make a general assignment for the benefit of its or his creditors; or Mortgagor commit any act providing grounds for the entry of an order for relief under any chapter of the federal bankruptcy code; or

(g) A petition or case is filed against Mortgagor of the Note seeking any reorganization, rehabilitation, arrangement, composition, readjustment, liquidation, dissolution or other relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, or the appointment of any trustee, custodian, receiver or liquidator of the Mortgagor or of all or any part of the Mortgaged Property or any interest therein or of any or all of the rents, revenues, issues, earnings, profits or income thereof, and such petition, case or appointment shall not be dismissed within sixty (60) days after such filing or appointment; or

(h) Any other event occurs which, under the Note or under any other agreement of the Mortgagor relating to the Loan, constitutes an Event of Default thereunder by the Mortgagor or give the Lender the right to accelerate the maturity of all or any part of the indebtedness evidenced by the Note or related loan documents or secured by this Mortgage; or

(i) A default occurs in payment of any indebtedness of Mortgagor, of any portion of the indebtedness secured by the Mortgage, or under any instrument evidencing, securing or governing any such indebtedness subject to any cure periods set forth in the Loan Agreement; or

(j) Any judgment or order for payment of money is levied against Mortgagor, of any portion of the indebtedness secured by the Mortgage and remains unsatisfied for a period of thirty (30) days without a stay of execution.

2.02 Acceleration. Upon the occurrence of an Event of Default under this Mortgage, then the whole of the indebtedness evidenced by the Note or secured hereby shall, without notice, demand or legal process, become immediately due and payable at the option of the Lender.

2.03 General Remedies. Upon the occurrence of an Event of Default under this Mortgage, the Lender may, at its continuing option, and without notice to or demand upon the Mortgagor:

(a) Enter onto the Mortgaged Property, in person or by agents or by court-appointed receiver, and take possession thereof and exclude the Mortgagor and the Mortgagor's agents and employees wholly therefrom, and upon demand of Lender, Mortgagor shall forthwith surrender to Lender actual possession of the Mortgaged Property, and upon every such entering and taking of possession, the Lender may hold, store, use, operate, manage, control and maintain the Mortgaged Property and conduct the business thereon and, from time to time, (i) make or perform all necessary and proper construction, repairs, renewals, replacements, additions, betterments and improvements thereto and thereon and purchase or otherwise acquire additional fixtures, personal 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; and (iv) enter into any and all agreements with respect to the exercise by others of any of the powers herein granted to Lender, all as Lender may from time to time determine to be to its best interest. Further, Lender may collect and receive all of the income, rents, profits, issues, revenues and accounts of or related to the Mortgaged Property, including those past due as well as those accruing thereafter, and Lender may apply any monies and proceeds received by Lender in such order and priority as Lender in its sole discretion may determine to all expenses of taking, holding, managing and operating the Mortgaged Property (including compensation for the services of all persons employed for such purposes), to the cost of all such maintenance, repairs, renewals, replacements, additions, betterments, improvements, purchases and acquisitions, to the cost of such insurance, to such taxes, assessments and other charges as Lender may determine to pay, to other proper charges upon the Mortgaged Property or any part thereof, to the reasonable compensation and expenses of attorneys and agents of the Lender, to accrued interest, to deposits for taxes, insurance and similar items required hereunder, and to overdue installments of principal. For the purposes of carrying out the provisions of this Subsection (a), Mortgagor hereby irrevocably constitutes and appoints Lender as Mortgagor's agent and attorney-in-fact to do and perform, from time to time, any and all actions necessary or incidental to such purpose and does, by these presents, ratify and confirm any and all actions of said attorney-in-fact in the Mortgaged Property. Whenever all Events of Default have been cured and satisfied, Lender shall surrender possession of the Mortgaged Property to Mortgagor, provided that the right of Lender to take possession, from time to time, pursuant to this Section shall exist if any subsequent Event of Default shall occur and be continuing;

(b) Bring a court action at law or in equity (i) to foreclose this Mortgage, (ii) to enforce its provisions or any of the indebtedness or obligations secured by this Mortgage, and (iii) to enforce Lender's rights and remedies under any or all guaranties, security agreements, assignments and other instruments and agreements evidencing or securing the Note, or to do any or all of the foregoing, concurrently or otherwise, and one action or suit shall not abate or be a bar to or waiver of Lender's right to institute or maintain any other, or constitute an election of remedies by Lender, provided that Lender shall have only one payment and satisfaction of the indebtedness;

(c) Exercise any other right or remedy available at law or in equity;

(d) Bid at any foreclosure sale and purchase the Mortgaged Property, or any part thereof, if the highest bidder therefor. At the foreclosure sale the Mortgaged Property may be offered for sale and sold as a whole without first offering it in any other manner or may be offered for sale and sold in any other manner Lender may elect in its sole discretion without regard to principles of marshalling.

2.04 Proceeds of Sale. The proceeds of any sale under this Mortgage shall be applied in the following manner:

(a) First, to payment of the costs and expenses of the sale, including but not limited to Lender's fees, reasonable legal fees and disbursements, title charges and transfer taxes, and payment of all expenses, liabilities and advances of the Lender, together with interest at the rate provided under the Note on all advances made by the Lender.

(b) Second, to payment of all sums expended by the Lender under the terms of this Mortgage and not yet repaid, together with interest on such sums at the after-default rate provided under the Note.

(c) Third, to payment of the indebtedness and obligations of the Mortgagor evidenced by the Note or related loan documents or secured by this Mortgage in any order that the Lender chooses.

(d) Fourth, the remainder, if any, to the person or persons appearing of record to be the owner of the Mortgaged Property, or as a court of competent jurisdiction shall otherwise order.

2.05 Marshalling. Mortgagor waives all rights to direct the order or manner in which any of the Mortgaged Property will be sold in the event of any sale under this Mortgage and also waives any right to have any of the Mortgaged Property marshalled upon any sale.

2.06 Receiver. In the event a suit shall be instituted to foreclose this Mortgage, Mortgagee, its successors or assigns, shall be entitled to apply at any time pending such foreclosure suit to the court having jurisdiction thereof for the appointment of a receiver for all and singular the Mortgaged Property and of all the rents, income, profits, issues and revenues thereof, from whatsoever source derived, with the usual powers and duties of receivers in like cases and such appointment shall be made by such court as a matter of strict right to Mortgagee, its successors or assigns, without reference to the adequacy or inadequacy of the value of the property hereby mortgaged or to the solvency or insolvency of the Mortgagor, Mortgagor's legal representatives, successors or assigns, and that such rents, profits, incomes, issues, and revenues shall be applied by such receiver to the payment of the Secured Indebtedness, costs, and charges, according to the order of said court. The Mortgagor hereby specifically waives the right to object to the appointment of a receiver as described herein and hereby expressly consents that such appointment shall be made as an admitted equity and is Mortgagee's absolute right, and that the appointment may be done without notice to the Mortgagor. Mortgagor further consents to the appointment of Mortgagee or any officer or employee of Mortgagee as receiver.

2.07 Remedies Cumulative. All remedies contained in this Mortgage are cumulative, and the Lender also has all other remedies provided by law, in equity, by statute or in any other agreement between the Mortgagor and the Lender. No right, power or remedy conferred upon or reserved to the Lender by this Mortgage, the Note or any assignment of leases or other agreement now or hereafter evidencing, securing or otherwise relating to the Loan shall be 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 now or hereafter existing at law or in equity or by statute. No delay or failure by the Lender to exercise any right or remedy under this Mortgage will be construed to be a waiver of that right or remedy or of any Event of Default hereunder. The Lender may exercise any one or more of its rights and remedies at its option without regard to the adequacy of its security.

2.08 Repossession and Sale of Personal Property. Expenses of retaking, holding, preparing for sale, selling or the like shall be borne by Mortgagor and shall include Lender's attorneys' fees and legal expenses. Mortgagor, upon demand of Lender, shall assemble all personal property subject to this Mortgage and Security Agreement and make it available to Lender at the Property, a place which is hereby deemed to be reasonably convenient to Lender and Mortgagor. Lender shall have the right to cause any of the Mortgaged Property which is subject to the security interest of Lender hereunder to be sold at any one or more public or private sales as permitted by applicable law. Any such disposition may be conducted by an employee or agent of Lender. Any person, including Mortgagor and Lender, shall be eligible to purchase any part or all of such property at any such sale. Lender shall give Mortgagor at least five (5) days' prior written notice of the time and place of any public sale or other disposition of such property or of the time of or after which any private sale or other intended disposition is to be made, and if such notice is sent to Mortgagor as provided for the mailing of notices herein, it is hereby deemed that such notice shall be and is reasonable notification to Mortgagor.

2.09 Expenses. Mortgagor shall pay all of the Lender's expenses incurred in any efforts to enforce any terms of this Mortgage or to collect the indebtedness secured hereby, whether or not any lawsuit is filed, including but not limited to reasonable attorneys' fees and disbursements, foreclosure costs, appraisal costs and title charges, the payment of which sums is secured by this Mortgage.

ARTICLE III
GENERAL PROVISIONS

3.01 Partial Invalidity. The invalidity or unenforceability of any one or more provisions of this Mortgage will in no way affect the remaining provisions hereof which shall be and remain in full force and effect.

3.02 Monthly Deposits. At Lender's request after the occurrence of an Event of Default under this Mortgage or upon Mortgagor's failure to pay the taxes, lease payments, insurance premiums, assessments and other similar charges hereinafter described when due, Mortgagor shall pay to the Lender on the first day of each month, together with and in addition to the regular installment of interest or principal and interest under the Note, until the Note is fully paid, an amount equal to one-twelfth (1/12) of the yearly taxes, lease payments, insurance premiums, assessments and other similar charges against the Mortgaged Property or any part thereof as estimated by the Lender to be sufficient to enable the Lender to pay all such charges at least thirty (30) days before they first become due. Such added payments shall not be, nor be deemed to be, trust funds, but may be commingled with the general funds of the Lender, and no interest shall be payable in respect thereto. Upon demand of the Lender the Mortgagor shall deliver to the Lender such additional monies as are necessary to make up any deficiencies in the amounts necessary to enable the Lender to pay such taxes, lease payments, insurance premiums, assessments and similar charges. Upon the occurrence of an Event of Default under any of the terms, covenants or conditions in the Note, Loan Agreement or related Loan Documents, or under this Mortgage, the Lender may apply to the reduction of the sums secured hereby, in such manner as the Lender shall determine, any amount under this Section remaining to the Mortgagor's credit.

3.03 Taxes, Utilities and Liens.

(a) The Mortgagor shall pay promptly, when and as due, and shall promptly exhibit to the Lender receipts for the payment of, all taxes, lease payments, insurance premiums, assessments, water rates, dues, charges, fines and impositions of every nature whatsoever imposed, levied or assessed or to be imposed, levied or assessed upon or against the Mortgaged Property or any part thereof, or upon the interest of the Lender in the Mortgaged Property as well as all income taxes, assessments and other governmental charges lawfully levied and imposed by the United States of America or any state, county, municipality, borough or other taxing authority upon the Mortgagor or in respect of the Mortgaged Property or any part thereof, or any charge which, if unpaid, would become a lien or charge upon the Mortgaged Property prior to or equal to the lien of the Mortgage for any amounts secured hereby or would have priority or equality with the mortgage in distribution of the proceeds of any foreclosure sale of the Mortgaged Property or any part thereof.

(b) Upon demand, Mortgagor shall promptly reimburse Lender for any and all sums Lender pays as intangible tax and documentary stamp tax on the Note or this Mortgage, or any future modification or extension thereof, pursuant to law as it now exists or may be hereafter amended.

(c) The Mortgagor shall promptly pay all charges by utility companies, whether public or private, for electricity, gas, water, sewer or other utilities furnished to the Mortgaged Property.

(d) The Mortgagor shall promptly pay any and all mechanic's, laborer's, statutory and other liens upon any of the Mortgaged Property and shall not suffer any of the same to be created or to remain outstanding upon any of the Mortgaged Property.

3.04 Insurance. Mortgagor will keep the Mortgaged Property insured against loss or damage by fire, flood and such other risks and matters including, without limitation, business interruption, rental loss, public liability and boiler insurance, as Mortgagee may from time to time require in amounts required by Mortgagee, not exceeding in the aggregate 100% of the full insurable value of the Mortgaged Property and shall pay the premiums for such insurance as same become due and payable. All policies of insurance (the "Policies") shall be issued by an insurer

acceptable to Mortgagee and shall contain the standard New York Mortgagee non-contribution provision naming Mortgagee as the person to which all payments made by such insurance company shall be paid. Mortgagor will assign and deliver the Policies to Mortgagee. Not later than thirty (30) days prior to the expiration date of each of the Policies, Mortgagor will deliver to Mortgagee evidence satisfactory to Mortgagee of the renewal of each of the Policies. If the Mortgaged Property shall be damaged or destroyed, in whole or in part, by fire or other casualty, Mortgagor shall give prompt notice thereof to Mortgagee. Sums paid to Mortgagee by any insurer may be retained and applied by Mortgagee toward payment of the Secured Indebtedness in such priority and proportions as Mortgagee in its discretion shall deem proper or, at the discretion of Mortgagee, the same may be paid, either in whole or in part, to Mortgagor for such purposes as Mortgagee shall designate. If Mortgagee shall receive and retain such insurance money, the lien of this Mortgage shall be reduced only by the amount thereof received after expenses of collection and retained by Mortgagee and actually applied by Mortgagee in reduction of the Secured Indebtedness.

3.05 Condemnation. Mortgagor shall give Lender immediate written notice of any actual or threatened condemnation proceeding affecting all or any part of the Mortgaged Property or any interest therein. If all or any part of the Mortgaged Property shall be damaged or taken through condemnation (which term when used in this Mortgage shall include any damage or taking by any governmental authority and any transfer by private sale in lieu thereof), either temporarily or permanently, the entire indebtedness secured hereby shall at the option of the Lender become immediately due and payable; provided, however, that in the event of a partial taking of the Mortgaged Property, Lender shall be entitled to accelerate the entire indebtedness secured hereby only if Lender in good faith deems itself insecure by reason of such partial taking. The Lender shall be entitled to all compensation, awards and other payments or relief thereof and is hereby authorized, at its option, to commence, appear in and prosecute, in its own or the Mortgagor's name, any action or proceedings relating to any condemnation. All such compensation, awards, damages, claims, rights of action and proceeds and the right thereto are hereby assigned by the Mortgagor to the Lender, which, after deducting therefrom all its expenses, including attorney's fees, may release any monies so received by it without affecting the lien of this Mortgage or may apply the same in such manner as the Lender shall determine to the reduction of the sums secured hereby, and any balance of such monies then remaining shall be paid to the Mortgagor. The Mortgagor agree to execute such further assignments of any compensations, awards, damages, claims, rights of action and proceeds as the Lender may require.

3.06 Care of the Property.

(a) The Mortgagor shall preserve and maintain the Mortgaged Property in neat, orderly and good condition and repair, shall maintain all equipment and personal property comprising the Mortgaged Property in good working order, shall not commit or suffer any waste, and shall not do or suffer to be done anything which might increase the risk of fire or other hazard to the Mortgaged Property or any part thereof or invalidate any insurance carried thereon. In the event Mortgagor default under its obligations under this Section 3.06(a), then in addition to all other remedies available to Lender by reason of such default, Lender shall be entitled to establish a maintenance reserve escrow account and to require Mortgagor to pay to Lender on the first day of each month, together with and in addition to the regular installment of interest or principal and interest under the Note, until the Note is fully paid, an amount deemed sufficient by Lender in the reasonable exercise of its judgment and discretion to provide for the present and future maintenance of the Mortgaged Property.

(b) Except as otherwise provided herein or in the Loan Agreement, no buildings, fixtures, personal property or other improvements shall be constructed, removed, demolished or materially altered on any part of the Mortgaged Property without the prior written consent of the Lender. The Mortgagor may sell or otherwise dispose of, free from the lien of this Mortgage and Security Agreement, furniture, furnishings, equipment, tools, appliances, machinery, fixtures and appurtenances which may become worn out, undesirable, obsolete, disused or unnecessary for use in the operation of the Mortgaged Property, upon replacing the same by, or substituting for the same, other furniture, furnishings, equipment, tools, appliances, machinery, fixtures or appurtenances not necessarily of the same character, but of at least equal value to the Mortgagor and costing not less than the amount realized from the property sold or otherwise disposed of, which shall forthwith become, without further action, subject to the lien of this Mortgage and Security Agreement.

(c) The Lender is hereby authorized to enter upon and inspect the Mortgaged Property at any time and from time to time during normal business hours.

(d) The Mortgagor shall 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 damaged by fire or other casualty causing damage in excess of \$5,000.00, the Mortgagor shall give immediate written notice of same to Lender and shall promptly restore the Mortgaged Property to the equivalent of its original condition, regardless of whether insurance proceeds are made available. If a part of the Mortgaged Property shall be physically damaged through condemnation, the Mortgagor shall give immediate written notice of same to Lender and shall promptly restore, repair or alter the remainder of the Mortgaged Property in a manner satisfactory to the Lender.

3.07 Required Notices. In addition to all other notices required by the Loan Documents, Mortgagor shall promptly notify Lender in writing of the occurrence of any of the following:

- (a) A fire or other casualty causing damage to the Mortgaged Property in excess of \$5,000.00;
- (b) Receipt of notice of eminent domain proceedings or condemnation of all or any part of the Mortgaged Property;
- (c) Receipt of notice of any violation of any law, ordinance or regulation from any governmental authority relating to the structure, use or occupancy of the Mortgaged Property;
- (d) Receipt of any default or acceleration notice from the holder of any lien or security interest in the Mortgaged Property or any portion thereof; and
- (e) Commencement of any material litigation affecting the Mortgaged Property.

3.08 Performance by Lender of Defaults by Mortgagor. If the Mortgagor shall default in the payment of any tax, lien, assessment or charge levied or assessed against the Mortgaged Property; in the payment of any utility charge, whether public or private; in the payment of any insurance premium; in the procurement of insurance coverage and the delivery of the insurance policies required hereunder; or in the performance or observance of any other covenant, condition or term of this Mortgage, then the Lender, at its option, may perform or observe the same, and all payments made or costs paid or incurred by the Lender in connection therewith shall be secured hereby and shall be, without demand, immediately repaid by the Mortgagor to the Lender with interest thereon at the after-default rate set forth in the Note. The Lender shall be the sole judge of the legality, validity and priority of any such tax, lien, assessment, charge, claim and premium; of the necessity for any such actions; and of the amount necessary to be paid in satisfaction thereof. The Lender 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 term, without thereby becoming liable to the Mortgagor or any person in possession holding under the Mortgagor.

3.09 Lender's Option on Foreclosure. Upon the occurrence of an Event of Default, at the option of the Lender, this Mortgage may be foreclosed in accordance with applicable law, in which event reasonable attorney's fee shall, among other costs and expenses, be allowed and paid out of the proceeds of the sale. In the event Lender exercises its option to foreclose the Mortgage in equity, Lender may, at its option, foreclose this Mortgage subject to the rights of any tenants of the Mortgaged Property and the failure to make any such tenants parties defendants to any such foreclosure proceeding and to foreclose their rights shall not be, nor be asserted to be by the Mortgagor, a defense to any proceedings instituted by the Lender to collect the sums secured hereby or any deficiency remaining unpaid after the foreclosure sale of the Mortgaged Property.

3.10 Waiver of Exemption. Mortgagor hereby waive all rights of exemption pertaining to real or personal property as to any indebtedness secured by or that may be secured by this Mortgage, and Mortgagor waive the benefit of any statute regulating, restricting or prohibiting the obtaining of a deficiency judgment by Lender against Mortgagor or requiring that the value of the Mortgaged Property be set off against any part of the indebtedness secured hereby, except as might be provided under Florida law in the event of foreclosure of this Mortgage.

3.11 No Waiver.

(a) No delay or omission of the Lender 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 nor be construed to be a waiver of any such Event of Default or acquiescence therein; and every right, power and remedy given by this Mortgage to the Lender may be exercised from time to time and as often as may be deemed expedient by the Lender.

(b) No waiver of any Event of Default hereunder shall extend to or shall affect any subsequent Event of Default or any other then existing Event of Default or shall impair any rights, powers or remedies consequent thereon.

(c) If the Lender (i) grants forbearance or an extension of time for the payment of any sums secured hereby; (ii) takes other or additional security for the payment thereof; (iii) waives or does not exercise any right granted herein or in the Note; (iv) releases any part of the Mortgaged Property from the lien of the Mortgage or otherwise changes any of the terms of the Note or this Mortgage; (v) consents to the filing of any map, plat or replat thereof; (vi) consents to the granting of any easement thereon; or (vii) makes or consents to any agreement subordinating the lien of this Mortgage or to any change in the Note or this Mortgage, then any such act or omission shall not release, discharge, modify, change or affect the original liability under the Note, Mortgage or otherwise of the Mortgagor or any subsequent purchaser of the Mortgaged Property or any part thereof, or any maker, co-signer, endorser, surety or guarantor of the Note; nor shall any such act or omission preclude the Lender from exercising any right, power or privilege herein granted or intended to be granted in the event of any other Event of Default then made or of any subsequent Event of Default; nor, except as otherwise expressly provided in an instrument or instruments executed by the Lender, 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, the Lender, without notice to any person 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 of 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 of Mortgagor or of any maker of the Note.

3.12 Severance. If any term, covenant, condition or provision of this Mortgage shall be held invalid or unenforceable, the remainder of this Mortgage shall not be affected thereby, and each other term, covenant condition and provision hereof shall be valid and be enforced to the fullest extent permitted by law.

3.13 Litigation and Attorney's Fees. Mortgagor shall pay or reimburse Lender for all reasonable attorney's fees, costs and expenses incurred by Lender in any proceeding involving the estate of a decedent or an insolvent, or in any action, proceeding or dispute of any kind in which the Lender is made a party or appears as party plaintiff or defendant, affecting this Mortgage or the Mortgaged Property, including without limitation the foreclosure of this Mortgage, any condemnation action involving the Mortgaged Property, or any action to protect the security hereof, and in any situation where Lender employs an attorney to protect the Lender's rights hereunder, whether or not legal proceedings are commenced or involved. All such amounts paid by Lender shall be secured by this Mortgage, shall bear interest at the after-default rate specified in the Note and shall be payable by Mortgagor upon demand.

3.14 Notices. All notices and other communications required hereunder shall be in writing and shall be delivered personally, or by registered or certified mail, return receipt requested, postage prepaid, or by Federal Express, Express Mail or Air Courier, fees prepaid. Such notices shall be deemed to have been received (i) upon delivery, if personally delivered; (ii) upon the earlier of actual receipt or the fourth day after mailing, if mailed by registered or certified mail, return receipt requested, postage prepaid; and (iii) on the next business day if sent by Federal Express, Express Mail or Air Courier, fees prepaid. The address for delivery of such notices shall be as follows:

- (a) To Lender at: 1921 Seville Drive,
Pensacola, Florida 32502
- (b) To Borrower at: P.O. Box 30424
Pensacola, FL 32503

3.15 Miscellaneous. The term "Mortgagor" includes both the original Mortgagor and any subsequent owner or owners of any of the Mortgaged Property, and the term "Lender" includes the original Lender and also any future owner or holder, including pledgees, assignees and participants, of the Note or any interest therein. Whenever the context requires, the singular includes the plural and vice versa and each gender includes each other gender. The headings of the articles, sections and paragraphs of this Mortgage are for convenience only and do not limit its provisions.

3.16 Laws. In the event of the passage of any state, federal, municipal or other governmental law, order, rule or regulation, subsequent to the date hereof, in any manner changing or modifying the laws now in force governing the taxation of mortgages or debts secured thereby, or the manner of operation of such taxes so as to adversely affect the interest of Lender, then Mortgagor shall bear and pay the full amount of such taxes unless such payment would be unlawful, in which event Lender may at its option declare the entire balance of the principal sum secured by this Mortgage and all interest accrued thereon and all other sums secured by this Mortgage to be immediately due and payable upon written notice delivered by Lender to Borrower in accordance with Section 3.14 above, and thereupon Lender may foreclose upon this Mortgage without further notice.

3.17 Successors. The terms of this Mortgage shall bind and benefit the heirs, legal representatives, successors and assigns of the Mortgagor and the Lender. If the Mortgagor consist of more than one person or entity, each shall be jointly and severally liable to perform the obligations of the Mortgagor.

3.18 Waiver of Jury Trial. MORTGAGOR OBLIGATED FOR REPAYMENT OF ALL OR ANY PART OF THE INDEBTEDNESS SECURED BY THIS MORTGAGE (WHETHER AS MAKER, CO-MAKER, GUARANTOR, SURETY OR ENDORSER) (COLLECTIVELY, THE "OBLIGORS") HEREBY KNOWINGLY, VOLUNTARILY AND INTENTIONALLY AGREE THAT:

(1) MORTGAGOR HEREBY WAIVE THE RIGHT TO TRIAL BY JURY IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, CROSS-CLAIM OR OTHER ACTION OR PROCEEDING ARISING FROM OR BASED UPON THIS MORTGAGE OR ANY OF THE LOAN DOCUMENTS, AND NEITHER THE MORTGAGOR, NOR MORTGAGOR'S HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS, NOR ANY OTHER OBLIGOR OR SUCH OBLIGOR'S HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS SHALL SEEK A JURY TRIAL IN ANY LAWSUIT, PROCEEDING, COUNTERCLAIM, CROSS-CLAIM OR OTHER ACTION OR PROCEEDING ARISING FROM OR BASED UPON THIS MORTGAGE OR ANY OF THE LOAN DOCUMENTS.

(2) NEITHER THE MORTGAGOR, NOR MORTGAGOR'S HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS, NOR ANY OTHER OBLIGOR OR SUCH OBLIGOR'S HEIRS, LEGAL REPRESENTATIVES, SUCCESSORS OR ASSIGNS, SHALL SEEK TO CONSOLIDATE ANY CLAIM AS TO WHICH A JURY TRIAL HAS BEEN WAIVED WITH ANY CLAIM IN WHICH A JURY TRIAL HAS NOT BEEN OR CANNOT BE WAIVED.

(3) THE PROVISIONS OF THIS SECTION 3.18 HAVE BEEN FULLY NEGOTIATED BY LENDER, MORTGAGOR, AND THESE PROVISIONS SHALL BE SUBJECT TO NO EXCEPTIONS.

(4) NEITHER LENDER NOR ANY OFFICER, EMPLOYEE, ATTORNEY, AGENT OR OTHER REPRESENTATIVE OF LENDER HAS IN ANY WAY AGREED WITH OR REPRESENTED TO MORTGAGOR THAT THE PROVISIONS OF THIS SECTION 3.18 WILL NOT BE FULLY ENFORCED IN ALL INSTANCES.

(5) THIS SECTION 3.18 IS A MATERIAL INDUCEMENT FOR LENDER TO ENTER INTO THE LOAN AND OTHER TRANSACTIONS EVIDENCED OR SECURED BY THIS MORTGAGE AND THE LOAN DOCUMENTS.

3.19 Estoppel Affidavits. Mortgagor, within ten (10) days after written request from Lender from time to time, shall furnish written statements, duly acknowledged, setting forth the unpaid indebtedness evidenced by the Note and whether or not there exists any offset or defense against the Note and whether or not there exists any Event of Default or event which with the giving of notice or the passage of time, or both, would constitute an Event of Default by Mortgagor or Lender under the Note, this Mortgage, the Loan Agreement or any other instrument evidencing or securing the Loan.

IN WITNESS WHEREOF, Mortgagor has caused this instrument to be executed in its name as of the day and year first above written.

Witness:

Kristal Heiland
Printed Name: Kristal Heiland

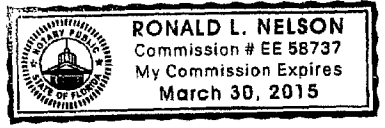
Innerarity Island Development Corporation, a Florida corporation
By: Kathy Collins
Kathy Collins, President, *and not individually*

Printed Name: RONALD L. NELSON

STATE OF FLORIDA

COUNTY OF ESCAMBIA

The foregoing instrument was acknowledged before me this 5 day of ^{November,} ~~October~~, 2013, by Kathy Collins, President of Innerarity Island Development Corporation, a Florida corporation on behalf of the corporation () who are personally known to me or () who produced a valid driver's license as identification.



RLN
NOTARY PUBLIC - STATE OF FLORIDA
Typed Name:
My Commission Expires:

Exhibit A
Legal Descriptions for Mortgage

Lots 3, 4, 7, 8 and 9, Block D; Lots 17 and 18, Block E; Lot 1, Block G; Lots 17, 20, 21 and 22, Block H, Innerarity Shores, a subdivision of a portion of Section 15, Township 3 South, Range 32 West, Escambia County, Florida according to Plat recorded in Plat Book 13 at pages 79 and 79A of the public records of said county.

Lots 1, 2, 3, 4, 5, 6, 7 and 8 Block E; Lot 1 Block F; Lots 3, 4, 5, 6 and 7 Block G; Lots 3, 4 and 5 Block H, The Cove, Section 15, Township 3 South, Range 32 West, Escambia County, Florida, recorded in Plat Book 9, Page 97 of the public records of said county.

Lots 6 and 12, Block C; Lots 3 and 4, Block E; Lots 2, 8, 9 and 10, Block F; Lots 2, 3 and 4, Block J, in the First Addition to North Shore, a subdivision of a portion of the west half of Section 15, Township 3 South, Range 32 West, Escambia County, Florida according to plat recorded in Plat Book 9 at page 89 of the public records of said county.

Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block E; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block F; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, Block G; Lots 1, 2, 3, 4 and 5, Block H; Lot 1, 2, 3 and 4, Block I; in the Third Addition to North Shore, a subdivision of a portion of Section 15, Township 3 South, Range 32 West, Escambia County, Florida according to plat thereof recorded in Plat Book 10, Page 29, of the public records of said county.

Lots 1,2,3,4,5,6,7,8,9 and 10, Block B; Lots 1,2,and 3, Block C; Lots 1,2,3, 4, 5, Block D; Lots 1,2,3, 4, 5, Block E; Lots 1,2,3, 4, 5, Block F; Lots 1,2,3, 4, Block G; Lots 1,2,3 and 4, Bloch H; Lot 4 and 8, Block I; in the Fourth Addition to North Shore, according to plat thereof recorded in Plat Book 10, Page 76, of the public records of Escambia County, Florida.

LINE OF CREDIT PROMISSORY NOTE ("Note")

Kathy F. Collins, Personal Representative of the
Estate of Fayette Dennison
(Hereinafter called "Lender")

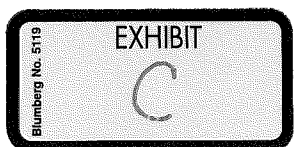
November 5,
~~October~~ 2013
\$750,000.00

Pensacola, Escambia County, Florida

FOR VALUE RECEIVED, the undersigned, Innerarity Island Development Corporation, a Florida corporation, promises to pay to Kathy F. Collins as Personal Representative of the Estate of Fayette Dennison, or to her order, the principal sum of Seven Hundred Fifty Thousand Dollars (\$750,000.00) with interest from date at the rate set forth below on the balance from time to time remaining unpaid. The said principal and interest shall be payable in lawful money of the United States of America at 1921 Seville Drive, Pensacola, Florida 32503, or at such place as may hereafter be designated by written notice from the holder to the maker hereof. The undersigned also agrees to comply with all of the following provisions of this Note.

This Note evidences a line of credit loan and the total amount of the outstanding principal indebtedness may vary from time to time and may range from zero to the full amount of this Note. The funds advanced pursuant to this Note may be advanced by Lender to the undersigned at the time of closing, or by depositing sums requested into the checking account of the undersigned, or by disbursement in any manner requested by the undersigned provided such manner of disbursement is acceptable to Lender. The total outstanding balance of all advances shall never exceed the original principal amount of this Note.

- (1) Interest shall accrue at the rate of eight percent (8.0%) per annum.
- (2) Interest shall be paid quarterly on January 1, April 1, July 1 and October 1 during the term of the Note. The entire principal balance and accrued interest shall be payable in full on ~~October~~ November 5, 2014.
- (3) If any installment of principal, interest, or any portion thereof, is not paid within ten (10) days from the date said installment shall be due, a late payment charge of five cents (.05) per dollar on any amount so overdue may be charged by Lender for the purpose of defraying the expense of handling such delinquent payments. The collection of such late charges shall in no way limit the right of Lender to exercise its right to indicate a default hereunder in accordance with the terms and conditions set forth herein.
- (4) This Note with interest is secured by a mortgage and security agreement on real estate of even date herewith made by the maker hereof in favor of the said payee, and shall be construed and enforced according to the laws of the State of Florida.
- (5) If default be made in the payment of any of the sums or interest mentioned herein or in said mortgage, or in the performance of any of the agreements contained herein or in said mortgage, then the entire principal sum and accrued interest shall at the option of the holder hereof become at once due and collectible without notice, time being of the essence. Failure to exercise this option shall not constitute a waiver of the right to exercise the same in the event of any subsequent default.
- (6) No waiver by Lender or other holder of this note of any default shall operate as a waiver of any other default or the same default on a future occasion. No modification that may be



granted or consented to by the Lender with regard to the time of payment or with respect to any other provisions of this Note or any delay or omission on the part of Lender in enforcing the terms hereof shall operate as a waiver, or otherwise affect, its right to enforce the terms hereof or to avail itself of any remedy with respect hereto.

(7) This Note may not be changed, modified or discharged, in whole or in part, and no right or remedy of the Lender hereunder or under any other agreement may be waived except by written agreement signed by the Lender effective only in the specific instance for which given. The terms and provisions of this Note shall survive the payment, renewal, extension, cancellation or surrender of this Note.

(8) Each person liable hereon whether maker or endorser, hereby waives presentment, protest, notice, notice of protest and notice of dishonor and agrees to pay all costs, including reasonable attorney's fees, whether suit be brought or not, if, after maturity of this Note or default hereunder, or under said mortgage, counsel shall be employed to collect this Note or to protect the security of said mortgage.

(9) This Note has been delivered in the State of Florida and shall be construed in accordance with the laws of the State of Florida. Wherever possible, each provision of this Note shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Note shall be prohibited by or invalid under applicable law, such provision shall be ineffective to the extent of such prohibition or invalidity, without invalidating the remaining provisions of this Note.

(10) Notwithstanding any provision of this Note to the contrary, the holder of this Note shall never be entitled to collect any sums which could render this instrument usurious under applicable State or Federal law.

(11) Whenever used herein the terms "holder," "maker" and "payee" shall be construed in the singular or plural as the context may require or admit.

SIGNED, SEALED, and DELIVERED by the undersigned on the date first above written, who also acknowledges that the loan evidenced herewith is for commercial purposes only and not for personal, family or household purposes.

THIS NOTE MAY BE PREPAID IN FULL, OR IN PART, WITHOUT PENALTY.

Innerarity Island Development Corporation, a
Florida corporation

By: Kathy Collins
Kathy Collins, Its President,
and not individually
(CORPORATE SEAL)

LOAN AGREEMENT

This Loan Agreement ("Agreement") is made this 5 day of November, 2013, by and between Innerarity Island Development Corporation, a Florida corporation ("Borrower") and Kathy F. Collins as Personal Representative of the Estate of Fayette Dennison ("Lender").

WITNESSETH:

WHEREAS, Lender will be making a revolving line of credit loan ("Loan") to Borrower in the amount of \$750,000.00 as evidenced by a revolving line of credit promissory note, and all extensions and renewals and amendments thereto ("Note"); and

WHEREAS, Borrower shall execute the Note, this Agreement, a Mortgage and Security Agreement and other various loan documents ("Loan Documents"); and

WHEREAS, Lender is agreeable to making the Loan subject to compliance with the terms set forth herein; and

NOW, THEREFORE, in consideration of the premises and the loan of money to be made, the undersigned parties, intending to be legally bound, do hereby consent and agree as follows:

ARTICLE I

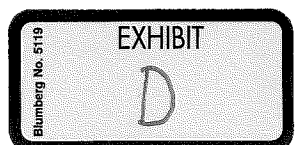
TERMS OF LOAN

1.1 **GENERAL**. Lender hereby agrees to lend to Borrower and Borrower hereby agrees to borrow from Lender upon the terms and conditions set forth in this Agreement and the terms and conditions of the Loan Documents the sum of \$750,000.00 which shall constitute the Loan. This is a commercial loan.

1.2 **REQUIREMENTS**. The Loan represents a loan to finance expenditures already made by Lender on behalf of Borrower and to finance future disbursements with regard to the management and operation of Borrower. A list of disbursements already made is set forth on Exhibit A hereto.

1.3 **SECURITY**. The security for the Loan shall be the real and personal property set forth in the Mortgage and Security Agreement and other Loan Documents as prepared by Lender ("Collateral"). The Mortgage and Security Agreement shall contain an additional advance clause of \$1,000,000.00 but no funds will be disbursed by the Lender until an additional Advance Agreement is recorded in the public records after receiving the consent of all three (3) beneficiaries of the estate. The real property encumbered by the Mortgage and Security Agreement is set forth on attached Exhibit B.

1.4 **DISBURSEMENTS**. Future advances will be disbursed by Lender at the request of Borrower but the Lender shall not be required to make further disbursements and any further disbursements shall be made by Lender in the sole discretion of Lender.



ARTICLE II

AFFIRMATIVE COVENANTS OF BORROWER

2.1 **COMPLIANCE WITH LOAN DOCUMENTS.** Borrower shall fully and punctually comply with each and every agreement, promise, covenant, obligation, term, provision, requirement, condition, stipulation, warranty and representation under the Loan Documents, and shall assure that Lender has at all times during the term of this Agreement a perfected first priority security interest in the Collateral.

2.2 **FURTHER ASSURANCES.** Borrower shall (i) execute and deliver all such additional documents and instruments as Lender may be reasonably required by Lender; and (ii) do all such additional acts as (A) Lender shall require to more fully and effectually secure the due and punctual payment and performance of Borrower's obligations under the Loan Documents, (B) may be necessary to assure to Lender a first priority security interest in the Collateral, and (C) Lender may reasonably request for the foregoing purposes.

ARTICLE III

EVENT OF DEFAULT

3.1 **EVENT OF DEFAULT.** Any one or more of the following shall constitute an Event of Default hereunder by Borrower:

(a) Failure to pay when due any payment of principal or interest due on Note or any renewal, modifications or amendments thereto, or any other sum due required to be paid under any Loan Documents; or

(b) non-monetary default under any of the Loan Documents ; or

(c) Borrower making or taking any action to make an assignment for the benefit of creditors, or petitioning or taking any action to petition any tribunal for the appointment of a custodian, receiver or any trustee for it or a substantial part of its assets, or commencing or taking any action to commence any proceeding under any bankruptcy, reorganization, arrangement, including, without limitation, any chapter of the federal Bankruptcy Code; or, if there shall have been filed or commenced against Borrower any such petition, application or proceeding which is not dismissed within thirty (30) days or in which an order for relief is entered; or should Borrower by any act or omission indicate its approval of or acquiescence in any such petition, application or proceeding or order for relief or the appointment of a custodian, receiver or any trustee for it or any substantial part of any of its properties; or should Borrower suffer to exist any such custodianship, receivership or trusteeship.

ARTICLE IV

MISCELLANEOUS PROVISIONS

4.1 **SEVERABILITY.** In the event any provision of any of the Loan Documents shall be held invalid or unenforceable by a court of competent jurisdiction, such holding shall not invalidate or render unenforceable the remaining provisions of the Loan Documents and there

shall be inserted, if practicable, in lieu of such invalid or unenforceable provision, a provision which is valid and enforceable and which as nearly as practicable carries out the intent of the parties expressed in the invalid or unenforceable provision.

4.2 **AMENDMENT AND WAIVER**. No course of dealings between Lender and Borrower shall be effective to amend, modify or change any provision of the Loan Documents. No amendment, modification or waiver of any provision of the Loan Documents or consent to any departure therefrom shall be effective unless it is made in writing and signed by Lender.

4.3 **ENTIRE AGREEMENT**. This document sets forth the entire agreement between the parties with respect to the subject matter hereof, and supersedes all prior agreements and understandings, if any, except as further set forth in the Loan Documents.

4.4 **JURISDICTION, VENUE AND JURY TRIAL**. Any action or proceeding against Borrower relating in any way to the Loan Documents shall be brought in the applicable State of Florida court in Escambia County and Borrower irrevocably submits to the jurisdiction of each such court in respect of any such action or proceeding. **BORROWER HEREBY KNOWINGLY, VOLUNTARILY, AND INTENTIONALLY WAIVES ANY RIGHT IT MAY HAVE TO A TRIAL BY JURY, WITH RESPECT TO ANY LITIGATION OR LEGAL PROCEEDINGS BASED ON, OR ARISING OUT OF THE NOTE, LOAN AGREEMENT, MORTGAGE AND SECURITY AGREEMENT OR OTHER LOAN DOCUMENTS, INCLUDING ANY COURSE OF CONDUCT, COURSE OF DEALINGS, VERBAL OR WRITTEN STATEMENTS, OR ACTIONS OR OMISSIONS OF ANY PARTY WHICH IN ANY WAY RELATES TO THE LOAN. THE PARTIES HERETO HAVE SPECIFICALLY DISCUSSED AND NEGOTIATED THIS WAIVER AND UNDERSTAND THE LEGAL CONSEQUENCES OF THIS PARAGRAPH.**

4.5 **GOVERNING LAW**. The Loan Documents shall be governed by and construed in accordance with the laws of the State of Florida.

EXECUTED in Pensacola, Florida.

Borrower

Innerarity Island Development Corporation, a Florida corporation

By: Kathy Collins
Kathy Collins, Its President, *and not individually*

Lender

Kathy Collins
Kathy F. Collins as Personal Representative of the Estate of Fayette Dennison,
and not individually

Exhibit A

1/24/2013	Southern Utility Co. (invoices 11/21/12-1/9/13, IIDC)	70,329.38
1/25/2013	ECUA (IIDC acct. 316269-144457)	9,461.76
1/25/2013	ECUA (IIDC acct. 87795-71056)	5,956.52
1/28/2013	Gulf Power (IIDC lift stations)	134.26
1/28/2013	Gulf Power (IIDC lift station, acct. 06184-06009)	34.79
1/28/2013	Gulf Power (IIDC lift station, acct. 24571-18000)	66.43
1/31/2013	Innerness Island Association Inc. (assessment fees 86 lots, IIDC)	6,880.00
2/4/2013	FL Dept. of Health Bureau of Labs (fi De)	40.00
2/4/2013	Technologies for Tomorrow (IIDC computer & setup)	1,405.64
2/5/2013	Gulf Power (IIDC, 4 Lift Stations)	149.03
2/5/2013	Gulf Power (IIDC, lift station)	50.97
2/5/2013	Gulf Power (IIDC lift station)	37.19
2/14/2013	Kelson Electric (IIDC relay switch)	165.00
2/15/2013	Vinnie Garabedian (IIDC meter reading)	600.25
2/19/2013	McMann and Hadden Insurance (IIDC general liability ins)	861.86
2/21/2013	United States Postal Service (IIDC, 3 rolls stamps)	138.00
02/26/2013	ECUA (IIDC acct. 316269-144457)	4,918.69
02/26/2013	ECUA (IIDC acct. 87795-71056)	2,824.18
2/28/2013	Florida DOH, Bureau of laboratories (IIDC, 2 water samples)	40.00
3/11/2013	Vinnie Garabedian (feb 2013 IIDC monitoring)	524.75
3/12/2013	Gulf Power (IIDC lift station, acct. 35014-45006)	27.63
3/12/2013	United States Postal Service (IIDC stamps)	138.00
3/13/2013	AT&T (IIDC)	188.44
3/15/2013	Dennison & Assoc (IIDC billing Jan & Feb 2013)	3,720.00
3/18/2013	Gulf Power (IIDC lift stations)	155.19
3/18/2013	Gulf Power (IIDC lift station)	35.83
3/21/2013	Ken Horne & Associates (IIDC wtr sewer utility evaluation)	6,200.00
3/29/2013	Erica Murphy (IIDC billing, 2/18-3/24/13)	767.24
4/3/2013	Florida Public Service Commission (2012 wastewater report IIDC)	1,971.00
4/3/2013	Florida Public Service Commission (2012 small water IIDC)	2,165.08
4/4/2013	ECUA (Wtr, sewer IIDC)	9,265.76
4/4/2013	Gulf Power (5 lift stations, IIDC)	231.75
4/5/2013	Dennison & Assoc (balance of billing for discussion with Erica)	120.00
4/9/2013	Gulf Power (IIDC lift station)	28.51
4/10/2013	Vinnie Garabedian (IIDC monitoring & meter reading 3/2013)	625.00
4/18/2013	Vinnie Garabedian (IIDC meter reading)	125.00
4/23/2013	Erica Murphy (IIDC water billing, etc. 3/25-4/14/13)	525.00
4/23/2013	ECUA (IIDC water bill)	2,571.73
4/24/2013	Florida DOH, Bureau of laboratories (IIDC water testing)	40.00
4/24/2013	AT&T (IIDC cell phone 2 month billing)	172.13
4/30/2013	ECUA (IIDC sewer bill)	6,232.96
7/1/2013	IIDC (loan so Southern Utility Co. can be paid))	25,000.00
7/23/2013	IIDC (loan to pay expenses)	5,000.00
8/2/2013	Merrill Parker Shaw, Inc. (IIDC survey-90% of contract amt)	48,150.00
8/13/2013	Ken Horne & Associates (IIDC engineering study)	4,910.00
8/14/2013	Ken Horne & Associates (water, sewer evaluation)	8,938.75
9/5/2013	Ken Horne IIDC	5,367.00
9/26/13	SBP IIDC	57,000.00
	Personal Representatives Fee	70,000.00
	Fees through 09-16-13 to Ronald Nelson	<u>11,859.00</u>
	Total	376,149.70

Exhibit B

Lots 3, 4, 7, 8 and 9, Block D; Lots 17 and 18, Block E; Lot 1, Block G; Lots 17, 20, 21 and 22, Block H, Innerarity Shores, a subdivision of a portion of Section 15, Township 3 South, Range 32 West, Escambia County, Florida according to Plat recorded in Plat Book 13 at pages 79 and 79A of the public records of said county.

Lots 1, 2, 3, 4, 5, 6, 7 and 8 Block E; Lot 1 Block F; Lots 3, 4, 5, 6 and 7 Block G; Lots 3, 4 and 5 Block H, The Cove, Section 15, Township 3 South, Range 32 West, Escambia County, Florida, recorded in Plat Book 9, Page 97 of the public records of said county.

Lots 6 and 12, Block C; Lots 3 and 4, Block E; Lots 2, 8, 9 and 10, Block F; Lots 2, 3 and 4, Block J, in the First Addition to North Shore, a subdivision of a portion of the west half of Section 15, Township 3 South, Range 32 West, Escambia County, Florida according to plat recorded in Plat Book 9 at page 89 of the public records of said county.

Lots 1, 2, 3, 4, 5, 6, 7, and 8, Block E; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10, 11 and 12, Block F; Lots 1, 2, 3, 4, 5, 6, 7, 8, 9, 10 and 11, Block G; Lots 1, 2, 3, 4 and 5, Block H; Lot 1, 2, 3 and 4, Block I; in the Third Addition to North Shore, a subdivision of a portion of Section 15, Township 3 South, Range 32 West, Escambia County, Florida according to plat thereof recorded in Plat Book 10, Page 29, of the public records of said county.

Lots 1,2,3,4,5,6,7,8,9 and 10, Block B; Lots 1,2,and 3, Block C; Lots 1,2,3, 4, 5, Block D; Lots 1,2,3, 4, 5, Block E; Lots 1,2,3, 4, 5, Block F; Lots 1,2,3, 4, Block G; Lots 1,2,3 and 4, Bloch H; Lot 4 and 8, Block I; in the Fourth Addition to North Shore, according to plat thereof recorded in Plat Book 10, Page 76, of the public records of Escambia County, Florida.