

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

In re:

KT Spears Creek, LLC

Debtor.

Case No. 11-04241-jw

Chapter 11

**MOTION FOR ORDER (A) GRANTING FINAL AUTHORITY FOR DEBTOR'S USE
OF CASH COLLATERAL (B) GRANTING REPLACEMENT LIENS AND
MEMORANDUM IN SUPPORT**

KT Spears Creek, LLC, as debtor in this case (hereinafter, the "Debtor"), hereby moves the Court pursuant to 11 U.S.C. §§ 105(a), 361, 363(c)(2) and (e)¹ and Fed. R. Bankr. P. 4001(b) and 9014² for an order authorizing Debtor to use cash collateral ("Motion") on which RBC Bank (USA) ("RBC") asserts a security interest and lien. Debtor proposes to use the monies generated from the operation of its 240-unit apartment complex, use of which is absolutely necessary for the continuation of Debtor's business. In support of this Motion, Debtor would show as follows:

JURISDICTION

1. Debtor filed its voluntary petition for relief under chapter 11 of the Bankruptcy Code on May 3, 2011 (the "Petition Date").
2. Debtor is operating its business and managing its assets as debtor-in-possession pursuant to §§1107(a) and 1108 of the Bankruptcy Code.
3. This Court has subject matter jurisdiction over the Motion pursuant to 28 U.S.C. §1334.
4. This is a core proceeding pursuant to 28 U.S.C. §157(b)(2)(A). The Court can exercise its subject matter jurisdiction pursuant to 28 U.S.C. §157(b)(1).
5. Venue of these proceedings and the Motion is proper in this district pursuant to 28 U.S.C. §§1408 and 1409.
6. The statutory basis for relief requested herein are §§ 105(a), 361, 363(c)(2) and (e) and Rules 4001(b) and 9014.

¹ Further reference to the Bankruptcy Code, 11 U.S.C. § 101 *et seq.*, will be by section number only.

² Further reference to the Federal Rules of Bankruptcy Procedure will be by rule number only.

BACKGROUND

7. Debtor is the owner of the Greenhill Parrish Crossing Apartment Homes, a 240-unit apartment complex located in Elgin, South Carolina (“Apartment Complex”).

8. Debtor originally filed its voluntary petition for relief in the Southern District of Texas, Case No 11-33991-H3-11.

9. On June 1, 2011, the Debtor filed an Emergency Motion for Interim and Final Orders Approving Use of Cash Collateral (Docket No. 27) (“Emergency Cash Collateral Motion”).

10. On June 9, 2011, RBC filed an Objection to the Emergency Cash Collateral Motion (Docket No. 50) (“Objection”) asserting that an assignment of rents caused the Debtor to no longer have ownership of the rents received from tenants of the Debtor.

11. On June 8, 2011, the Bankruptcy Court for the Southern District of Texas transferred venue in this case to the District of South Carolina, prior to hearing any of the pending motions or objections, including the Debtor’s Emergency Cash Collateral Motion.

12. RBC asserts that it has a perfected first priority pre-petition security interest in the Debtor’s Rents derived from the Apartment Complex (“Cash Collateral”). RBC and the Debtor believe that RBC has a claim in the approximate amount of \$22,494,711.88.

13. As of the Petition Date, the Debtor’s approximate monthly revenue from the Greenhill Apartments was \$190,000.00.

RELIEF REQUESTED

14. The Debtor’s use of Cash Collateral in this case is necessary for the continued operation of its business. Debtor needs to pay operational expenses in order to continue to generate income.

15. Debtor proposes to pay only those expenses itemized on the budget attached hereto as **Exhibit A** (the “Budget”). Debtor also requests permission to exceed any line item in the Budget that contains a dollar amount as long as Debtor does not exceed the overall amount requested in the Budget attached as Exhibit A. If surplus funds are available from Cash Collateral after payment of those expenses set forth in Exhibit A, they will be held for possible use by the Debtor pending further order of the court.

16. As adequate protection for the use of Cash Collateral, Debtor agrees to provide RBC a replacement lien on post-petition accounts receivable and cash proceeds of post-petition accounts receivable to the same extent and priority as its pre-petition liens, up to the extent of any diminution in the Cash Collateral post-petition.

17. Section 363(c)(2) provides that the Debtor may use Cash Collateral if each entity that has an interest in such Cash Collateral consents or if the court authorizes such use after notice and hearing. Among the non-exclusive examples of adequate protection found in §361 is a replacement lien to the extent that use of collateral results in a decrease in its value.

18. Use of Cash Collateral is necessary in order for the Debtor to maintain its business operations. As the Debtor is continually receiving income from the letting of apartments, Cash Collateral is continually being replenished. Therefore, Debtor believes that granting a replacement lien to RBC and the payments proposed in **Exhibit A** should fully protect RBC.

19. Debtor believes that RBC may object to the use of cash collateral, as RBC has already done in the Texas case, arguing that the Debtor absolutely assigned its rents to RBC removing any ownership interest in those rents from the Debtor. RBC's argument in their previous objection is that because of this assignment and loss of ownership there is no cash held by the debtor that is collateral because RBC owns the cash.

20. Debtor disagrees with RBC's position regarding the assignment of rents for the following reasons.

21. Property of the estate includes “[p]roceeds, products, offspring, rents or profits of or *from property of the estate.*” § 541(a)(6) (emphasis added). Where the rents have been absolutely assigned as security for a loan, such assignment has no affect on a debtor in bankruptcy as congress intended to override state law to allow a debtor to reorganize and such rents are essential to such reorganizations. In re Amaravathi Ltd. P'ship, 416 B.R. 618, 623 (Bankr. S.D. Tex. 2009).

22. Assuming arguendo that the rents were absolutely assigned, KT Spears Creek, LLC is the owner of the property that derives the rents subject to the assignment. Because those rents are derived from property of the estate under § 541(a)(6), the rents are property of the estate. Therefore, any argument by RBC asserting that the Debtor has no interest in the rents directly derived from property of the estate is without merit and should be overruled.

23. As mentioned above, RBC has asserted in its pleadings, and at the July 21st status conference hearing that the rents are not property of the estate because of an “absolute assignment” of those rents.

24. RBC, and the debtor entered into note and security agreement whereby RBC received a mortgage and simultaneously received an assignment of rents to secure the note. Such

an agreement clearly falls under the Collateral Assignment provision of S.C. Code Ann. § 29-3-100 (A)(3).

“Collateral assignment” means any assignment of leases, rents, issues, or profits made and delivered in connection with the grant of any mortgage, or the execution of any conditional sales contract or in connection with any extension of credit made against the security of any interest in real property, where the assignor retains the right to collect or to apply the lease revenues, rents, issues, or profits after assignment and prior to default.

S.C. Code Ann. § 29-3-100 (A)(3)

25. Pursuant to the assignment of the rents, attached as **Exhibit B**, the Debtor maintains the right to collect and use lease revenues.

26. More importantly, RBC made no such payment to the Debtor for the present value of the income stream derived from the rents. “[A] *pro tanto* payment must be made to create a ‘true’ assignment.” In re Amaravathi Ltd. P’ship, 416 B.R. 618, 635 (Bankr. S.D. Tex. 2009). In this instance, the “absolute assignment of rents” is in name only and was not the intent of the parties. Id.

27. Because RBC made no such *pro tanto* payment for the assignment of the income stream, it is not an absolute assignment, as RBC has previously asserted. The rental income is property of the estate and RBC holds a collateral interest in the rental income.

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WHEREFORE, having shown that the rents are property of the estate, and having further shown that the Debtor's continuing use of Cash Collateral for its ongoing operations is absolutely necessary, Debtor seeks a final order authorizing use of such Cash Collateral and requests such other and further relief as the Court may deem just and proper.

RESPECTFULLY SUBMITTED on this the 19th day of August 2011 at Columbia, South Carolina.

MCCARTHY LAW FIRM, LLC

By: /s/ Sean P. Markham
G. William McCarthy, Jr., I.D.#2762
Daniel J. Reynolds, Jr., I.D.#9232
Sean P. Markham, I.D. #10145
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KT Spears Creek LLC

**Budget
4 Months**

	<u>Aug 2011</u>	<u>Sep 2011</u>	<u>Oct 2011</u>	<u>Nov 2011</u>
<u>BEGINNING CASH BALANCE</u>	217,214	264,690	354,471	439,377
<u>INCOME</u>				
Rental Income	176,483	176,483	176,483	176,483
Total Other Income	13,580	13,580	13,580	13,580
Total INCOME	190,063	190,063	190,063	190,063
<u>EXPENSES - APTS</u>				
Payroll Reimbursement	23,558	23,558	23,558	23,558
Repairs & Maintenance	2,358	2,358	2,358	2,358
Make-Ready	3,834	3,834	3,834	3,834
Recreational Amenities	413	413	413	413
Contract Services	7,262	7,262	7,262	7,262
Advertising/Mktg/Promo	4,191	4,191	4,191	4,191
Office	2,042	2,042	2,042	2,042
Other G&A	1,935	1,935	1,935	1,935
Utilities	6,714	6,714	6,714	6,714
Management Fees	6,035	6,035	6,035	6,035
Taxes	25,638	25,638	25,638	25,638
Property Insurance	3,072	3,072	3,072	3,072
Non-Operating expenses	1,230	1,230	1,230	1,230
	88,282	88,282	88,282	88,282
<u>EXPENSES - OTHER</u>				
Interest - First Palmetto	5,000	5,000	5,000	5,000
UST Fees	4,550	0	4,875	0
Taxes on 65 ac & 7 ac	1,000	1,000	1,000	1,000
Advertising/Mktg	1,000	1,000	1,000	1,000
Legal - Condemnation, etc	2,000	2,000	2,000	2,000
Engineer, Site Planning	2,000	2,000	2,000	2,000
Travel to Columbia, SC	1,000	1,000	1,000	1,000
	16,550	12,000	16,875	12,000
Total EXPENSES	104,832	100,282	105,157	100,282
<u>NET INCOME</u>	85,231	89,781	84,906	89,781
Payment of past due taxes on the First Savers Property	37,755	0	0	0
<u>NET REMAINING CASH</u>	47,476	89,781	84,906	89,781
<u>ENDING CASH BALANCE</u>	264,690	354,471	439,377	529,158

Book 1195-2187
2006053652 05/16/2006 11:20:00 697
Fee:\$17.00 County Tax:\$0.00 State Tax:\$0.00
Asgmt Lease Rent Profit



Space Above Line for Processing Data

State of South Carolina

County of Richland

RBC Centura

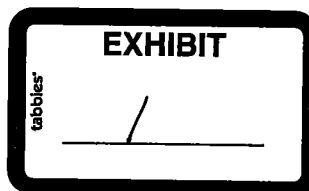
ASSIGNMENT OF LEASES, RENTS AND PROFITS

THIS ASSIGNMENT OF LEASES, RENTS AND PROFITS ("Assignment", which includes all amendments, modifications, renewals, extensions, replacements and substitutions thereof and therefor), entered into as of the 25th day of MAY, 2006, by KT SPEARS CREEK, LLC (whether one or more, "Assignor"), with a mailing address of 5410 Piping Rock, Houston, Texas 77056, to RBC CENTURA BANK ("Assignee"), with a business address of 134 N. Church Street, Rocky Mount, North Carolina 27804 and a mailing address of Post Office Box 1220, Rocky Mount, North Carolina 27802-1220, which mailing address is the place to which all notices and communications should be sent to Bank regarding this Assignment.

WITNESSETH:

FOR VALUE RECEIVED, and as additional security for the obligations hereinafter mentioned, the Assignor hereby sells, transfers and assigns unto the Assignee, its successors and assigns, all of Assignor's presently existing right, title and interest and all of Assignor's right, title and interest which may arise in the future in and to the rents, issues, profits, revenues, royalties, rights and benefits (collectively, the "Rents and Profits") arising from or related to (1) the parcels of land described on Exhibit A, (2) the rights and benefits appurtenant to said parcels of land including all sales contracts for sale of the improvements to be constructed thereon, and (3) the buildings and other improvements (to include manufactured homes) now located thereon and thereunder and those which may be located thereon and thereunder in the future (collectively, the "Property"), together with all equipment, fixtures, standing timber (to include timber to be cut, but this inclusion does not permit cutting of timber unless Assignee agrees to such cutting in advance thereof), crops grown, growing and to be grown on the Property (to include crops that are produced on trees, vines and bushes and aquatic goods) and other farm products (to include livestock - born and unborn, supplies and products of crops and livestock), oil, gas and other minerals and as-extracted collateral (but inclusion of as-extracted collateral does not permit extraction unless Assignee agrees to such extraction in advance thereof), both that now owned by Assignor and on behalf of and for the benefit of Assignor and located in, on and under the Property and otherwise used in connection therewith, and that hereafter acquired and located as aforesaid and used in connection with the ownership, possession, operation and maintenance of the Property (collectively, the "Collateral").

AND, in furtherance of the foregoing assignment, but not in limitation thereof, Assignor does hereby sell, transfer and assign to Assignee, its successors and assigns, all of Assignor's presently existing right, title and interest and all Assignor's right, title and interest which may arise in the future in and to (1) the leases and rental agreements, if any, listed on Exhibit A and all other leases and rental agreements with respect to the Property and with respect to the



Collateral now existing or hereafter made, executed and delivered (whether written, electronic or verbal), together with all present and future extensions, renewals, modifications and amendments thereof, and substitutions and replacements therefor (collectively, the "Leases"), (2) all Rents and Profits due and all Rents and Profits which become due under the Leases and (3) all security deposits now held or hereafter acquired and held in connection with any of the foregoing.

THIS ASSIGNMENT is subject to the following terms and conditions:

Section 1: Absolute Assignment Given as Security. This Assignment is absolute and is given as additional security for the payment and performance of the obligations described in and secured by that certain Mortgage ("Mortgage") identified on Exhibit A. The amounts collected hereunder shall be applied first to the costs and expenses incurred by Assignee and those incurred on behalf of Assignee under this Assignment in collecting and receiving Rents and Profits, or as otherwise provided herein, and then in reduction of the obligations from time to time outstanding and secured by the Mortgage, in the order provided in the Mortgage. The term of this Assignment shall be until the obligations secured by the Mortgage shall have been fully paid and satisfied and the cancellation of the Mortgage shall constitute a release hereof.

1.1. Management and Collection of Rents and Profits. Until release of this Assignment by Assignee as provided in Section 1 above, but subject to the revocable license granted by Assignee to Assignor as provided in Section 1.2 below, the sole right and authority to collect the Rents and Profits shall be with and shall lie with Assignee and such right, authority and power may be exercised by Assignee and may be exercised by either or both Assignee's designee or a receiver or other official appointed as provided in Section 2.4 below, from time to time and in such manner as Assignee deems necessary or appropriate, in its sole discretion; and, in connection with such right of collection, Assignor hereby directs each and all of the lessees and tenants of the Property and lessees and tenants of the Collateral and any other person obligated to pay Rents and Profits on account of the Property and on account of the Collateral to pay said Rents and Profits (as may now be due and as shall hereafter become due) to the Assignee, its designee or a receiver or other official appointed for such purpose, upon demand for payment thereof by the Assignee or such other person or persons from time to time and at anytime. Without limiting the foregoing; but in furtherance thereof, Assignee shall have the additional rights and powers set forth in Sections 1.1.1 through 1.1.3. below.

1.1.1. Assignee, at any time and from time to time, may give notice in writing of this Assignment to any and all of the lessees and tenants under the Leases and to any other persons in possession of the Property and in possession of the Collateral, and any parts of either and interests in either; and, Assignee, for the purpose of fully enforcing its rights and powers under this Assignment, may otherwise communicate with such lessees, tenants and other persons regarding this Assignment and Assignee's rights, authority and powers hereunder.

1.1.2. Assignee, at its option and at any time or times, shall have the right to enter and take possession of the Property and possession of the Collateral and to manage and operate the same, to let or re-let the Property, the Collateral and any part of either and interests in either, to cancel and modify the Leases, to grant rent concessions and other inducements, to evict lessees, tenants and other persons, to bring and defend any suits in connection with possession of the Property and possession of the Collateral in its own name or the Assignor's name, to make repairs as the Assignee deems appropriate, and to perform such other acts in connection with the management and operation of the Property as the Assignee, in its discretion, may deem proper, all at the cost and expense of Assignor.

1.1.3. Assignee shall have the right to hold and possess, and the Assignor shall turn over to the Assignee immediately upon demand of Assignee, the security deposits held by the Assignor, and those held by its employees and agents, under and pursuant to the Leases. Assignee shall hold and apply the security deposits received in connection with the Leases to the purposes specified in the Leases, in accordance with the terms and conditions thereof. Except to the extent required by law or otherwise required in the Leases, Assignee shall not be obligated for the payment of interest on security deposits delivered to it.

1.2. Revocable License Given to Assignor.

1.2.1. Until the occurrence of an Event of Default, as defined in the Mortgage, or the breach of or default under this Assignment by Assignor, Assignor shall have a license and Assignee hereby grants to Assignor a revocable license to continue collecting the Rents and Profits in the normal and ordinary course of Assignor's business; provide, however, (1) Assignor shall not collect any rental installments under any Leases more than two months in advance of its scheduled payment date without the prior written consent of the Assignee – and if Assignor does so do in contravention hereof, Assignor shall promptly remit such advanced rental installments to Assignee for application by Assignee against the obligations secured hereby, such installments to be applied as provided in Section 1 of this Assignment, (2) Assignor shall pay to Assignee, upon receipt by Assignor and in the same form as received (with any necessary endorsements), (A) any award made hereafter in any court procedure involving any of the Leases in any bankruptcy, insolvency or reorganization proceedings in any state court and in any federal court and (B) any payments made and consideration given by tenants and lessees in lieu of rental payments under any of the Leases, or in settlement of or on account of a claim or dispute under or with respect to any Leases, and (3) Assignor shall promptly comply with such other directives as Assignee may from time to time give to Assignor regarding collection of the Rents and Profits.

1.2.2. If Assignor should breach this Assignment or default hereunder, or if an Event of Default occurs under the Mortgage, Assignee may, at its option, terminate the privilege and license granted to Assignor by Assignee in Section 1.2.1 above and upon a determination by Assignee to terminate, the privilege and license granted to Assignor shall automatically terminate without any notice from Assignee to Assignor and without any further or additional acts on the part of Assignee, unless notice is required under the Mortgage or under applicable law, and then only such minimum notice as may be required. Upon such termination, Assignor shall cease all collection activities and shall pay over to Assignee all Rents and Profits received by it on and after such termination. All amounts which are received by Assignor from and after the termination of Assignor's license shall be received in trust for the benefit of Assignee, shall be segregated from other funds of Assignor and shall be immediately paid over to Assignee in the same form as received (with any necessary endorsements).

Section 2. Additional Provisions Relating to Collection of Rents and Profits.

2.1. Limitation on Accountability of Assignee. The Assignee shall not be liable for laches and shall not be liable for the inability to collect the Rents and Profits. The Assignee is obligated to account only for such sums as are actually collected and shall not be obligated to perform and shall not be obligated to discharge any obligation to be performed or discharged by the Assignor under any of the Leases unless it has undertaken the cure of any default. The Assignor hereby agrees to indemnify the Assignee for, and to save it harmless from, any and all liability arising from the Leases and any and all liability arising from this Assignment. This Assignment shall not place responsibility for the control, care, management and repair of the Property and Collateral upon the Assignee, and shall not make the Assignee responsible or liable for any negligence in the management, operation, upkeep, repair and control of the Property and the Collateral resulting in loss or injury or death to any lessee, tenant, licensee, employee or stranger unless Assignee has taken possession of the Property.

2.2. Consequences of Receipt of Rents and Profits. The receipt by the Assignee of any Rents and Profits pursuant to this Assignment after acceleration of the obligations secured hereby shall not cure any default nor shall the receipt thereof at any subsequent time cure any default, affect Assignee's right to institute foreclosure proceedings under the Mortgage or affect any sale pursuant thereto. Neither the existence of this Assignment nor the exercise of Assignee's privilege to collect the Rents and Profits, shall be construed as a waiver by the Assignee of the right to enforce payment of the obligations hereby secured in strict accordance with the terms and provisions of the Mortgage and any agreement evidencing any of the obligations secured by the Mortgage.

2.3. Waiver of Rights by Assignor. If there is any case law, statute or regulation requiring Assignee to take actual possession of the Property and to take actual possession of the Collateral (or some action equivalent thereto, such as securing the appointment of a receiver) in order for Assignee to perfect or activate its rights and remedies as set forth herein, then Assignor waives the benefits of such law and agrees that such requirement of law may be satisfied solely by (1) Assignee sending Assignor written notice that Assignee intends to enforce, and is enforcing, its

rights in and to the Property, the Collateral and the Rents and Profits assigned herein and (2) Assignee sending written notice to any one or more of the lessees and tenants of the Property and lessees and tenants of the Collateral, and any other person in possession of all or part of either or both, to commence making payments directly to Assignee or its designee as provided herein.

2.4. Appointment of Receiver. Assignee shall have the absolute and unconditional right to apply for and to obtain the appointment of a receiver or similar official for any part of and for all of the Property and for any part of and for all of the Collateral, to, among other things, manage and operate the Property and to manage and operate the Collateral, and any part of and interest in either or both, and to collect and apply the Rents and Profits as provided above. In the event of such application, Assignor consents to the appointment of such receiver or similar official and agrees that such receiver or similar official may be appointed without notice to Assignor, without regard to the adequacy of any security for the obligations secured hereby and without regard to the solvency of Assignor and without regard to the solvency of any other person, firm or corporation who or which may be liable for the payment of the obligations secured hereby. All costs and expenses related to the appointment of a receiver or other similar official hereunder shall be the responsibility of Assignor, but if paid by Assignee, Assignor hereby agrees to pay to Assignee, immediately and without demand, all such expenses, together with interest thereon from the date of each payment by Assignee at the contract rate at which interest accrues from time to time on the obligations hereby secured, or if interest accrues at different contract rates, any one of the contract rates at which interest accrues as selected by Assignee, in its sole discretion, which rate may be fixed or variable (the "Contract Rate"). All sums so paid by Assignee, and the interest thereon, shall be added to and be secured by this Assignment.

2.5. Power of Attorney. Assignor does hereby irrevocably constitute and appoint Assignee its true and lawful attorney with full power of substitution, for it and in its name, place and stead, to execute, deliver, send and file such agreements, documents, notices, statements and records as Assignee, in its sole discretion, deems necessary and advisable to effect the terms and conditions of this Assignment and to otherwise realize Assignee's rights, authority and powers hereunder, and the benefits provided to Assignee herein, and in connection therewith, Assignee may appear in any action and collect any award or payments relating to the Property and Collateral (including, without limitation, the Leases and the Rents and Profits). The foregoing appointment is and the same shall be coupled with an interest in favor of Assignee. In furtherance of the foregoing appointment and grant of authority, but not in limitation thereof, Assignor irrevocably authorizes Assignee to file such financing statements as may be necessary to protect, in Assignee's opinion, Assignee's liens and security interests in the Property and Collateral (including, without limitation, the Leases and the Rents and Profits) and, to the extent Assignee deems necessary or appropriate, to sign Assignor's name with the same force and effect as if signed by Assignor and to make public in financing statements and other public filings such information regarding Assignor as Assignee deems necessary or appropriate, including, without limitation, federal tax identification numbers, social security numbers and other identifying information.

Section 3. Representations, Warranties and Covenants Regarding Leases.

3.1. Representations and Warranties. Assignor represents and warrants to Assignee that (1) it has full right, title and authority to assign to Assignee the Leases and the Rents and Profits due or to become due thereunder or with respect to the Property and the Collateral, (2) the terms of the Leases have not been amended, modified, replaced or changed from the terms in the copies of the Leases submitted to the Assignee for approval, which copies are true and exact copies of the Leases currently outstanding with respect to the Property and the Collateral, (3) no other assignment of any interest in the Leases has been made by Assignor or any other person to anyone other than Assignee, (4) there are no existing defaults under any of the Leases by any party thereto, and (5) there has been no anticipation or prepayment of any rental installments by any lessees or tenants occupying or possessing the Property and the Collateral or by any of the lessees or tenants in any of the Leases.

3.2. Covenants Regarding Leases.

3.2.1. The Assignor shall fully perform its obligations under the Leases in a timely manner and shall take such actions as may be reasonably necessary to ensure that all lessees and tenants under any of the Leases fully and timely perform their respective obligations thereunder, all at Assignor's sole cost and expense. The Assignor

shall provide to Assignee such information with respect to the Leases and the Rents and Profits therefrom or otherwise arising from or in connection with the Property and Collateral as Assignee may from time to time request; such information to be delivered to Assignee promptly by Assignor and in a form and medium directed by Assignee.

3.2.2. The Assignor shall not hereafter, without the prior written consent of the Assignee: (1) cancel any of the Leases, surrender any of the Lease and terminate any of the Leases, (2) exercise any option which might lead to a cancellation, surrender or termination of any of the Leases, (3) change, amend, alter and modify any of the Leases, (4) consent to the release of any party liable under any of the Leases, and (5) consent to the assignment and subletting of the lessee's or tenant's interest in them.

3.2.3. The Assignor shall maintain the security deposits made or to be made with respect to Leases of the Property and the Collateral in a separate bank account maintained by the Assignor with the Assignee, if so requested by Assignee, and designated as the account for the deposit of security deposits with respect to the Property and Collateral. The Assignor shall provide to the Assignee within thirty (30) days of the end of each of the Assignor's fiscal years, or more frequently if so requested by Assignee, a written verification of the amount of security deposits maintained in the account together with a list of the Leases with respect to which the deposits are maintained.

Section 4. Miscellaneous.

4.1. Incorporation of Exhibits. All exhibits, schedules, addenda and other attachments to this Assignment are by this reference incorporated herein and made a part hereof as if fully set forth in the body of this Assignment.

4.2. Maintenance of Records by Assignee. Assignee is authorized to maintain, store and otherwise retain evidences of the obligations, this Assignment, any separate security agreements and other agreements executed and delivered and to be executed and delivered by Assignor and others on Assignor's behalf to Assignee in their original, inscribed tangible form or a record thereof in an electronic medium or other non-tangible medium which permits such record to be retrieved in a perceivable form.

4.3. Credit Investigations; Sharing of Information; Control Agreements. Assignee is irrevocably authorized by Assignor to make and have made such credit investigations as it deems appropriate to evaluate Assignor's credit, personal and financial standing, and employment. Assignor authorizes Assignee to share with consumer reporting agencies and creditors its experiences with Assignor and other information in Assignee's possession relative to Assignor, the Property and the Collateral (including, without limitation, the Leases and the Rents and Profits); but Assignee shall not have (1) any obligation to provide information to third persons relative to any of the foregoing or otherwise, (2) any obligation to subordinate its liens and security interests in the Property and Collateral (including, without limitation, the Leases and the Rents and Profits) and (3) any obligation to enter into control agreements and other agreements relative thereto.

4.4. Marshalling of Assets. Assignor hereby waives, to the extent permitted by law, the benefit of all homestead, appraisal, valuation, stay, extension, reinstatement and redemption laws now in force and any which may in the future come to be in force and all rights of marshalling in the event of any collection hereunder of Rents and Profits or otherwise against the Property, the Collateral or any part or any interest in either or both.

4.5. Waiver of Statutory Rights. Assignor waives any right to require Assignee to bring any action against any other person or to require that resort be had to any security or to any balances of any deposit or other accounts or debts or credits on the books of Assignee in favor of any other person. Assignor also waives any and all right of subrogation, contribution, reimbursement and indemnity and any right of recourse to and with respect to the assets of any other person that is or may be security for the obligations secured hereby.

4.6. Jury, Venue, Jurisdiction. This Assignment shall be deemed to have been executed and delivered in South Carolina regardless of where the signatories may be located at the time of execution and shall be governed by and construed in accordance with the substantive laws of the State of South Carolina, excluding, however, the

conflict of law and choice of law provisions thereof. Assignor, to the extent permitted by law, waives any right to a trial by jury in any action arising from or related to this Assignment.

4.7. No Waiver; No Course of Dealing; No Invalidity. No delay or forbearance by Assignee in exercising any and all of its rights and remedies hereunder, and its rights and remedies otherwise afforded by law and in equity, shall operate as a waiver thereof or preclude the exercise thereof during the continuance of any default hereunder or in the event of any subsequent default hereunder. Also, no act or inaction of Assignee under this Assignment shall be deemed to constitute or establish a "course of performance or dealing" that would require Assignee to so act or refrain from acting in any particular manner at a later time under similar or dissimilar circumstances. Wherever possible, each provision of this Assignment shall be interpreted in such manner as to be effective and valid under applicable law, but if any provision of this Assignment shall be prohibited or invalid under such law, such provision shall be ineffective to the extent of such prohibition or invalidity without invalidating the remainder of such provision or the remaining provisions of this Assignment.

4.8. No Oral Change. Subject to the exercise by Assignee of its rights and remedies as set forth in this Assignment and without limiting any of such rights and remedies, this Assignment, and any provisions hereof, may not be modified, amended, waived, extended, changed, discharged or terminated orally or by any act or failure to act on the part of Assignor or Assignee, but only by an agreement in writing, signed by the party against whom enforcement of any modification, amendment, waiver, extension, change, discharge or termination is sought.

4.9. Payment of Expenses. Without limiting any other provision of this Assignment relating to Assignor's payment of costs and expenses incurred by and on behalf of Assignee, but in addition thereto, Assignor shall pay to Assignee on demand any and all reasonable costs and expenses, including, without limitation, attorneys' fees, incurred by Assignee and those incurred on behalf of Assignee in protecting its interest in the Property and its interest in the Collateral and in collecting any amount payable hereunder and in enforcing its rights hereunder with respect to the Property and with respect to the Collateral (including, without limitation, commencing any collection action, and prosecuting and defending any legal and equitable proceeding), together with interest thereon at the Contract Rate from the date paid or incurred by or on behalf of Assignee until such costs and expenses are paid by Assignor. All sums so paid and expended by Assignee, and the interest thereon, shall be added to and be secured by this Assignment.

4.10. Documentary Stamp Taxes. To the extent not prohibited by applicable law and notwithstanding who is liable for payment of the taxes or fees, Assignor shall pay upon demand any stamp tax, documentary tax, intangible tax and other taxes, levies and charges of any jurisdiction with respect to the execution, delivery, registration, performance and enforcement of this Assignment.

4.11. Relationship of Parties: Successors and Assigns. The relationship of Assignee to Assignor is that of a creditor to an obligor or debtor; and in furtherance thereof and in explanation thereof, Assignee has no fiduciary, trust, guardian, representative, partnership, joint venturer or other similar relationship to and with Assignor and no such relationship shall be drawn or implied from this Assignment and any of Assignor's actions or inactions hereunder or with respect hereto - and, Assignee has no obligation to Assignor and any other person relative to administration of the obligations secured by this Assignment, the Property, the Collateral and any part or parts of any of the foregoing. The covenants, terms and conditions herein contained shall bind, and the benefits and powers shall inure to, the respective heirs, executors, administrators, successors and assigns of the parties hereto, but nothing herein contained shall be deemed a consent to the sale, lease, demise, further encumbrance, transfer and other disposition by Assignor, either directly or indirectly, of all or any part of the Property, the Collateral and any interest, right and estate in either or both (including, without limitation, the Leases and the Rents and Profits), without Assignee's prior written consent, which may be withheld in Assignee's sole discretion. If two or more persons or entities have joined as Assignor, each of the persons and entities shall be jointly and severally obligated to perform the obligations herein contained. The term "Assignee" shall include any payee of the obligations hereby secured and any transferee and assignee thereof, whether by operation of law or otherwise, and Assignee may transfer, assign and negotiate all and any of the obligations secured by this Assignment from time to time without the consent of Assignor and without notice to Assignor and any transferee and assignee of Assignee, and any transferee and assignee of another may do the same without Assignor's consent and without notice to Assignor. Assignor waives and will not

assert against any transferee and waives and will not assert against any assignee of Assignee any claims, defenses, set-offs and rights of recoupment which Assignor could assert against Assignee, except defenses which Assignee cannot waive.

4.12. Notices. All notices, certificates and other communications hereunder shall be deemed given when mailed by registered or certified mail, postage prepaid, return receipt requested, addressed to the addresses set forth above. Assignor and the Assignee may, by written notice given hereunder, designate a different address where communications should be sent and Assignee may direct, by notice to Assignor, for communications to be sent electronically or in some other non-tangible medium.

4.13. Anti-Money Laundering and Anti-Terrorism. Assignor represents, warrants and covenants to Assignee as follows: (1) Assignor (a) is not and shall not become a person whose property or interest in property is blocked or subject to blocking pursuant to Section 1 of Executive Order 13224 of September 23, 2001 Blocking Property and Prohibiting Transactions With Persons Who Commit, Threaten to Commit, or Support Terrorism (66 Fed. Reg. 49079 (2001)), (b) does not engage in and shall not engage in any dealings or transactions prohibited by Section 2 of such executive order, and is not and shall not otherwise become associated with any such person in any manner violative of Section 2, (c) is not and shall not become a person on the list of Specially Designated Nationals and Blocked Persons, and (d) is not and shall not become subject to the limitations or prohibitions under any other U.S. Department of Treasury's Office of Foreign Assets Control regulation or executive order; (2) Assignor is and shall remain in compliance, in all material respects, with (a) the Trading with the Enemy Act, as amended, and each of the foreign assets control regulations of the United States Treasury Department (31 CFR, Subtitle B, Chapter V, as amended) and any other enabling legislation or executive order relating thereto, and (b) the Uniting And Strengthening America By Providing Appropriate Tools Required To Intercept And Obstruct Terrorism (USA Patriot Act of 2001); and (3) Assignor has not and shall not use all or any part of the proceeds of the obligations secured by the Mortgage or any or all of the Rents and Profits, directly or indirectly, for any payments to any governmental official or employee, political party, official of a political party, candidate for political office, or anyone else acting in an official capacity, in order to obtain, retain or direct business or obtain any improper advantage, in violation of the United States Foreign Corrupt Practices Act of 1977, as amended.

4.14. Use and Application of Terms. Whenever the context may require, any pronouns used herein shall include the corresponding masculine, feminine or neuter forms, and the singular form of nouns and pronouns shall include the plural and vice versa; and as the context requires, the word "and" may have a joint meaning or a several meaning and the word "or" may have an inclusive meaning or an exclusive meaning. All references in this Assignment to "person" or "persons" shall include individuals and organizations and all terms used in this Assignment that are not defined in this Assignment, the Mortgage or in the obligations secured hereby, but are defined in the Uniform Commercial Code in effect in the State of South Carolina, shall have the meaning ascribed to such terms from time to time in said Uniform Commercial Code. Any reference contained in this Assignment to specific statutes or laws shall include any successor statutes or laws, as the case may be. This Assignment shall not be applied, interpreted and construed more strictly against a person because that person or that person's attorney drafted this Assignment.

The undersigned has executed this Assignment as of the day and year first above stated.

Signed, sealed and delivered in the presence of:

Witness:
Michelle Lee Reed
Print Name: Michelle Lee Reed

KT SPEARS CREEK, LLC
By: [Signature]
Name: Kyle Reed
Its: Member

Witness:
[Signature]
Print Name: Carol Ann Byrnes

STATE OF)
COUNTY OF)

ACKNOWLEDGMENT

The foregoing instrument was acknowledged before me this 15 day of June, 2006, by Kyle TAUCH, as Member of KT Spears Creek, LLC.

Michele Lee Reed
Notary Public for

My commission expires: 9-12-06

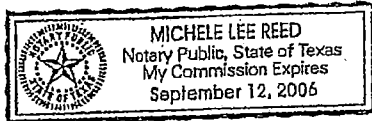


EXHIBIT A

(Attached to Assignment of Leases, Rents and Profits)

1. Description of Mortgage: Mortgage, Assignment of Rents and Security Agreement from KT Spears Creek, LLC, to RBC Centura Bank of even date herewith.
2. List of Leases and Rental Agreements:
3. Description of Property: See legal description attached.

EXHIBIT A

PHASE I PROPERTY DESCRIPTION

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, LYING AND BEING IN RICHLAND COUNTY, STATE OF SOUTH CAROLINA, BEING LOCATED AT THE NORTHWEST CORNER OF THE INTERSECTION OF GREENHILL PARISH PARKWAY AND OLD NATIONAL HIGHWAY AND BEING MORE FULLY SHOWN AND DESIGNATED AS PHASE I ON A BOUNDARY SURVEY OF GREENHILL PARISH CROSSING PHASE I & 2, BY W.K. DICKSON & CO., INC. DATED MAY 9, 2006 AND LAST REVISED MAY 23, 2006.

COMMENCING AT THE CENTER LINE INTERSECTION OF OLD NATIONAL HIGHWAY AND GREENHILL PARISH PARKWAY, THENCE NORTH 77°48'09" WEST, A DISTANCE OF 79.44 FEET TO THE POINT OF BEGINNING A #4 REBAR (FOUND) ON THE R/W OF OLD NATIONAL ROAD; THENCE RUNNING IN A WESTERLY DIRECTION ALONG THE NORTHERN R/W OF GREENHILL PARISH PARKWAY SOUTH 09°07'22" EAST, A DISTANCE OF 52.50 FEET TO A #4 REBAR (FOUND); THENCE CONTINUING ALONG SAID R/W SOUTH 34°58'49" WEST, A DISTANCE OF 33.82 FEET TO A #4 REBAR (FOUND) THENCE CONTINUING ALONG SAID R/W HAVING A CURVE WITH AN RADIAL DISTANCE OF 242.00 FEET, HAVING AN ARC LENGTH OF 198.85 FEET AND A CORD OF NORTH 58°16'35" EAST 193.30 FEET TO A #4 REBAR (FOUND); THENCE CONTINUING ALONG SAID R/W SOUTH 81°49'37" WEST, A DISTANCE OF 252.92 FEET TO A #5 REBAR (SET); THENCE CONTINUING ALONG SAID R/W HAVING A CURVE WITH AN RADIAL DISTANCE OF 767.00 FEET, HAVING AN ARC LENGTH OF 34.85 FEET AND A CORD OF NORTH 83°08'37" EAST 34.85 FEET TO A #5 REBAR (SET); THENCE CONTINUING ALONG SAID R/W SOUTH 84°27'01" WEST, A DISTANCE OF 431.81 FEET TO A #4 REBAR (FOUND); THENCE CONTINUING ALONG SAID R/W HAVING A CURVE WITH AN RADIAL DISTANCE OF 833.00 FEET, HAVING AN ARC LENGTH OF 185.25 FEET AND A CORD OF NORTH 78°36'11" EAST 184.87 FEET TO A CALCULATED POINT; THENCE NORTH 61°03'52" WEST, A DISTANCE OF 74.35 FEET TO A CALCULATED POINT; THENCE SOUTH 76°19'38" WEST, A DISTANCE OF 33.51 FEET TO A CALCULATED POINT; THENCE NORTH 60°34'03" WEST, A DISTANCE OF 100.67 FEET TO A CALCULATED POINT; THENCE NORTH 02°17'29" WEST, A DISTANCE OF 25.51 FEET TO A CALCULATED POINT; THENCE NORTH 61°03'52" WEST, A DISTANCE OF 80.41 FEET TO A CALCULATED POINT; THENCE NORTH 14°07'26" WEST, A DISTANCE OF 431.86 FEET TO A CALCULATED POINT; THENCE NORTH 75°52'26" EAST, A DISTANCE OF 104.75 FEET TO A #4 REBAR (FOUND); THENCE CONTINUE EASTERLY ALONG SAID LINE, A DISTANCE OF 69.19 FEET TO A #5 REBAR (SET); THENCE NORTH 14°07'38" WEST, A DISTANCE OF 156.88 FEET TO A #5 REBAR (SET); THENCE NORTH 18°27'37" WEST, A DISTANCE OF 102.41 FEET TO THE SOUTHERN R/W OF U.S. HIGHWAY #1 TO A #5 REBAR (SET); THENCE CONTINUING ALONG SAID R/W NORTH 72°00'37" EAST, A DISTANCE OF 69.21 FEET TO A #4 REBAR (FOUND); THENCE CONTINUING ALONG SAID R/W NORTH 71°54'05" EAST, A DISTANCE OF 5.80 FEET TO A #5 REBAR (SET); THENCE SOUTH 18°27'37" EAST, A DISTANCE OF 104.64 FEET TO A CALCULATED POINT; THENCE SOUTH 14°07'38" EAST, A DISTANCE OF 159.72 FEET TO A #5 REBAR (SET); THENCE NORTH 75°52'17" EAST, A DISTANCE OF 4.11 FEET TO A #4 REBAR (FOUND); THENCE NORTH 75°53'05" EAST, A DISTANCE OF 143.52 FEET TO A #4 REBAR (FOUND); THENCE

NORTH 75°52'07" EAST, A DISTANCE OF 195.04 FEET TO A #4 REBAR (FOUND); THENCE NORTH 78°15'21" EAST, A DISTANCE OF 242.09 FEET TO THE WESTERN RW OF OLD NATIONAL HIGHWAY TO A #4 REBAR (FOUND); THENCE CONTINUING ALONG SAID RW SOUTH 53°18'52" EAST, A DISTANCE OF 765.28 FEET TO THE POINT OF BEGINNING A #4 REBAR (FOUND). CONTAINING 743,026 SQUARE FEET OR 17.06 ACRES, MORE OR LESS.

TMS#: A portion of 25800-03-05 and 25900-04-04

Derivation: Deed from DAK I, LLC to K T Spears Creek LLC dated December 3, 2004 and recorded December 6, 2004 in the Office of the Register of Deeds for Richland County in Record Book 1003, at page 1581 and Deed from G. P. Monroe, Jr. and Virginia R. Monroe to K T Spears Creek, LLC dated August 1, 2005 and recorded August 1, 2005 in the Office of the Register of Deeds for Richland County in Record Book 1081, at Page 827.

PHASE II PROPERTY DESCRIPTION

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, LYING AND BEING IN RICHLAND COUNTY, STATE OF SOUTH CAROLINA, BEING LOCATED AT THE NORTHEAST CORNER OF THE INTERSECTION OF GREENHILL PARISH PARKWAY AND UPLAND HILL LANE AND BEING MORE FULLY SHOWN AND DESIGNATED AS PHASE II ON A BOUNDARY SURVEY OF GREENHILL PARISH CROSSING PHASE I & 2, BY W.K. DICKSON & CO., INC. DATED MAY 9, 2006 AND LAST REVISED MAY 23, 2006.

COMMENCING AT THE CENTER LINE INTERSECTION OF UPLAND HILL LANE AND GREENHILL PARISH PARKWAY, THENCE NORTH 34°00'00" WEST, A DISTANCE OF 81.37 FEET TO A PK NAIL (SET), SAID POINT BEING THE POINT OF BEGINNING; THENCE NORTH 40°37'37" WEST, A DISTANCE OF 583.87 FEET TO A #5 REBAR (SET); THENCE NORTH 15°29'49" WEST, A DISTANCE OF 349.95 FEET TO A #5 REBAR (SET); THENCE NORTH 74°54'59" EAST, A DISTANCE OF 91.31 FEET TO A #4 REBAR (FOUND); THENCE NORTH 75°51'40" EAST, A DISTANCE OF 464.91 FEET TO A #4 REBAR (FOUND); THENCE NORTH 75°52'26" EAST, A DISTANCE OF 217.50 FEET TO A CALCULATED POINT; THENCE SOUTH 14°07'26" EAST, A DISTANCE OF 431.86 FEET TO A CALCULATED POINT; THENCE SOUTH 61°03'52" EAST, A DISTANCE OF 80.41 FEET TO A CALCULATED POINT; THENCE SOUTH 02°17'29" EAST, A DISTANCE OF 25.51 FEET TO A CALCULATED POINT; THENCE SOUTH 60°34'03" EAST, A DISTANCE OF 100.67 FEET TO A CALCULATED POINT; THENCE NORTH 76°19'38" EAST, A DISTANCE OF 33.51 FEET TO A CALCULATED POINT; THENCE SOUTH 61°03'52" EAST, A DISTANCE OF 74.35 FEET TO A CALCULATED POINT ON THE NORTHERN RW OF GREENHILL PARISH PARKWAY, THENCE CONTINUING WESTERLY ALONG SAID RW HAVING A CURVE WITH AN RADIAL DISTANCE OF 833.00 FEET, HAVING AN ARC LENGTH OF 347.55 FEET AND A CORD OF SOUTH 60°16'46" WEST 345.04 FEET TO A #4 REBAR (FOUND); THENCE SOUTH 48°19'06" WEST, A DISTANCE OF 350.35 FEET TO A #4 REBAR (FOUND) THENCE CONTINUING ALONG SAID RW HAVING A CURVE WITH AN RADIAL DISTANCE OF 80.00 FEET, HAVING AN ARC LENGTH OF 80.62 FEET AND A CORD OF SOUTH 85°32'08" WEST 77.25 FEET TO A PK NAIL (SET) BEING THE POINT OF BEGINNING.

CONTAINING 582,527 SQUARE FEET OR 13.37 ACRES, MORE OR LESS.

TMS#: A portion of 25800-03-05

Derivation: Deed from DAK I, LLC to K T Spears Creek LLC dated December 3, 2004 and recorded December 6, 2004 in the Office of the Register of Deeds for Richland County in Record Book 1003, at page 1581.

STATE OF SOUTH CAROLINA
COUNTY OF RICHLAND

RBC Bank (USA),
Plaintiff,

v.

KT Spears Creek, LLC, KT Builders,
LTD., Kyle D. Tauch, and Hyco
Plumbing, Inc. ,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2010-CP-40-6025

Order Appointing Receiver

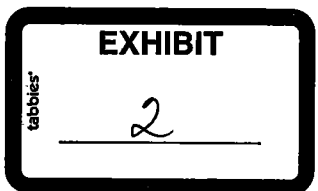
JEANETTE W. HERR
C.C.P. & G.S.

2010 NOV 17 PM 1:24

RICHLAND COUNTY
FILED

This matter came before the Court on the Plaintiff's motion for the appointment of a receiver and a Verified Complaint, making application for the appointment of a Receiver for the Property as identified in the Complaint. Due and proper notice of this hearing was served on all parties to the action and upon the property manager as will appear by reference to the hearing notice served by Plaintiff's counsel on October 29, 2010 and filed on November 1, 2010. Appearing before the Court was counsel for the Plaintiff. The Defendants KT Spears Creek, LLC and KT Builders, LTD are in default and did not appear. The Defendant Kyle D. Tauch is being served by publication. The Defendant Hyco Plumbing did not appear, but advised Plaintiff's counsel, that it did not oppose the appointment of the receiver.

This Court has the authority to appoint a Receiver of the Property pursuant to Section 15-65-10 of Code of Laws of South Carolina (1976) et seq. Further, the Mortgage at issue in this case provides that Plaintiff is entitled to the appointment of a receiver upon default by the mortgagor (KT Spears Creek). The well pleaded



allegations of the Complaint and its attachments incorporated into the Complaint are deemed admitted by those Defendants in default. Further, the Court notes that Judge Allison R. Lee has issued a Temporary Injunction in this case. In her Order, Judge Lee specifically found that the Plaintiff would suffer immediate and irreparable injury in the case if the injunction was not issued. That injunction provides, *inter alia*:

the Enjoined Parties are ordered to collect and pay to RBC Bank (USA) all the income and profits from the Property in any such person's possession until further order of this Court. The Enjoined Parties are, however, permitted to pay the necessary operating expenses of the apartment complex such as utilities, maintenance, and routine repairs.

The Property identified in the Complaint is comprised of an apartment complex in Richland County, South Carolina, an assignment of leases, rents, and profits, and personal property of KT Spears Creek, LLC (herein "Property"). Plaintiff is entitled to protection of its Property during this proceeding.

IT IS THEREFORE ORDERED:

1. Receivership. The Property of KT Spears Creek, LLC ("Borrower") as identified in the Complaint is placed in receivership.
2. Receiver. Colliers International whose address is 1301 Gervais St., Suite 600, Columbia, South Carolina, Attention Mr. Woody Moore, is hereby appointed Receiver over the Property. All communication to the Receiver shall be directed to the Receiver at the above address. Confirmation of general insurance coverage as to the Receiver or a bond of Five Thousand and No/100 (\$5,000.00) Dollars shall be filed with the court within seven business days of the date of this Order.
3. Restrained. Borrower (its agents, representatives and employees) are restrained from disposing of, transferring, conveying, or otherwise encumbering the

Property or books, files, records and accounts relating to the Property, and they and all other parties having Property in their possession or under their control are hereby directed to deliver the same to the said Receiver.

4. Cooperation. Borrower, its agents, representatives and employees, are ordered to cooperate with the Receiver and appear at the Property, and at the Receiver's office, at such times as may be required to sign such legal documents as may be necessary and to furnish such records as the Receiver may require. Failure of Borrower to cooperate with the Receiver or otherwise comply with terms of this order shall make Borrower liable for contempt of court upon application by the Receiver or his attorneys. The parties are hereby ordered to cooperate with the Receiver at all times during the pendency of this receivership.

5. Income. Borrower, its respective agents and employees, and any other person receiving actual notice of the terms of this Order are hereby ordered and directed to immediately collect and pay to the below named Receiver all of the income and profits (both current and prepaid) from the Property in any such person's possession as of the date of this Order, regardless of when collected, pending adjudication of the parties' rights thereto and subject to such other orders of this Court as may be subsequently entered. In addition, Borrower shall execute any and all documents necessary to substitute the Receiver for the current signatories on all of the bank accounts relating to the Property of Borrower.

6. Inventory and Reports. The Receiver shall prepare and deliver to all parties appearing of record within thirty (30) days from the date of this Order a full and detailed inventory, under oath, of all the Property which comes into its possession and

thereafter it shall prepare and deliver to all parties appearing of record each thirty (30) days thereafter a full and complete report reporting all activities and changes in the Receivership estate and all claims against the estate that have arisen or have occurred during the period covered by the report.

7. Possession of Property. The Receiver shall take and have exclusive control, possession and custody of all the Property, monies, contracts, insurance policies, assets, files, papers, keys, accounts receivable, records, documents, licenses, permits, monies, securities, choses in action, books of account, bank accounts and all other property, real, personal, or mixed, which relate to the Property, and shall retain custody of the same until further order of this Court. All Defendants and other persons or corporations now or hereafter in possession of the Property, or any part thereof, or any other of the items entrusted to the Receiver as set forth herein, shall forthwith surrender such possession to the Receiver.

8. Operating Account. The Receiver shall establish and/or maintain, at a banking or savings and loan institution located in South Carolina whose deposits are insured by the FDIC or the FSLIC, a separate operating account ("the Operating Account") into which the Receiver shall deposit all receipts from the Property and from which the Receiver shall disburse regularly and punctually (to the extent available), all amounts due and payable as are reasonable, necessary and proper operating expenses of the Property, subject to the terms of this Order.

9. Costs. The Receiver is hereby authorized, empowered and directed to pay from the Operating Account all reasonable expenses necessary for the preservation of the Property, including, but not limited to, the costs of all labor, insurance, equipment,

supplies, inventory, water, sewer, trash and garbage disposal, electricity, security and telephone expenses which are necessary to the operation and preservation of the Property, together with any expenditure authorized by Plaintiff.

10. Operation. The Receiver is hereby authorized, empowered and directed to contract with such individuals and entities as may be necessary to preserve, protect, supervise, operate and manage the Property. The Receiver shall use its best efforts to operate the Property profitably, and to maintain the building, appurtenances and grounds of the Property in accordance with customary standards for a business of its type, including, without limitation, interior and exterior cleaning, painting and decoration, plumbing, carpentry, maintenance of air conditioners and elevators, and such other normal maintenance and repair work as may be appropriate, subject to the requirements and limits set forth herein.

11. Collection of Rents and Profits. The Receiver is hereby authorized, empowered and directed to enforce and collect all debts, accounts receivable, rents or other obligations due and owing to or from the operation of the Property. Subject to its obligations to pay the costs of the Property and operate the Property, and consistent with Judge Lee's Temporary Injunction, the Receiver shall pay to RBC Bank (USA) all the income and profits from the Property.

12. Insurance. The Receiver is hereby authorized, empowered and directed to maintain all policies of insurance or similar contracts affecting the Property in full force and effect, and if none exists, to insure the Property for its current fair market value against personal injury, property damage and liability claims. The Receiver shall maintain or purchase appropriate property insurance for the Property, public liability

insurance, workmen's compensation insurance, fire and extended coverage insurance, and burglary and theft insurance. The Plaintiff shall be listed as an insured and a loss payee on all such insurance policies. The Receiver shall promptly investigate and provide Plaintiff a full, prompt written report as to all serious and material accidents, claims for damage relating to the ownership, operation and maintenance of the Property, and any damage or destruction to the Property and the estimated cost of repair thereof, and shall prepare any and all reports required by any insurance company in connection therewith. All existing insurance coverage purchased by the Borrower or by any other person, which is now in force for the protection of the Property, is hereby assigned to the Receiver.

13. Actions Against Receiver. All persons, funds, corporations, associations and all other parties are hereby enjoined and restrained from commencing, maintaining, or otherwise prosecuting any action at law or in equity against the Receiver without prior leave of this Court.

14. Default. Entry of this Order shall not constitute a breach or default of any contract relating to the Property unless the Receiver expressly cancels such contract.

15. Employment of Professionals. The Receiver may employ attorneys, accountants, or other professionals if reasonably required to discharge its duties herein and shall, if necessary, apply to this Court for instructions and advice if in doubt concerning its rights and responsibilities as Receiver.

16. Leasing. The Receiver shall have the authority to lease, rent or otherwise seek compensation for space at the Property in the ordinary course of business, at such

rates and on such terms as are customary in the business, provided that Plaintiff approves each such rental or lease agreement.

17. Other Tasks. The Receiver is hereby authorized, empowered, and directed to perform all other tasks reasonably necessary for the proper administration, conservation, maintenance, security and protection of the Property.

18. Fees. At the end of each month, the Receiver shall present to all parties who have appeared of record an invoice for services rendered to the Receivership and if no objections are received within ten (10) days, the Receiver shall pay such invoice from funds in the Operating Account. In the event any party of record objects to the payment of any invoice presented or any charge contained therein, the Receiver may seek an order approving and directing such payment. The compensation of the Receiver shall be at the discretion of the Court and shall be set by the Court upon further order.

19. Legal Actions. The Receiver is hereby authorized, empowered and directed to apply to this Court for instructions and authorization should it seem to be necessary or desirable to sue or defend any legal action or otherwise compromise or settle same.

20. Use and Maintenance of Property. The Receiver shall not permit the use of the Property for any purpose which will or might void any required policy of insurance, which might render any loss thereunder uncollectible, or which would be in violation of any law or government restriction.

21. Records. The Receiver shall maintain a comprehensive system of office records, books, and accounts concerning the operation of the Property. At all

reasonable times, Plaintiff, Defendants, and their respective agents and other representatives shall have reasonable access to such records, accounts and books and to all vouchers, files, and all other material pertaining to the operation of the Property, all of which the Receiver agrees to keep safe, available and separate from any records not having to do with the operation of the Property.

22. Legal Requirements. The Receiver shall ensure that all aspects of the Property, and its operation and management, comply with any and all laws, regulations, orders or requirements affecting the Property issued by any federal, state, county or municipal authority having jurisdiction thereover.

23. Employment of Agents. The Receiver is hereby authorized to employ agents, servants and employees and to contract as necessary for the purpose of renting, operating, managing, preserving, protecting, and taking possession of the Property, and carrying out the terms of this Order. The Receiver shall collect the rents, revenues, and profits from the Property, including those now due and unpaid, and hereafter to become due.

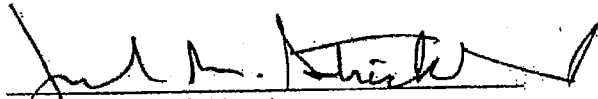
24. Licenses. All existing licenses relating to the operation of the Property issued in the name of the Borrower are hereby assigned to the Receiver.

25. Termination of Receivership. Plaintiff, or the successful bidder at any foreclosure sale of the Property, may apply to the Court upon the issuance of an Order of Sale, for entry of an order terminating the Receivership, discharging the Receiver, and putting the successful bidder at sale into possession of the Property, effective upon issuance of a deed to the Property.

26. Retention of Jurisdiction. The Court retains jurisdiction of this matter to enter such further orders as may be just and proper.

27. Sheriff's Assistance. The Receiver is authorized and empowered to obtain the assistance of the Sheriff's Department of the counties of this State in performing those duties and responsibilities enumerated herein.

AND IT IS SO ORDERED.


Joseph M. Strickland
Special Circuit Court Judge

Columbia, South Carolina

November 12, 2010.

**UNITED STATES BANKRUPTCY COURT
DISTRICT OF SOUTH CAROLINA**

IN RE:)
)
KT Spears Creek, LLC,) Case No.: 11-04241-jw
)
)

Debtor.)

CERTIFICATE OF SERVICE BY MAIL

I, Sean P. Markham, counsel for the Debtor, do hereby certify that I served a copy of the attached **MOTION FOR ORDER (A) GRANTING FINAL AUTHORITY FOR DEBTOR'S USE OF CASH COLLATERAL (B) GRANTING REPLACEMENT LIENS AND MEMORANDUM IN SUPPORT**, both filed August 12, 2011 and served upon the attached matrix, counsel for the Movant, and that same was mailed via First Class Mail, Postage Prepaid, on the 19th day of August 2011.

/s/Sean P. Markham
Sean P. Markham, Dist. I.D. #10145
P.O. Box 11332
Columbia, SC 29211-1332

Label Matrix for local noticing
0420-3

ALLIED WASTE SERVICES #993
LEXINGTON P.O. BOX 9001265,
LOUISVILLE, KY 40290-1265

APARTMENT NEWSLETTERS.COM
PO Box 699
Grapevine, TX 76099-0699

Case 11-04241-jw
District of South Carolina
Columbia
Fri Aug 19 12:19:40 EDT 2011

APARTMENTS.COM LLC
2563 Collection Center Drive
Chicago, IL 60693-0025

APPLIANCE WAREHOUSE OF AMERICA, INC.
LOCKBOX 847696
DALLAS, TX 75284-7696

AT & T
P.O. Box 105262
Atlanta, GA 30348-5262

AUDIO IMAGES INC
PO Box 550819
JACKSONVILLE, FL 32255-0819

Apartment Association of Greater Columbi
P. O. Box 7515
Columbia, SC 29202-7515

Apartments.com
16610 COLLECTION CENTER DRIVE
Chicago, IL 60693-0166

BENSON MEDIA, INC
220 Turner Boulevard
Ball Ground, GA 30107-6507

Thomas W. Bunch II
Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, SC 29202-0944

Joseph F. Buzhardt III
Office of the United States Trustee
1835 Assembly Street Suite 953
Columbia, SC 29201-2448

Buzzier Bee's LLC
c/o Beate M. Fitzgerald
278 Woodmill Circle
Lexington SC 29072-6845

CAPTURE THE MARKET
7750 North MacArthur Boulevard, Suite 12
Irving, TX 75063-7514

CITY OF COLUMBIA
1136 Washington Street
Columbia, SC 29201-3215

CONSUMER SOURCE INC.
PO BOX 402039
Atlanta, GA 30384-2039

County of Richland
Office of County Treasurer
P.O. Box 11947
Columbia, SC 29211-1947

DEPARTMENT OF THE TREASURY-INTERNAL REVENUE
INTERNAL REVENUE SERVICE
PO BOX 7346
PHILADELPHIA PA 19101-7346

DUPLICATING PRODUCTS, INC.
150 Lott Court
West Columbia, SC 29169-3039

ELITE RENTING LLC
PO BOX 4152
SEATTLE, WA 98194-0152

ELLIS PARTNERS IN MYSTERY SHOPPING
4324 North Beltline Road
Irving, TX 75038-3585

FAIRFIELD ELECTRIC COOPERATIVE
P.O. Box 2500
Blythewood, SC 29016-2500

FLOOR MART WEST, INC.
4336 Augusta Road
Lexington, SC 29073-9151

FedEx
P.O. Box 371461
Pittsburg, PA 15250-7461

First Advantage Saferent
P.O. Box 402453
Atlanta, GA 30384-2453

First Palmetto Savings Bank
10540 Two Notch Rd
Columbia SC 29223

First Palmetto Savings Bank, FSB
c/o Callison Tighe & Robinson, LLC
Attn. Ian D. McVey, Esquire
P.O. Box 1390
Columbia, SC 29202-1390

First Savers Bank, a division of
Plantation Federal Bank
c/o Amy L.B. Hill
1310 Gadsden Street, P.O. Box 11449
Columbia, SC 29211-1449

G. William McCarthy, Jr.
W. Harrison Penn
McCarthy Law Firm, LLC
P.O. Nox 11332
Columbia, SC 29211-1332

Greystar
750 Bering, Ste. 300
Houston, TX 77057-2132

HANDY TRAC SYSTEMS
510 Staghorn Court
Alpharetta, GA 30004-0737

HD SUPPLY FACILITIES MAINTENANCE
PO Box 509058
San Diego, CA 92150-9058

Hyco Plumbing, Inc.
c/o N. Ward Lambert
Harper Lambert & Brown PA
P.O. Box 908
Greenville, SC 29602-0908

IES Residential, Inc.
c/o Christine Kirklin
10203 Mula Circle
Stafford, TX 77477-3326

IES Residential, Inc.
f/k/a Houston-Stafford Electric
c/o Stephen E. Toomey, Atty at Law
4200 South Shepherd, Ste. 212
Houston, TX 77098- 5354

INTERNAL REVENUE SERVICE
P.O. 7346
PHILADELPHIA 19101-7346

Jeanne A. Pearson
Johnston, Allison & Hord, P.A.
1065 East Morehead Street
Charlotte, NC 28204-2812

KT Spears Creek, LLC
5410 Piping Rock
Houston, TX 77056-4916

KYLE D TAUCH
5410 PIPING
HOUSTON TX 77056

KYLE D TAUCH
5410 PIPING ROCK
HOUSTON TX 77056-4916

LEVEL ONE CORE LEASING SOLUTIONS
PO BOX 671476
Dallas, TX 75267-1476

LEVEL ONE, LLC
1511 S. Batesville Road
Greer, SC 29650-4810

Lexis Nexis Screening Solutions, Inc.
1000 Alderman Drive
Alpharetta, GA 30005-4101

MARLIN LEASING
PO Box 13604
PHILADELPHIA, PA 19101-3604

MAXX Fitness Inc.
POBox 7654
Myrtle Beach, SC 29572-0015

MISTY JONES CLEANING
531 Foremost Drive
Lexington, SC 29073-8519

Matthew Okin
Okin Adams & Kilmer LLP
1113 Vine Street, Suite 201
Houston, TX 77002-1045

G. William McCarthy Jr.
3924 Forest Drive, Suite 9 (29204)
PO Box 11332
Columbia, SC 29211-1332

Ian D. McVey
Callison Tighe & Robinson, LLC
1812 Lincoln Street, Suite 200
Columbia, SC 29201-2383

R. William Metzger Jr.
Robinson, McFadden & Moore, P.C.
Post Office Box 944
Columbia, SC 29202-0944

NETWORK COMMUNICATIONS, INC.
PO Box 935080
Atlanta, GA 31193-5080

Nexsen Pruettt, LLC
Attn: Henry W. Brown
P.O. Drawer 2426
Columbia, SC 29202-2426

OFFICE DEPOT
P.O. Box 88040
Chicago, IL 60680-1040

Orkin, Inc.
P.O. Box 71869
North Charleston, SC 29415-1869

Orkin, LLC
1126 Silstar Rd
West Columbia, SC 29170-2200

PALMETTO UTILITIES INC.
1710 WOODCREEK FARMS; INC.
Elgin, SC 29045-8755

PROTECTION SYSTEMS TECHNOLOGIES, INC.
PO Box 411821, , 28241
Charlotte, NC 28241-1821

Michael J. Polk
Belser and Belser
1901 Main St Ste 1550
Columbia, SC 29201-2492

Private I Print Promotions, LLC
PO Box 937, Mount Pleasant
Mount Pleasant, SC 29465-0937

RBC
P.O. Box 1220
Rocky Mount, NC 27802-1220

RBC BANK (USA)
 CONSTANCE L YOUNG
 JOHNSTON ALLISON & HORD PA
 1065 E MOREHEAD ST
 CHARLOTTE NC 28204-2812

RBC Bank USA
 Attn: Mark Starnes
 200 Providence Road, Suite 300
 Charlotte, NC 28207-1437

RENT.COM
 Rent.com - Payment Center, Department 19
 LOS ANGELES, CA 90084-1987

RENTWIKI.COM
 264 19th Street, Suite 2230
 Atlanta, GA 30363-1139

Daniel J. Reynolds Jr.
 McCarthy Law Firm, LLC
 3924 Forest Drive, Suite 9 (29204)
 PO Box 11332
 Columbia, SC 29211-1332

Richland County Business Service Center
 P.O. Box 192
 Columbia, SC 29202-0192

SALUDA HILL INC
 2025 INDUSTRIAL BLVD
 LEXINGTON SC 29072-3732

SANDY RUN EXTERMINATING COMPANY, INC.
 189 Julia Lane
 Gaston, SC 29053-8393

SECURITY CENTRAL
 PO Box 5759,
 Statesville, NC 28687-5759

SOUTH CAROLINA APARTMENT ASSOCIATION
 PO Box 1763
 Columbia, SC 29202-1763

SOUTHERN COMFORT PROPERTY MAINT.
 3801 Country Club Blvd. #7
 Cape Coral, FL 33904-5106

SOUTHERN COMFORT SERVICES
 813 Woodtrail Dr., Gaston, SC 29053
 Gaston, SC 29053-8939

STEAM SYSTEMS, LLC
 PO Box 2661
 West Columbia, SC 29171-2661

ScentAir Technologies, Inc
 P.O. Box 534448
 Atlanta, GA 30353-4448

Sherwin Williams
 GREYSTAR MASTER ACCOUNT, PO Box 277499
 Atlanta, GA 30384-7499

Signs by Tomorrow
 7364 Two Notch Road
 Columbia, SC 29223-7620

South Carolina Department of Health &
 POBox 100103, Columbia, SC 29202
 Columbia, SC 29202-3103

Tara Allen
 10682 Two Notch Road
 Elgin, SC 29045-9834

US Trustee's Office
 Strom Thurmond Federal Building
 1835 Assembly St.
 Suite 953
 Columbia, SC 29201-2448

United States Trustee's Office
 515 Rusk St., Suite 3516
 Houston, TX 77002-2604

Universal Background Screening
 7720 N 16th Street Suite 200
 Phoenix, AZ 85020-4496

WILMAR INDUSTRIES
 PO Box 404284
 Atlanta, GA 30384-4284

Constance Young
 Johnston, Allison & Hord, PA
 1065 East Morehead Street
 Charlotte, NC 28204-2812

Constance L. Young
 Johnston Allison & Hord PA
 1065 East Morehead St
 Charlotte, NC 28204-2812

The following recipients may be/have been bypassed for notice due to an undeliverable (u) or duplicate (d) address.

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 DALLAS, TX 75284-7696

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 PO BOX 105262
 ATLANTA, GA 30348-5262

(d)AUDIO IMAGES, INC.
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 JACKSONVILLE, FL 32255-0819

Case 11-04241-jw
(d)CONSUMER SOURCE, INC.
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ATLANTA, GA 30384-2039

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(d)ELITE RENTING, LLC
PO Box 4152
Seattle, WA 98194-0152

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Desc Main
(u)First Savers Bank

(d)Floor Mart West Inc.
4336 Augusta Road
Lexington, SC 29073-9151

(u)GREP Atlantic, L.P.

(d)KT Spears Creek, LLC
5410 Piping Rock
Houston, TX 77056-4916

(d)MARLIN LEASING CORP
PO BOX 13604
PHILADELPHIA, PA 19101-3604

(u)NO TRUSTEE

(d)PALMETTO UTILITIES, INC.
1710 Woodcreek Farms, Inc.
Elgin, SC 29045-8755

(u)RBC Bank (USA)

(u)Richland County

(d)SALUDA HILL INC.
2025 Industrial Blvd.
Lexington, SC 29072-3732

(d)Steam Systems LLC
POBox 2661
West Columbia, SC 29171-2661

(d)Thomas W. Bunch, II
Robinson McFadden & Moore, P.C.
P.O. Box 944
Columbia, SC 29202-0944

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Bypassed recipients 17
Total 100