

THE STATE OF SOUTH CAROLINA
In The Supreme Court

RECEIVED

Oct 17 2022

S.C. SUPREME COURT

APPEAL FROM SALUDA COUNTY
Court of Common Pleas
R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2022-000369

Stephen Wilkinson, as Trustee of George B. Buchanan, Jr.
Irrevocable Family Trust Dated the 15th day of July, 2001, ... Respondent,

v.

Redd Green Investments, LLC, Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce Green, Herbert Keith Anderson,
and L. Cliff Redd, ... Defendants,

Of which Redd Green Investments, LLC, A. Bruce Green,
and L. Cliff Redd are Petitioners.

**APPENDIX
VOLUME I OF II**

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IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SALUDA COUNTY
COURT OF COMMON PLEAS

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2018-001388

RECEIVED

FEB 21 2019

SC Court of Appeals

Stephen Wilkinson, as Trustee of George B. Buchanan, Jr.
Irrevocable Family Trust Dated the 15th day of July, 2001, ...Respondent,

v.

Redd Green Investments, LLC, Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce, Green, Herbert Keith Anderson,
and L. Cliff Redd, ... Defendants,

Of which Redd Green Investments, LLC, A. Bruce Green,
and L. Cliff Redd are Appellants.

RECORD ON APPEAL

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IN THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

**APPEAL FROM SALUDA COUNTY
COURT OF COMMON PLEAS**

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2018-001388

Stephen Wilkinson, as Trustee of George B. Buchanan, Jr.,
Irrevocable Family Trust Dated the 15th day of July, 2001, ... Respondent,

v.

Redd Green Investments, LLC, Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce Green, Herbert Keith Anderson,
and L. Cliff Redd, ... Defendants,

Of which Redd Green Investments, LLC, A. Bruce Green,
and L. Cliff Redd are Appellants.

RECORD ON APPEAL

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STATE OF SOUTH CAROLINA)

COUNTY OF SALUDA)

IN THE COURT OF COMMON PLEAS

Harry P. Sakellaris, as Trustee of
George B. Buchanan, Jr. Irrevocable
Family Trust dated the 15th day of July,
2001,

Civil Action No. 2015-CP-41-172

Plaintiff,

vs.

**ORDER AMENDING CAPTION
AND SUBSTITUTING COUNSEL**

Redd Green Investments, LLC,
Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce
Green, Herbert Keith Anderson and
L. Cliff Redd,

Defendants.

FILED
SALUDA COUNTY
CLERK
84-0117-1-000000

Pursuant to Motion by Plaintiff as to the (i) substitution of Stephen Wilkinson as Trustee for Harry P. Sakellaris as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust dated the 15th day of July, 2001, and (ii) substitution of John T. Moore and Nelson Mullins Riley Scarborough, LLP for Stanley H. McGuffin and Haynsworth Sinkler Boyd, PA as counsel for Plaintiff, Stephen Wilkinson is hereby substituted in place of Harry P. Sakellaris as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust dated the 15th day of July, 2001 in the above-captioned matter and the caption is hereby amended, and John T. Moore and Nelson Mullins Riley & Scarborough, LLP are substituted as Plaintiff's counsel in place of Stanley H. McGuffin and Haynsworth Sinkler Boyd, PA.

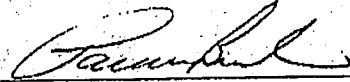
PAID

Date 2-23-16

SALUDA COUNTY
CLERK

\$ 2500

IT IS SO ORDERED.

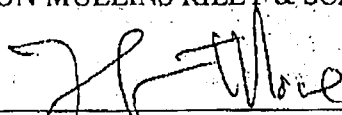


Presiding Judge
Eleventh Judicial Circuit

Saluda, South Carolina
February 29, 2016

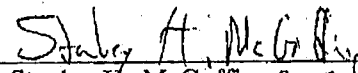
WE SO MOVE:

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: 

John T. Moore
Attorneys for Plaintiff

HAYNSWORTH SINKLER BOYD, PA

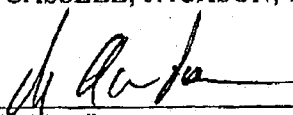
By: 

Stanley H. McGuffin
Attorneys for Plaintiff

By Sch. Moore with Penman

WE CONSENT:

TYLER, CASSELL, JACKSON, PEACE & SILVER

By: 

M. Alan Peace
Attorneys for Redd Green Investments,
A. Bruce Green and L. Cliff Redd

MCDONALD PATRICK POSTON HEMPHILL & ROPER, LLP

By: _____

Roy R. Hemphill
Attorneys for Anderson North America Augusta, LLC
Herbert Anderson, Jr. and Herbert Keith Anderson

~#481R-2538-7815 v.1 - 47587/01500~

WE SO MOVE:

NELSON MULLINS RILEY & SCARBOROUGH, LLP

By: _____
John T. Moore
Attorneys for Plaintiff

HAYNSWORTH SINKLER BOYD, PA

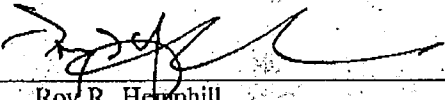
By: _____
Stanley H. McGuffin
Attorneys for Plaintiff

WE CONSENT:

TYLER, CASSELL, JACKSON, PEACE & SILVER

By: _____
M. Alan Peace
Attorneys for Redd Green Investments,
A. Bruce Green and L. Cliff Redd

MCDONALD PATRICK POSTON HEMPHILL & ROPER, LLP

By:  _____
Roy R. Hemphill
Attorneys for Anderson North America Augusta, LLC
Herbert Anderson, Jr. and Herbert Keith Anderson

~#4818-2538-7815 v.1 - 47587/01500~

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP-41-172

Harry P. Sakellaris et al

2016 MAR 11 PM 3:01

Redd Green Investments et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

2048
Judge Code

3-1-16
Date

For Clerk of Court Office Use Only

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

Stanley H. McGuffin

P. O. Box 11889

Columbia, SC 29211-1889

ATTORNEY(S) FOR THE PLAINTIFF(S)

Roy R. Hemphill

P. O. Box 1547

Greenwood, SC 29046

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

Plaintiff's motion for Summary Judgment is denied. Issues may be raised at directed verdict stage.

The Court is unable to determine from the file if this case has been mediated. Respective counsel need to determine if this matter should be mediated pursuant to recent Supreme Court Order.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA

2017 JUN -2 AM 11:21

CIVIL ACTION NO.: 2015-CP-41-00172

Stephen Wilkinson, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust
Dated the 15th day of July, 2001,

Plaintiff,

**ORDER DENYING PLAINTIFF'S
MOTION TO DISMISS**

vs.

Redd Green Investments, LLC, Anderson
North Augusta, LLC, Herbert Anderson, Jr.,
A. Bruce Green, Herbert Keith Anderson,
And L. Cliff Redd,

Defendants.

This matter came before the Court on May 8, 2017, pursuant to Plaintiff's Motion to Dismiss filed March 1, 2017. Appearing at the hearing on behalf of Plaintiff was Erik Norton, Esquire of Nelson Mullins Riley & Scarborough, LLP. Appearing on behalf of Defendants Redd Green Investments, LLC, A. Bruce Green, and L. Cliff Redd was their counsel, M. Alan Peace, Esquire of Harrell, Martin & Peace, P.A. Appearing on behalf of Defendants Anderson North Augusta, LLC, Herbert Anderson, Jr. and Herbert Keith Anderson was their counsel, Roy R. Hemphill, Esquire of McDonald Patrick Poston Hemphill & Roper, LLC.

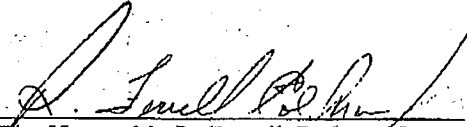
2301
This case is an action by Plaintiff against Defendants Redd Green Investments, LLC, Anderson North Augusta, LLC, Herbert Anderson, Jr., A. Bruce Green, Herbert Keith Anderson, and L. Cliff Redd ("Defendants") based on a deficiency judgment which Plaintiff obtained in a separate foreclosure action captioned, Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th day of July 2001 v. Springs North Augusta, LLC, case number 2012-CP-02-00173 ("Foreclosure Case"). The deficiency judgment is in the

amount of Two Million Four Hundred Eighty-Four Thousand One Hundred Sixty-Three and 95/100 (\$2,484,163.95) Dollars ("Deficiency Judgment") and is against Springs North Augusta, LLC. Defendants are alleged to be guarantors of the underlying debt in the Foreclosure Case. In response to Plaintiff's Complaint, Defendants asserted counterclaims against Plaintiff asserting causes of action for civil conspiracy, constructive fraud, and fraud and deceit related to Plaintiff's alleged violation of S. C. Code Ann. §15-39-720 (1976, as amended) in the Foreclosure Case. Plaintiff's Motion to Dismiss contends that Defendants' counterclaims are an improper collateral attack on the Deficiency Judgment in the Foreclosure Case and, accordingly, the counterclaims should be dismissed for lack of subject matter jurisdiction pursuant to Rule 12(b)(1) of the South Carolina Rules of Civil Procedure.

It is uncontested that Defendants in this case were not parties to the Foreclosure Case. The Deficiency Judgment constitutes the law of the case between the parties to the Foreclosure Case. But, since Defendants were not parties to the Foreclosure Case, it is not the law of this case. Professional Banker's Corp. v. Floyd, 285 S.C. 607, 331 S.E.2d 362 (Ct. App. 1985). Furthermore, a review of the allegations of Defendants' counterclaims indicates Defendants are not contesting the Deficiency Judgment that Plaintiff obtained against Springs North Augusta, LLC in the Foreclosure Case. Defendants are seeking in their counterclaims to hold the Plaintiff accountable for an alleged violation of the foreclosure upset bid statute found at South Carolina Code Anno. §15-39-720 (1976, as amended). Therefore, because Defendants were not parties to the

Foreclosure Case and are not seeking to overturn or otherwise attack the Deficiency Judgment obtained in the Foreclosure Case, Plaintiff's Motion to Dismiss must be denied.

IT IS SO ORDERED:


The Honorable R. Ferrell Cothran, Jr.
Judge, 3rd Judicial Circuit

June 1, 2017

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP- 41-00172

Stephen Wilkinson, et al

Redd Green Investments,

et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ STAYED DUE TO BANKRUPTCY

DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):

☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Directed Verdict in favor of Plaintiff in the amount of \$4,781,882.65

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk: _____

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details. E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

[Signature]
Circuit Court Judge

2145
Judge Code

7 Sept 17
Date

SCRPC Form 4C (02/2017)

Page 1 of 4

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-41-00172

Stephen Wilkinson, as Trustee of George B. Buchanan,
Jr. Irrevocable Family Trust Dated the 15th day of July,
2001

Redd Green Investments, LLC, Anderson North
Augusta, LLC, Herbert Anderson, Jr., A. Bruce
Green, Herbert Keith Anderson, And L. Cliff
Redd

PLAINTIFF(S)

DEFENDANT(S)

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

DISPOSITION TYPE (CHECK ONE)

- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION
MOTION FOR NEW TRIAL IS DENIED

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk : _____

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$

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The judgment information above has been provided by the submitting party. Disputes concerning the amounts contained in this form may be addressed by way of motion pursuant to the SC Rules of Civil Procedure. Amounts to be computed such as interest or additional taxable costs not available at the time the form and final order are submitted to the judge may be provided to the clerk. Note: Title abstractors and researchers should refer to the official court order for judgment details.
E-Filing Note: In E-Filing counties, the Court will electronically sign this form using a separate electronic signature page.

Date _____

Certificate of Electronic Notification

Recipients

John Moore - Notification transmitted on 06-29-2018 12:49:38 PM.

Roy Hemphill - Notification transmitted on 06-29-2018 12:49:38 PM.

Erik Norton - Notification transmitted on 06-29-2018 12:49:38 PM.

M. Peace - Notification transmitted on 06-29-2018 12:49:38 PM.

***** IMPORTANT NOTICE - READ THIS INFORMATION *****

NOTICE OF ELECTRONIC FILING [NEF]

A filing has been submitted to the court RE: 2015CP4100172

Official File Stamp: 06-29-2018 12:49:26 AM

Court: CIRCUIT COURT

Common Pleas

Saluda

Case Caption: Stephen (Trustee) Wilkinson , plaintiff, et al VS
Redd Green Investments , defendant, et al

Document(s) Submitted: Order/Form 4 Order/Form 4

Filed by or on behalf of: Margaret Davis

This notice was automatically generated by the Court's auto-notification system.

The following people were served electronically:

Erik Tison Norton for Stephen (Trustee) Wilkinson
et al

John T. Moore for Stephen (Trustee) Wilkinson et
al

Roy R. Hemphill for Herbert Keith Anderson,
Anderson North Augusta, Herbert Anderson, Jr

M. Alan Peace for Redd Green Investments

The following people have not been served electronically by the Court. Therefore, they must
be served by traditional means:

William Otha Bodie

Gene Trotter for L Cliff Redd, Redd Green
Investments, A Bruce Green

Redd Green Investments for Redd Green
Investments

Redd Green Investments for Redd Green
Investments

COPY

STATE OF SOUTH CAROLINA

FILED

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA

2013 MAR -5 AM 10:49

Case No. 2013-CP- 41-42

HARRY P. SAKELLARIS, AS TRUSTEE OF THE
GEORGE B. BUCHANAN, JR. IRREVOCABLE
FAMILY TRUST, DATED THE 15TH DAY OF JULY,
2001,

CLERK OF COURT
SALUDA CO. S.C.

Plaintiff,

vs.

COMPLAINT
(Suit on Guaranty)
(Non-Jury)

REDD GREEN INVESTMENTS, LLC, ANDERSON
NORTH AUGUSTA, LLC, HERBERT ANDERSON,
JR., A. BRUCE GREEN, WILLIAM OTHA BODIE,
HERBERT KEITH ANDERSON, AND L. CLIFF
REDD,

Defendants.

Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001, ("Plaintiff"), complaining of the above-captioned defendant, alleges as follows:

1. Plaintiff is a trust organized and existing under the laws of the Commonwealth of Virginia.
2. On information and belief, defendant William Otha Bodie ("Bodie"), is a citizen and resident of the County of Saluda, State of South Carolina.
3. On information and belief, defendant Redd Green Investments, LLC ("Redd Investments"), is a South Carolina limited liability company with its principal place of business in the County of Greenwood, State of South Carolina.
4. On information and belief, defendant William Otha Bodie ("Bodie"), is a citizen and resident of the County of Saluda, State of South Carolina.

5. On information and belief, defendant Anderson North Augusta, LLC ("Anderson LLC"), is a South Carolina limited liability company with its principal place of business in the County of Aiken, State of South Carolina.

6. On information and belief, defendant Herbert Anderson, Jr. ("Anderson Jr."), is a citizen and resident of the County of McCormick, State of South Carolina.

7. On information and belief, defendant A. Bruce Green ("Green"), is a citizen and resident of the County of Haywood, State of North Carolina.

8. On information and belief, defendant Herbert Keith Anderson ("H. K. Anderson"), is a citizen and resident of the County of Greenwood, State of South Carolina.

9. On information and belief, defendant L. Cliff Redd ("Redd"), is a citizen and resident of the County of Greenwood, State of South Carolina.

10. This Court has proper jurisdiction over the subject matter of and the parties to this action.

11. This is an action to collect a non-consumer debt and therefore the statutory requirements for right to cure and other consumer notice statutes are not applicable.

12. Springs North Augusta, LLC made, executed, and delivered unto Plaintiff a Loan Agreement dated November 18, 2009, which was modified by the November 16, 2010 Amendment to Loan Agreement (collectively "Loan Agreement"). A true and correct copy of the Loan Agreement is attached hereto as Exhibit A. Pursuant to the terms of the Loan Agreement, Plaintiff agreed to provided financing to Springs North Augusta, LLC to purchase the Mortgaged Property described therein.

13. Pursuant to the terms of the Loan Agreement and for valuable consideration given, on or about November 18, 2009, Springs North Augusta, LLC executed and delivered to Plaintiff a promissory note in the original principal amount of Seven Million Five Hundred Ninety

Thousand and 00/100 Dollars (\$7,590,000.00), which was modified by November 16, 2010 Modification to Promissory Note in the amount of Eight Million Seven Hundred Twenty Eight Thousand Five Hundred and 00/100 Dollars (\$8,728,500.00) (collectively "Note"). A true and correct copy of the Note is attached hereto as Exhibit B and its terms thereof are incorporated herein by reference.

14. To secure the repayment of the Note, and the debt evidenced thereby, Springs North Augusta, LLC made, executed, and delivered to Plaintiff, a certain Mortgage and Security Agreement dated November 18, 2009, whereby Springs North Augusta, LLC mortgaged to Plaintiff the real property described in said Mortgage. The Mortgage was recorded on November 18, 2009, in the Office of the Register of Mesne Conveyance for Aiken County in Book RB 4284 at Page 1885. Said Mortgage was modified by November 16, 2010 Amendment to Mortgage and Security Agreement recorded on May 13, 2011 in Book RB 4357 at Page 676. The Mortgage and Security Agreement and November 16, 2010 Amendment to Mortgage and Security Agreement are collectively referred to herein as the "Mortgage".

15. As additional and further security for the Note and the debt evidenced thereby, Springs North Augusta, LLC executed and delivered to Plaintiff an Assignment of Leases, Rents and Profits dated November 18, 2009 whereby Springs North Augusta, LLC did, among other terms, assign, grant a security interest in and convey to Plaintiff all of Defendant's present and future rights, interest, and estates in and to the leases, agreements, rental agreements, property management agreements, rents, rentals, monies, awards, revenues, profits, royalties, rights and benefits ("Rents") from the Mortgaged Property. The Assignment of Rents was recorded on November 18, 2009 in the Office of the Register of Mesne Conveyance for Aiken County in Book RB 4284 at Page 1920. Said Assignment of Leases, Rents and Profits was modified by

November 16, 2010 Amendment to Assignment of Leases, Rents and Profits recorded on May 13, 2011 in Book RB 4357 at Page 679. The Assignment of Leases, Rents and Profits and November 16, 2010 Amendment to Assignment of Leases, Rents and Profits are collectively referred to herein as the "Assignment of Rents."

16. In connection with the foregoing transaction, and to secure and guaranty the full and faithful performance of the terms and obligations of Springs North Augusta, LLC under the Note, and contemporaneous with the execution of Note, Redd Investments and Anderson LLC (collectively, the "LLC Guarantors") executed and delivered to Plaintiff a guaranty dated November 18, 2009 (the "LLC Guaranty"). A true and correct copy of the LLC Guaranty is attached hereto as Exhibit C, and its terms thereof are incorporated herein by reference.

17. In connection with the foregoing transaction, and to secure and guaranty the full and faithful performance of the terms and obligations of Springs North Augusta, LLC under the Note, and contemporaneous with the execution of Note, Anderson, Jr., Green, Bodie, H.K. Anderson, and Redd (collectively, "Individual Guarantors") executed and delivered to Plaintiff a guaranty dated November 18, 2009 (the "Individual Guaranty"). A true and correct copy of the Individual Guaranty is attached hereto as Exhibit D, and its terms thereof are incorporated herein by reference. (The LLC Guaranty and the Individual Guaranty are collectively referred to as the "Guaranty". The LLC Guarantors and the Individual Guarantors are collectively referred to as "Guarantors".)

18. Springs North Augusta, LLC defaulted under the terms of Note by its failure to make payments there under when due, as required under the terms of Note. As a consequence of the default, Plaintiff has liquidated through foreclosure the property encumbered by the Mortgage and applied the net proceeds from the foreclosure sale to the Note.

19. Guarantors breached the Guaranty by the failure to make all payments as required by the terms and conditions of the Guaranty.

20. Plaintiff has and does hereby elect to declare the total unpaid balance of principal and interest under the Guaranty due and payable.

21. Guarantors are indebted to the Plaintiff for \$2,918,384.26, being the balance justly due under the Guaranty as of February 28, 2013, which includes the principal balance of \$2,753,192.70, and interest of \$165,191.56. Additionally, Guarantors are indebted to Plaintiff for interest at the rate of 15% per annum from March 1, 2013, until the balance due is paid, plus reasonable attorney's fees and costs of collections as provided by the Guaranty.

22. Guarantors have no right of setoff against the Plaintiff.

23. Plaintiff has placed this matter with the undersigned attorneys for collection.

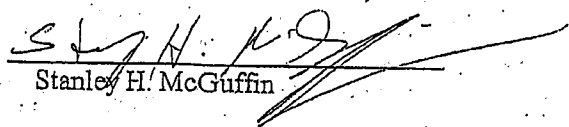
WHEREFORE, Plaintiff prays that the Court inquire into the matters hereinabove alleged, and enter judgment in Plaintiff's favor as follows:

1. Judgment against Guarantors on the Guaranty in the amount of \$2,918,384.26, as of February 28, 2013, plus interest accruing from March 1, 2013 at the rate of 15% per annum until the balance due is paid.
2. For attorneys' fees and costs incurred by Plaintiff in bringing this action; and

3. For such other and further relief as the Court deems just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By:


Stanley H. McGuffin

Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 Tel
(803) 765.1243 Fax

Attorneys for Harry P. Sakellaris, as Trustee of
the George B. Buchanan, Jr. Irrevocable Family
Trust, dated the 15th Day of July, 2001

March 1, 2013

LOAN AGREEMENT

THIS LOAN AGREEMENT (this "Agreement") is made and entered into this 18th day of November, 2009, by and between D. RICHARD CRUMPLER, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED THE 15TH DAY OF JULY, 2001 (hereinafter referred to as "Lender") whose address is 4728 Jenn Drive, Myrtle Beach, SC 29577; SPRINGS NORTH AUGUSTA, LLC, a South Carolina limited liability company (hereinafter referred to as "Borrower"), whose address is 133 Joe Bernat Drive, Greenwood, , South Carolina 29649; and HERBERT ANDERSON, JR., HERBERT KEITH ANDERSON, A. BRUCE GREEN, WILLIAM OTHA BODIE, L. CLIFF REDD, REDD GREEN INVESTMENTS, LLC and ANDERSON NORTH AUGUSTA, LLC (hereinafter referred to collectively as "Guarantors").

RECITALS:

WHEREAS, Borrower has requested from Lender a loan in the principal amount of Seven Million Five Hundred Ninety Thousand and No/100 (\$7,590,000.00) Dollars (hereinafter referred to as the "Loan") and Lender has agreed to make the Loan pursuant to a Loan Commitment Agreement dated November 13, 2009, (hereinafter referred as the "Commitment Agreement") and to advance the Loan pursuant to the terms of this Agreement; and

WHEREAS, Borrower will use the proceeds of the Loan to purchase certain real property, consisting of 1420 acres, more or less, located in Aiken County, South Carolina; and

WHEREAS, Lender is willing to make the Loan based on the terms and conditions set forth in the Commitment Agreement, this Agreement and the Loan Documents.

AGREEMENT:

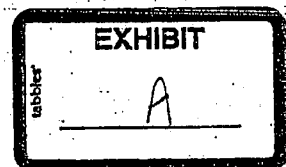
In consideration of the mutual covenants and agreements set forth in this Agreement, Lender agrees to make the Loan, Borrower agrees to accept the Loan and Borrower agrees to grant security interests in various assets of the Borrower to secure the Loan in the amount and in accordance with and subject to the terms and conditions set forth in this Agreement.

ARTICLE 1

Terms and Definitions

In addition to the other terms defined in this Agreement, for purposes of this Agreement each of the following terms shall have the meanings set forth with respect to such terms in this Article 1:

1.1. Accounting Terms. All accounting terms not specifically defined or specified herein shall have the meanings generally attributed to such terms under generally accepted accounting principles currently in effect in the United States ("GAAP").



1.2. Accounts, As-extracted Collateral, Chattel Paper, Commercial Tort Claims, Contract Rights, Deposit Accounts, Documents, Equipment, Fixtures, General Intangibles, Goods Instruments, Inventory, Investment Property, Letter-of-credit Rights, Payment Intangibles, Proceeds, Promissory Notes, Software and Trademarks. These terms shall have the same respective meanings as are given to those terms in the Secured Transactions chapter of the Uniform Commercial Code as adopted by South Carolina.

1.3. Affiliate. As to any Person, each of the Persons that directly or indirectly, through one or more intermediaries, owns or controls, or is controlled by or under common control with, such Person or any individual related to such Person. For the purpose of this definition, "control" means the possession, directly or indirectly, of the power to direct or cause the direction of management and policies, whether through the ownership of voting securities, by contract or otherwise.

1.4. Assets. All real property and personal property used in connection with the operation and development of the Fee Simple Property.

1.5. CERCLA. The Comprehensive Environmental Response, Compensation and Liability Act of 1980, 42 U.S.C.A. § 9601 et seq., as amended from time to time, and all rules and regulations from time to time promulgated thereunder.

1.6. Certificate and Indemnification Agreement with Respect to Environmental Matters. The Certificate and Indemnification Agreement with Respect to Environmental Matters given by Borrower to Lender relating to environmental matters affecting the Fee Simple Property.

1.7. Closing. The execution and delivery of the Loan Documents by Borrowers and Guarantors and disbursement by Lender of the Loan proceeds

1.8. Contract of Sale and Purchase. The Contract of Sale by and between Borrower, as purchaser and Springs Development Company, LLC, as seller, dated June 8, 2009, as amended by first amendment, dated September 10, 2009, as further amended by second amendment, dated November 6, 2009.

1.9. Current Assets. Current Assets means the aggregate amount of all of Borrower's assets which would, in accordance with GAAP, properly be defined as current assets, but excluding the following items: organization and development costs, debt discount and expense, goodwill, patents, trademarks, tradenames, copyrights, franchises, licenses, amounts due from officers, directors, shareholders, members, owners and affiliates, and such other assets as are properly classified as "intangible assets."

1.10. Current Liabilities. Current Liabilities means the aggregate amount of all current liabilities, as determined in accordance with GAAP, but in any event shall include all liabilities

except those having a maturity date, which is more than one (1) year from the date as of which such computation is being made.

1.11. Debt Service. Debt Service is defined as current maturities of long term debt plus interest expense.

1.12. Environmental Laws. All federal, state and local laws, statutes, ordinances and regulations, now or hereafter in effect, and in each case as amended or supplemented from time to time, any judicial or administrative interpretation thereof, including any judicial or administrative order, consent decree, ruling, directive, or judgment relating to the regulation and protection of human health, safety, the environment and natural resources (including, without limitation, ambient air, surface water, groundwater, wetlands, land surface or subsurface strata, wildlife, aquatic species and vegetation). Environmental Laws include, but are not limited to, CERCLA; RCRA; the Hazardous Material Transportation Act, as amended (40 USC § 1801 *et seq.*); the federal Insecticide, Fungicide and Rodenticide Act, as amended (7 USC § 136 *et seq.*); the Toxic Substances Control Act, as amended (15 USC § 2601 *et seq.*); the Clean Air Act, as amended (42 USC § 7401 *et seq.*); the federal Water Pollution Control Act, as amended (33 USC § 1251 *et seq.*); the Occupational Safety and Health Act, as amended (29 USC § 651 *et seq.*); the Safe Drinking Water Act, as amended (42 USC § 300f *et seq.*); and their state and local counterparts or equivalents, including, without limitation, the South Carolina Oil Pollution and Hazardous Substances Control Act of 1976 and the South Carolina Inactive Hazardous Sites Act.

1.13. ERISA. The Employee Retirement Income Security Act of 1974, as amended from time to time, and all rules and regulations promulgated thereunder.

1.14. Event of Default. As defined in Article 6 of this Agreement.

1.15. Fee Simple Property. The real property and all improvements thereon further defined and described in Exhibit A attached hereto and incorporated herein.

1.16. Force Majeure. Any act of God, strike, lockout or other major occurrence beyond the control of a Borrower.

1.17. Funded Debt. Any debt incurred by borrowing money, specifically excluding trade accounts payable or purchase money loans which are secured only by the asset purchased (including applicable equipment leases) arising in the ordinary course of business.

1.18. Guaranty Agreements. The Guaranty Agreements duly executed by each of the Guarantors.

1.19. Hazardous Substance. All materials and substances subject to regulation under any Environmental Laws and shall include, but not be limited to, asbestos, polychlorinated biphenyls ("PCBs"), lead-based paints, any petroleum products, including crude oil or any fraction of it, and any natural gas, natural gas liquids, synthetic gas and liquefied natural gas.

- 1.20. Loan. The loan which is the subject of this Agreement as described in Article 2.
- 1.21. Loan Collateral. All of the assets of the Borrower serving as collateral for the Loan pursuant to the Security Instruments, including, without limitation, the Fee Simple Property, including all additions, substitutions, and accessions thereto.
- 1.22. Loan Documents. Loan Documents means collectively this Agreement, the Note, the Mortgage and all other documents, instruments, certificates and agreements executed and delivered by Borrowers and Guarantors evidencing, securing or otherwise relating to the Loan, including without limitation, the Loan Documents set forth on the attached Exhibit D.
- 1.23. Mortgage. That certain Mortgage and Security Agreement, dated of even date herewith, issued by Borrower in favor of Lender, constituting a first mortgage lien upon the Fee Simple Property.
- 1.24. Net Income. Net Income means net income as determined in accordance with GAAP.
- 1.25. Net Working Capital. Net Working Capital shall be defined as the difference between total Current Assets and total Current Liabilities of the Borrowers on a consolidated basis.
- 1.26. Net Worth. Net Worth means net worth of the Borrowers on a consolidated basis as determined in accordance with GAAP.
- 1.27. Note. The Note is defined as that certain promissory note issued by Borrower in favor of Lender, dated of even date herewith, as further described in Article 2, and any modifications or amendments thereof, as well as any promissory note, revolving line of credit note, and/or notes issued by Borrower in substitution, replacement, extension, amendment or renewal of the Note.
- 1.28. OSHA. The Occupational Safety and Health Act, as amended from time to time, and all rules and regulations promulgated thereunder.
- 1.29. Obligations. The Loan and all other loans, advances, indebtedness, liabilities, obligations, covenants and duties (including post-petition interest on the foregoing, to the extent lawful) owing, arising, due or payable from Borrower to Lender of any kind or nature, present or future, arising under this Agreement or any of the other Loan Documents, whether direct or indirect (including those acquired by assignment), absolute or contingent, primary or secondary, due or to become due, now existing or hereafter arising. The term includes, without limitation, all interest, charges, expenses, fees, attorneys' fees and any other sums chargeable to Borrower by Lender under this Agreement or any of the other Loan Documents.

1.30. Permitted Encumbrances. Those liens, encumbrances, easements and other matters listed on Exhibit C attached to this Agreement.

1.31. Person. A corporation, an association, a joint venture, a partnership, an organization, a limited liability company or partnership, a business, an individual, a trust or a government or political subdivision of a government or any government agency or any other legal entity.

1.32. RCRA. The Resource Conservation and Recovery Act, 42 U.S.C.A. § 6901 et seq., as amended from time to time, and all rules and regulations from time to time promulgated under such act.

1.33. Requirement. Any law, ordinance, order, rule, regulation or other requirement issued by the United States of America, South Carolina and any other state in which Borrowers are doing business and/or any political subdivision thereof and/or any agency, department, commission, board, bureau or instrumentality of any of them relating in any way to (a) the Loan Collateral, (b) Borrowers' operations, or (c) the transactions contemplated by this Agreement, including, without limitation, all federal and state securities laws, business opportunity and franchise regulation and antitrust laws, ERISA and OSHA, the Americans with Disabilities Act and federal and state Environmental Laws, all as amended, now or hereafter.

1.34. Security Instruments. Collectively, the Assignment of Leases, the Mortgage and Guaranty Agreements all dated of even date herewith executed by Borrower and/or Guarantors in favor of Lender, and related financing statements, encumbering the Fee Simple Property and the other Loan Collateral to include, without limitation, all materials, fixtures, machinery, equipment, and other articles or items of personal property, all contracts, accounts receivable and inventory now owned or hereafter acquired and any other property, tangible or intangible, owned by Borrower as more particularly described in such documents.

1.35. Subsidiary. Subsidiary means any affiliate that is directly, or indirectly through one or more intermediaries, controlled by Borrowers or not less than fifty (50%) percent of the voting capital stock of which is owned, directly, or through one or more intermediaries by Borrowers. The plural Subsidiaries shall sometimes be used when referring to all such entities collectively.

1.36. Tangible Net Worth. Tangible Net Worth is defined as net worth, plus obligations contractually subordinated to debts owed to Lender, minus goodwill, contract rights, and assets representing claims on stockholders or affiliated entities.

1.37. Taxes. Any and all net income, alternative or add-on minimum tax, gross income, gross receipts, sales, use, ad valorem, franchise, capital, paid-up capital, profits, green mail, license, withholding, payroll, employment, excise, severance, stamp, occupation, premium, property, environmental or windfall profit tax, custom, duty or other tax, governmental fee or

other like assessment or charge, together with any interest or any penalty, addition to tax or additional amount imposed by any governmental authority.

ARTICLE 2.

The Loan

2.1. General Terms of the Loan. Relying upon the representations and warranties and the agreements and covenants contained below, and subject to the terms of this Agreement, Lender shall loan the aggregate total principal amount of up to Seven Million Five Hundred Ninety Thousand and No/100 (\$7,590,000.00) Dollars (hereinafter referred to as the "Loan"), which is evidenced by the Note.

2.2. The Note. The Loan shall be evidenced by and bear interest as provided in the Note, the terms of which are incorporated by reference into this Agreement. The Loan shall be repaid in accordance with the terms of this Agreement and the Note. All payments received by Lender from Borrower shall be applied to the outstanding debt as provided in the Note. Notwithstanding anything to the contrary herein or in the Note, on or prior to the Initial Maturity Date (as defined in the Note), Borrower shall be obligated to reduce the original principal balance of the Note by not less than Nine Hundred Ninety Thousand and No/100 (\$990,000.00) Dollars. Such interest payment requirement shall be a condition precedent for Borrower's ability to extend the Initial Maturity Date another twelve months as provided in the Note. Except for the interest payment requirement set forth in the two preceding sentences, in the event of any conflict between the terms and provisions of this Agreement and that of the Note, the terms and provisions of the Note shall apply.

2.3. Use of Loan Disbursement. Lender agrees that it will disburse the Loan proceeds of the Note to Borrower at the closing of this Loan for the purpose of purchasing the Fee Simple Property. Borrower covenants that the Loan proceeds will be used for no other purpose than that set forth above.

2.4. Documentation and Security for Loan. The terms and provisions of the Loan Documents are incorporated in this Agreement by reference.

2.5. Intentionally Omitted.

2.6. Intentionally Omitted.

2.7. Prepayment. Subject to the terms and conditions of the Note regarding fully earned capitalized interest, Borrower may prepay all or any portion of this Loan at any time without prepayment compensation. Any prepayment shall be applied first to accrued interest, then to fees, then to principal due and then to late charges. Any remaining funds shall be applied to the further reduction of principal. Notwithstanding the foregoing, upon the

occurrence of an Event of Default under the Note or this Agreement, payments shall be applied as determined by Lender in its sole discretion.

ARTICLE 3.

Conditions Precedent to Closing

Lender's obligation to make the Loan disbursement at Closing shall be subject to the fulfillment of the requirements and conditions set forth in the Commitment Agreement.

ARTICLE 4.

Representations and Warranties of Borrowers

As an inducement to Lender to enter into this Loan Agreement and to make the Loan contemplated by this Agreement, Borrower warrants and represents to Lender the following (it being acknowledged that each such warranty relates to a material matter upon which Lender has relied).

4.1. Validity of Loan Documents. The Loan Documents are in all respects legal, valid, binding, and enforceable in accordance with their respective terms.

4.2. Ownership/Priority of Liens/Permitted Encumbrances. Borrower has good title to the Fee Simple Property. The Security Instruments grant to Lender a direct, valid, and continuing first mortgage lien on and/or security interest in and to the Fee Simple Property, subject to those Permitted Encumbrances which are specifically acknowledged in Exhibit C to have priority. No other mortgage, deed of trust, chattel mortgage, bill of sale, security agreement, financing statement or other title retention agreement has been or will be executed by Borrower.

4.3. Conflicting Transactions of Borrower. Consummation of the transactions contemplated by this Agreement and the performance of the obligations of Borrower under and by virtue of the Loan Documents will not result in any breach of, or constitute a default under, any mortgage, deed of trust, deed to secure debt, lease, Lender loan or credit agreement, corporate charter or by-laws, partnership agreement, operating agreement or any other instrument or agreement to which Borrower is a party or by which Borrower may be bound and/or the Loan Collateral are affected.

4.4. Pending Litigation. Except as disclosed in Exhibit E attached to this Agreement, there are no actions, suits or proceedings pending, or, to the knowledge of Borrower and Guarantors, threatened against or affecting Borrower or Borrower's business, or involving the validity or enforceability of any of the Loan Documents or the priority of the lien thereon, in any court, at law or in equity, or before any administrative agency or other governmental authority.

4.5. Organization, Status, Authority and Office. Borrower: (a) is a duly formed and validly existing South Carolina limited liability company; (b) is qualified to do business in the states where it is required to be so qualified, except where failure to be so qualified would not have a material adverse effect on the Borrower on a consolidated basis; (c) has the necessary power, authority and legal right to carry on the business conducted by it and to engage in the transactions contemplated by the Loan Documents; and (d) has duly authorized the execution and delivery of the Loan Documents and the performance and observance of the provisions of the Loan Documents by all necessary actions.

4.6. No Event of Default Under Documents. No default or Event of Default on the part of the Borrower exists under this Agreement, or under any of the other Loan Documents and no event has occurred and is continuing which with notice or the passage of time or both would constitute a default or an Event of Default under any of such documents.

4.7. Taxes. Borrower is not delinquent in the payment of any Taxes in an aggregate amount that would have a material adverse effect upon any of its businesses, properties, assets, operations or conditions, financial or otherwise, that have been levied or assessed by any governmental authority against them or their assets. Borrower has timely filed all tax returns that are required by law to be filed prior to the date of this Agreement, and have paid all Taxes shown on said returns and all other assessments or fees levied upon Borrower or upon any of its properties to the extent that such Taxes, assessments or fees have become due and, if not due, such taxes have been adequately provided for and sufficient reserves have been established on Borrower's books of account to pay such Taxes. To the best knowledge of Borrower, no material controversy in respect of any Taxes owed by it is pending or threatened.

4.8. Compliance With Laws. Borrower has duly complied in all material respects with, and Borrower's assets, properties, business operations and leaseholds are in compliance in all material respects with, the provisions of all Requirements applicable, their assets and properties or the conduct of their businesses, and there have been no material citations, notices or orders of noncompliance issued to Borrower or any subsidiary under any such Requirement.

4.9. Intentionally Omitted.

4.10. Financial Statements and Condition. The financial statements, balance sheets and other financial information provided by Borrower and Guarantors to Lender (hereinafter referred to as the "Financial Statements"), fairly reflect the financial condition of Borrower and Guarantor, as applicable, and the results of their respective operations as of the date(s) and for the periods stated, and no material adverse changes in the financial condition, the business or operations of Borrower or Guarantor has occurred since the date(s) of such Financial Statements. With respect to the Financial Statements and the Borrower's financial condition, Borrowers represent and warrant as follows:

(a) The Fee Simple Property is subject to no mortgage or lien except for the Permitted Encumbrances.

(b) There are no liabilities, direct or contingent, except those disclosed in the Financial Statements.

(c) Borrower has not made investments in, advances to or guaranties of the obligations of any corporation, individual or other entity except those disclosed in the Financial Statements.

4.12. Full Disclosure. Neither this Agreement, nor any of the Loan Documents, contain any untrue statement of a material fact or omit a material fact necessary to make the statements contained in the Loan Documents or this Agreement not misleading. Neither Borrower nor Guarantors know of any facts or circumstances that Borrower or Guarantors have not disclosed to Lender in writing that, as of the date hereof, could reasonably be expected to give rise to a material adverse effect on the Loan Collateral, the ability of Borrower to pay, perform or discharge, as applicable, the Obligations, or the business operations or financial condition of Borrower.

ARTICLE 5.

Covenants of Borrowers and/or Borrower

Borrower covenants and agrees with Lender that, unless Lender specifically consents in writing to the contrary and for as long as any Obligations have not been satisfied in full, they will comply with the following covenants (it being acknowledged that each such covenant and agreement relates to a material matter).

5.1. Insurance. Borrower shall obtain and keep in force such insurance as Lender may require, with Lender named as additional insured or loss payee, as the case may be, and shall provide Lender with such evidence of insurance as Lender may require, all in such form and amounts as are reasonably satisfactory to Lender, including, but not limited to the following: (a) insurance required in any Loan Document, (b) public liability, fire and extended coverage insurance and/or builder's risk insurance on the Fee Simple Property and other Loan Collateral, and all other assets owned or leased by Borrower or used by it in its business, and (c) workers' compensation, or similar insurance as may be required under Requirements applicable to Borrower. All insurance policies shall be written for the benefit of Borrower and Lender as their interests may appear, payable to Lender as loss payee, or in other form satisfactory to Lender, and shall provide for written notice to Lender at least thirty (30) days prior to cancellation. Copies of all insurance policies, or certificates evidencing the same, shall be furnished to Lender. Risk of loss or damage is to the Borrower to the extent of any deficiency in any effective insurance coverage.

5.2. Collection of Insurance Proceeds. Borrower shall cooperate with Lender in obtaining for Lender the benefit of any insurance or other proceeds lawfully or equitably payable to Lender in connection with the transactions contemplated by this Agreement.

5.3. Right of Lender to Inspect. Permit the officers and authorized agents of Lender, at any reasonable time or times in Lender's sole discretion, to examine and make copies of the records and books of account or to visit the properties of Borrower, and to discuss such matters with any officers, directors, managers, members or partners, limited or general of Borrower and Borrower's independent accountant as Lender deems necessary and proper.

5.4. Compliance with Requirements. Borrower shall comply promptly with each and every Requirement and shall furnish Lender, on demand, independent evidence of such compliance as Lender may reasonably require. Without limiting the foregoing, Borrowers shall: use and operate all of their respective facilities and properties, including the Fee Simple Property, in compliance with all applicable Environmental Laws; (except where non-compliance could not reasonably be expected to have a material adverse effect on the Loan Collateral, the ability of Borrowers to pay, perform or discharge, as applicable, the Obligations, or the business operations or financial condition of Borrowers); keep all material permits, approvals, certificates and licenses in effect and remain in compliance with them; undertake measures to minimize any immediate environmental impact of any spill or leak of any Hazardous Substance on the Fee Simple Property to avoid any harm to human health or the environment and make all reasonable efforts to prevent the formation of any claim seeking to impose liability that could reasonably be expected, if determined adversely, to have a material adverse effect on the business operations or financial condition of Borrower; appropriately dispose of all wastes generated or stored on the Fee Simple Property in compliance with applicable Environmental Laws (except where non-compliance could not reasonably be expected to have a material adverse effect on the Loan Collateral, the ability of Borrowers to pay, perform or discharge, as applicable, the Obligations, or the business operations or financial condition of Borrowers); provide notice to Lender of the operation of any on-site, non-hazardous waste disposal facility. Borrower shall cooperate with any involved governmental agencies as to environmental problems or concerns on or near the Fee Simple Property; provide Lender promptly with copies of all written notices by Borrower of releases of Hazardous Substances at the Fee Simple Property that are reported to government regulators; promptly provide any correspondence or documentation received from or supplied to any governmental authority or third parties relating to environmental conditions at the Fee Simple Property, including, but not limited to those requiring assessment or other action, and; provide such information that Lender may reasonably request from time to time to determine compliance by Borrower with the Requirements.

5.5. Defaults. Borrower shall notify the Lender in writing within five (5) days in the event of any default by Borrowers of any Obligations undertaken by any of them herein and/or of any obligations under any of the Loan Documents.

5.6. Liens. Borrower shall notify the Lender in writing within five (5) days of receipt of any notice or knowledge of any mortgage or lien or any other security instrument whatsoever which has been filed against the Fee Simple Property or other Loan Collateral described in the Security Instruments.

5.7. Mechanics and Materialmen. Borrower will notify the Lender in writing within five (5) days if a Borrower receives any written notice from any laborer, subcontractor or materialman to the effect that said laborer, subcontractor or materialman has not been paid when due for any labor or materials furnished in connection with the construction of any improvements located on the Fee Simple Property.

5.8. Borrower's Financial and Business Information. Borrower shall keep adequate books and records in accordance with GAAP in which full and correct entries will be made of their transactions, businesses and affairs, and deliver to Lender:

(a) Fiscal year-end CPA-Compiled financial statement as soon as available and in any event within One Hundred Twenty (120) days of Borrower's fiscal year-end.

(b) Monthly Company-Prepared interim financial statements within thirty (30) days of each month's end.

(c) Personal financial statements on all Guarantors dated within twelve (12) months of statements previously provided and updated annually, and a complete copy of each Guarantor's personal Form 1040 tax return each year within thirty (30) days of filing; and

(d) Any other information regarding the operation, business affairs, and financial condition of Borrowers which Lender may reasonably request.

5.9. Financial Covenants. Borrowers shall maintain or meet, as the context requires, the following financial covenants on a consolidated basis (unless indicated otherwise), and unless a breach is specifically waived in writing by Lender:

(a) Borrower shall maintain its current management and ownership; and not be permitted to merge into or acquire the capital stock of any entity.

(b) Borrower shall not be permitted to acquire substantially all of the assets of any other entity, or to sell any of its assets other than in the ordinary course of business.

(c) Stockholders, officers, directors, members, managers and affiliates shall subordinate their loans to Borrower, if any, to Lender pursuant to subordination agreements satisfactory to Lender.

5.10. Existence. Borrower shall maintain their current form of existence. Borrower will continue to engage in business of the same general type as now conducted by Borrower and preserve, renew and keep in full force and effect their existence in all jurisdictions in which they

are doing business and take all reasonable action to maintain all rights and privileges necessary or desirable in the normal course of Borrower's businesses.

5.11. Management. Borrowers shall maintain its current ownership.

5.12. Agreement Not to File Bankruptcy or Other Debt Relief Proceedings. Borrower acknowledges that one of the express conditions to induce Lender to make the Loan to Borrowers is that Lender shall be free to realize upon any collateral given by Borrower to secure the Loan in the event of any occurrence of any Event of Default, and that time is of the essence. Therefore, Borrower represents, warrants, agrees and covenants that it will not voluntarily file a Bankruptcy petition, make an assignment for the benefit of creditors, consent to the appointment of a receiver or consent to any action that would stay or limit in any manner Lender's right to realize upon any of the collateral securing the Loan (hereinafter referred to collectively as the "Petition"). In the event that any such Petition is filed, voluntarily or involuntarily, Borrower hereby agrees that any Court in which such Petition is pending may enter an order dismissing the Petition.

5.13. Update Information. Borrower shall notify Lender in writing within five (5) days of any action, proceeding or notification which Borrower receives with respect to matters referenced in Sections 5.4, 5.7, 5.12, 5.18, 6.2 and 6.3 herein.

5.14. Payment of Taxes. Borrower will cause to be paid when due all taxes, assessments, charges, and levies imposed upon it, and/or the Fee Simple Property or other Loan Collateral which it is required to pay over, except when contested in good faith by appropriate proceeding with adequate reserves therefore having been set aside on its books and segregated where required by GAAP; provided, that Borrower shall pay or cause to be paid forthwith all taxes, assessments, levies, and charges whenever foreclosure, or other process, threatens the lien and priority of those liens and security interests granted to Lender under the Security Instruments.

5.15. Indemnity. Borrower shall indemnify the Lender from claims or process arising by reason of the execution hereof or the consummation of the transactions contemplated hereby and caused by the acts or omissions of the Borrower. Borrower shall indemnify Lender and shall hold Lender harmless from any and all loss, damages, suits, penalties, costs, liability and expenses (including, but not limited to, any reasonable investigation and legal expenses and consultant fees) arising out of: any claim or loss or damage to any property, including damage to the Fee Simple Property or other Loan Collateral; injuries to or death of persons; contamination of, or adverse affects on, the environment caused by any environmental condition or Hazardous Substance; any violation of any Environmental Law; damage, fees, fines, and other claims caused by or resulting from any Hazardous Substance used in connection with, or consisting of, any Loan Collateral. This indemnity shall survive this Agreement.

5.16. Intentionally Omitted.

5.17. Intentionally Omitted.

5.18. Negative Covenants.

(a) Unless otherwise allowed in the Loan Documents or until payment in full of the Note, Borrower covenants that it will not without the prior written consent of Lender:

(i) Incur or permit to exist any encumbrance, security interest, pledge, mortgage or lien against any of the Borrower's assets or property, except any Permitted Encumbrance;

(ii) Suffer or permit dissolution or liquidation either in whole or in part or redeem or retire any ownership interest in Borrower;

(iii) Permit Borrower to become a party to a merger, consolidation or other reorganization with any other entity (including a de facto merger by which all or substantially all of the property or assets of another company are acquired);

(iv) Acquire the capital stock of any entity or interest in any partnership or company;

(v) Become liable for and/or guarantee any other debt other than debt to Lender;

(vi) Pledge, assign or sell any portion of the Loan Collateral except in the ordinary course of business;

(vii) Enter any contract, lease or agreement of any kind with any owner, partner, member, related party or affiliate unless such is a negotiated arm's length transaction under competitive terms and conditions;

(viii) Make any dividend, loan, withdrawal, advance or any type of distribution to any of the Borrower, any owner, partner, member, related party, or Affiliates (hereinafter referred to collectively as the "Distributions") in excess of twenty-five percent (25%) of Net Income, provided, however Distributions in excess of this amount will be allowed to the extent that equal amounts of member loans are extended to Borrower. The member loans must be fully subordinated to Lender;

(ix) Intentionally Omitted;

(x) Grant security interests in, or permit liens to be filed on, any of its assets for the benefit of any creditor other than Lender;

(xi) Cease to engage in the business in which Borrower is currently engaged; and

(xii) Possess or incur debt to stockholders, officers, directors, and Affiliates which has not been subordinated to Lender.

5.19. Miscellaneous.

(a) Borrower shall notify the Lender in writing within five (5) days if any of them becomes aware of the occurrence of any Event of Default or condition which may lead to an Event of Default or the failure of a Borrower to observe any of its undertakings under this Agreement, or any other Loan Document.

(b) All covenants, whether affirmative or negative, contained in the Loan Documents are incorporated into this Agreement by reference as if the same were set forth in this Agreement.

(c) Borrower shall immediately advise Lender in writing within five (5) days of (i) any and all enforcement, cleanup, remedial, corrective action, removal or other government or regulatory actions instituted, completed, required or threatened pursuant to any Environmental Laws affecting the Fee Simple Property or other Loan Collateral; and (ii) all claims made or threatened by any third parties against Borrower relating to damages, contribution, cost, recovery compensation, loss or injury resulting from Hazardous Substances. Borrower shall immediately notify Lender in writing within five (5) days of any remedial action taken by Borrower with respect to the Fee Simple Property.

(d) Borrower shall not demolish any part of the Fee Simple Property except with the consent of Lender, which shall not be unreasonably withheld or delayed.

(e) Intentionally Omitted.

ARTICLE 6.

Guarantors Covenants

Guarantors covenant and agree that from the date hereof and until payment in full of all indebtedness and performance of all obligations owed under the Loan Documents, Guarantors shall:

6.1. Maintain Existence and Current Legal Form of Business. If Guarantors are a corporation, partnership, limited partnership, limited liability partnership or limited liability company, (a) maintain its existence and good standing in the state of its incorporation or organization, (b) maintain its current legal form of business as shown on the guaranty agreement provided by Guarantors to Lender in connection with the Loan, and (c) without

Lender's, prior written consent, change Guarantors' name, or enter into any merger, consolidation, reorganization or exchange of stock, ownership interests or assets, and (as applicable, qualify and remain qualified as a foreign corporation, general partnership, limited partnership, limited liability partnership or limited liability company in each jurisdiction in which such qualification is required.

6.2. Maintain Properties. Not, without the prior written consent of Lender, sell, transfer or otherwise dispose of all or substantially all of Guarantors' properties (tangible and intangible), except in the ordinary course of business.

6.3. Comply With Laws. Comply in all respects with all applicable laws, rules, regulations, and orders including, without limitation, paying before the delinquency of all taxes, assessments, and governmental charges imposed or assessed upon Guarantors or upon Guarantors' property, and all Environmental Laws.

6.4. Reporting Requirements. Furnish to Lender:

(a) Annual Financial Statements. If Guarantors are an individual, a personal financial statement promptly after the anniversary date of the Loan, on a form provided by Lender and in such reasonable detail as Lender may require; or, if Guarantors are a corporation, general partnership, limited partnership, limited liability partnership or limited liability company, as soon as available and not more than one hundred twenty (120) days after the end of each fiscal year of Guarantors, balance sheets, statements of income, and retained earnings for the period ended and a statement of changes in financial position, on form(s) to be provided by Lender, all in reasonable detail, and all prepared in accordance with GAAP consistently applied; and, such financial statements must be of the following quality or better; Compiled.

(b) Notice of Litigation. Promptly after the receipt by Guarantors, or by Borrowers of which Guarantors have knowledge, of notice of any action, suit and proceeding before any court or governmental agency of any type which, if determined adversely, could have a material adverse effect on the financial condition, properties, or operations of Guarantors or Borrower, as appropriate.

6.5. Transfer of Ownership. Not without the prior written consent of Lender, if Guarantors are a corporation, (a) issue, transfer or sell any new class of stock, or (b) issue, transfer or sell, in the aggregate, from its treasury stock and/or currently authorized, but unissued shares of any class of stock, more than ten (10%) percent of the total number of all such issued and outstanding shares as of the date of this Agreement; or, if Guarantors are a general partnership, limited partnership, limited liability partnership or limited liability company, issue, transfer or sell any interest in Guarantors.

6.6. Tax Returns. Within thirty (30) days of filing, furnish complete copies (including all schedules) of all state and federal tax returns filed by Guarantors.

6.7. Other Information. Furnish such other information as Lender may from time

in by such party or an order for relief shall have been entered against such party.

(c) Any dissolution or liquidation proceeding shall be instituted by or against Borrower, and, if instituted against such party, shall be consented to or acquiesced in by such party.

7.4. Receivership. By the order of a court of competent jurisdiction, a trustee or receiver of the Fee Simple Property and/or other Loan Collateral, or any part thereof, shall be appointed.

7.5. Loss of Security. Any Loan Document shall, at any time, cease to be in full force and effect or shall be judicially declared null and void, or the validity or enforceability of such Loan Document shall be contested by a Borrower, Guarantor or Lender shall cease to have a valid and perfected security interest having the priority contemplated under such Loan Document in all of the collateral described in any of the Loan Documents.

7.6. Denial of Inspection by Borrower. Lender, or its representatives, shall not be permitted by Borrower to enter upon and inspect the Fee Simple Property or any property wherever the Loan Collateral is located, or to have access to the books, records and such other documents of Borrower as Lender shall reasonably require after Lender has given Borrower such notice and complied with the conditions set forth in Section 5.3.

7.7. Change in Ownership of Borrower. There occurs any sale, conveyance, whether voluntary or involuntary, assignment, hypothecation, encumbrance (except for Permitted Encumbrances) or other transfer of, or the grant of a security interest in the Fee Simple Property, and/or the rents and profits thereof, or of Loan Collateral outside of the ordinary course of business, or any portion thereof, or in the ownership of Borrower.

7.8. False Representation or Warranty. At any time any financial statement or representation, warranty, opinion, or statement made by Borrower to Lender in any Loan Document, or otherwise, shall be or become incorrect, invalid, or misleading in any material respect or a breach, withdrawal, cancellation, rescission, termination or alteration shall occur regarding any material agreement, approval, opinion or waiver submitted to the Lender.

7.9. Inability to Conduct Business. Borrower is enjoined, restrained or in any way prevented by court order from conducting all or any material part of their business affairs and such court order has not been effectively dismissed or stayed within thirty (30) days. Notwithstanding anything herein to the contrary, Borrower shall have no more than thirty (30) days to cure such default after notice.

7.10. Tax Lien or Levy. A notice of lien, levy or assessment is filed of record against any portion of the assets of the Borrower by the United States of America, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency or if any taxes or debts owing at any time or times hereafter by any one of them become a

to time reasonably request.

ARTICLE 7.

Events of Default

An "Event of Default" shall be the occurrence or existence of any one of the following conditions set forth below and the continuance of such condition for (i) a period of ten (10) days if the event or condition is a failure to pay an installment of principal and interest under the Note; (ii) a period of twenty (20) days after delivery of written notice to Borrower from Lender specifying the nature of the default if the event or condition is a failure to make a payment required under the Loan Documents (other than payment) of an installment of principal and interest under the Note; provided, however, there shall be no obligation of Lender to give such notice and no right of Borrower to cure more than twice in any calendar year, or (iii) a period of thirty (30) days, unless otherwise specified herein, after delivery of written notice to Borrower from Lender specifying the nature of the default for any other event or condition. However, notwithstanding the notice and cure periods set forth above, there shall be no obligation of Lender to give notice and no right of Borrowers to cure if the event or condition is described in Sections 7.3, 7.4, 7.5, 7.7, 7.8, 7.15, 7.16, 7.17, 7.18.

7.1. Default Under Loan Documents. Borrower shall breach or fail to perform, observe or meet any term, covenant or condition made in this Agreement, including those supplemental agreements in the attachments hereto, or any of the other Loan Documents, including, without limitation, failure to pay principal and interest as required by the Note.

7.2. Liens and Encumbrances. Borrower shall fail to keep the Fee Simple Property and/or other Loan Collateral free and clear of all encumbrances, liens, mortgages, security interests and subordinate financing, except (i) for ad valorem taxes not yet due and payable; (ii) as permitted under the Loan Agreement, (iii) Permitted Encumbrances, and (iv) as may be approved in writing by the Lender in its sole discretion, and in the case of any consensual encumbrances, liens, mortgages, security interests or subordinate financing, such written approval to be obtained from the Lender in advance.

⊗ 7.3. Bankruptcy/Insolvency of Borrowers.

(a) Borrower shall become insolvent or shall generally not pay its debts as they mature or shall apply for, shall consent to, or shall acquiesce in the appointment of a custodian, trustee or receiver of the Borrowers or for a substantial part of the property of Borrower or, in the absence of such application, consent or acquiescence, a custodian, trustee or receiver shall be appointed for a Borrower or for a substantial part of Borrower's property or Borrower shall make an assignment for the benefit of creditors.

(b) Any Bankruptcy, reorganization, debt arrangement or other proceedings under any Bankruptcy, receivership or insolvency law shall be instituted by or against Borrower, and, if instituted against Borrower, shall have been consented to or acquiesced

in by such party or an order for relief shall have been entered against such party.

(c) Any dissolution or liquidation proceeding shall be instituted by or against Borrower, and, if instituted against such party, shall be consented to or acquiesced in by such party.

* 7.4. Receivership. By the order of a court of competent jurisdiction, a trustee or receiver of the Fee Simple Property and/or other Loan Collateral, or any part thereof, shall be appointed.

* 7.5. Loss of Security. Any Loan Document shall, at any time, cease to be in full force and effect or shall be judicially declared null and void, or the validity or enforceability of such Loan Document shall be contested by a Borrower, Guarantor or Lender shall cease to have a valid and perfected security interest having the priority contemplated under such Loan Document in all of the collateral described in any of the Loan Documents.

7.6. Denial of Inspection by Borrower. Lender, or its representatives, shall not be permitted by Borrower to enter upon and inspect the Fee Simple Property or any property wherever the Loan Collateral is located, or to have access to the books, records and such other documents of Borrower as Lender shall reasonably require after Lender has given Borrower such notice and complied with the conditions set forth in Section 5.3.

* 7.7. Change in Ownership of Borrower. There occurs any sale, conveyance, whether voluntary or involuntary, assignment, hypothecation, encumbrance (except for Permitted Encumbrances) or other transfer of, or the grant of a security interest in the Fee Simple Property, and/or the rents and profits thereof, or of Loan Collateral outside of the ordinary course of business, or any portion thereof, or in the ownership of Borrower.

* 7.8. False Representation or Warranty. At any time any financial statement or representation, warranty, opinion, or statement made by Borrower to Lender in any Loan Document, or otherwise, shall be or become incorrect, invalid, or misleading in any material respect or a breach, withdrawal, cancellation, rescission, termination or alteration shall occur regarding any material agreement, approval, opinion or waiver submitted to the Lender.

7.9. Inability to Conduct Business. Borrower is enjoined, restrained or in any way prevented by court order from conducting all or any material part of their business affairs and such court order has not been effectively dismissed or stayed within thirty (30) days. Notwithstanding anything herein to the contrary, Borrower shall have no more than thirty (30) days to cure such default after notice.

7.10. Tax Lien or Levy. A notice of lien, levy or assessment is filed of record against any portion of the assets of the Borrower by the United States of America, or any department, agency or instrumentality thereof, or by any state, county, municipal or other governmental agency or if any taxes or debts owing at any time or times hereafter by any one of them become a

lien or encumbrance upon any asset of the Borrower and such lien, levy, or assessment has not been bonded off or set aside within the above cure period.

7.11. Attachment; Execution Against Assets of Borrowers. The entry of a judgment or the issuance of a warrant of attachment, execution or similar process against the Borrower or any assets of the Borrower, which is not bonded off or set aside within the above cure period.

7.12. Encroachments. The appearance after the date hereof on any survey required hereunder of easements or encroachments on the Fee Simple Property which have occurred without the written approval of the Lender and which are not removed or corrected within the above cure period.

7.13. Injunction. Any court of competent jurisdiction (including without limitation the U.S. Bankruptcy Courts) enjoins or prohibits the Borrower or the Lender or either of them from performing hereunder or under any of the other Loan Documents, and such proceedings are not discontinued or such decree is not vacated within thirty (30) days. Notwithstanding anything herein to the contrary, Borrowers shall have no more than three (30) days to cure such default after notice.

7.14. Permits; Insurance. The Borrower neglects, fails, or refuses to keep in full force and effect (a) any permit or approval with respect to the construction, occupation or use of the Fee Simple Property or (b) the hazard, builder's risk, flood (if required) and liability insurance required hereunder.

✱ 7.15. Lawsuits. Any suit, or combination of suits, shall be filed against Borrower or any Guarantor which in the reasonable judgment of the Lender has a substantial likelihood of being determined adversely, and which, if adversely determined, could reasonably be expected substantially to impair the ability of Borrower to perform each and every one of their respective obligations under and by virtue of the Loan Documents.

✱ 7.16. Financial Condition. Any breach of a material representation or warranty made by the Borrowers in any Loan Document concerning the financial condition or credit standing of the Borrowers or, in the Lender's reasonable opinion, there is a threat to its security for the Loan by reason of a material adverse change in the financial condition or credit standing of one or more of the Borrower.

✱ 7.17. Subordinate Financing. Borrower fail to keep the Fee Simple Property free and clear of all encumbrances, liens, security interests, and claims related to subordinate financing, except for Permitted Encumbrances and other debt or encumbrances as may be approved in writing by the Lender, in its sole discretion in advance or as otherwise permitted by Section 7.2.

✱ 7.18. Intentionally Omitted.

The Events of Default set forth in this Article 7 are in addition to those Events of Default, Defaults, and/or other defaults set forth and defined elsewhere in the Loan Documents. In the event of any direct conflict in provisions related to Events of Default, including the requirements or applicability of any cure or grace periods contained in this Agreement and the other Loan Documents, the terms and provisions of this Agreement shall govern and control. Notwithstanding any language contained in any Loan Document to the contrary, the Lender agrees that in the event of any occurrence which would with the passage of time without cure become an Event of Default, the Lender shall not, on account of such occurrence, exercise any remedies under any of the Loan Documents if such a cure is permitted under Article 7 for the type of occurrence and if the occurrence is cured within the time permitted. Except for those types of occurrences which would constitute an Event of Default in which no cure period is permitted under this Agreement, or which without cure within the applicable cure period of this Agreement would give rise to: i) an Event of Default under Sections 7.2, 7.6, 7.9, 7.10, 7.11, 7.13, and 7.14, or ii) an Event of Default for failure to make a payment to the Lender required by any one or more of the Loan Documents, Lender agrees that it shall not, on account of a default under the Loan Documents, exercise any remedies under any of the Loan Documents if such occurrence cannot by its nature be reasonably cured within the time allowed in the Loan Documents, so long as the cure is commenced within the applicable cure period under this Agreement and is thereafter diligently pursued to completion.

ARTICLE 8

Remedies of Lender

Upon the occurrence of an Event of Default, Lender, at its option and in addition to and not in lieu of the remedies provided for in the other Loan Documents, shall be entitled to exercise any one or more of the following remedies in accordance with the following terms:

8.1. Default Constitutes Default Under Other Loan Documents/Acceleration. Borrower agrees that the occurrence of an Event of Default under this Agreement shall, at the option of Lender, constitute a default under each of the other Loan Documents, thereby entitling Lender (a) to exercise any or all of the various remedies provided in such Loan Documents, including, without limitation, the acceleration of the Obligations and the exercise of its remedies under any of the Loan Documents, and (b) cumulatively to exercise all other rights, options and privileges provided by law or in equity. Lender may make any advances or portions of advances after the occurrence of an Event of Default without thereby waiving its rights to demand payment of Borrower's indebtedness evidenced by the Note and secured by the Loan Documents.

8.2. Rights and Remedies Cumulative; Non-Waiver; etc. The enumeration of Lender's rights and remedies set forth in this Agreement is not intended to be exhaustive and the exercise by Lender of any right or remedy shall not preclude the exercise of any other rights or remedies, all of which shall be cumulative, and shall be in addition to any other right or remedy given under this Agreement, under the Loan Documents or under any other agreement between Borrower, Lender and/or any Subsidiary, which may now or hereafter exist, at law or in equity

or by suit or otherwise. No delay or failure to take action on the part of Lender in exercising any right, power or privilege shall operate as a waiver, nor shall any single or partial exercise of any such right, power or privilege preclude any other or further exercise thereof or the exercise of any other right, power or privilege or shall be construed to be a waiver of any Event of Default. No course of dealing between Borrower, Lender or their agents or employees shall be effective to change, modify or discharge any provision of this Agreement or to constitute a waiver of any Event of Default.

8.3. Environmental Assessments. Environmental assessments shall be prepared at Borrowers' expense and submitted to Lender upon Lender's reasonable request at any time or times: (i) after the occurrence of a Event of Default under the Loan, or (ii) as may be required by any applicable governmental authority, or (iii) if an environmental problem or hazard is discovered or reasonably suspected in connection with Borrowers' business or potentially exists on the Fee Simple Property and/or in connection with the other Loan Collateral.

8.4. Lift Stay. In the event a Petition is filed affecting Borrower, Borrower hereby consents to the entry of an order by a court of competent jurisdiction lifting, modifying or terminating any Bankruptcy stay, restraining order, or similar injunction upon filing of an appropriate motion by Lender and hereby stipulates to the entry of an order allowing Lender to realize upon the collateral securing the Loan.

8.5. Reappraisals. Lender may order reappraisals of the Fee Simple Property at Borrower's expense at any time or times after the occurrence of an Event of Default under the Loan, or as may be required by any regulatory authorities.

8.6. Intentionally Omitted.

8.7. Waiver. The Borrower does hereby expressly waive in favor of the Lender and its assigns, to the fullest extent allowed by law, any and all exemptions from seizure provided by any law, rule or regulation of the State of South Carolina, the United States, or any other state.

ARTICLE 9

General Conditions

The following conditions shall be applicable throughout the term of this Agreement:

9.1. Third Parties Not Benefited. All conditions to the obligations of Lender under this Agreement are imposed solely and exclusively for the benefit of Lender and its successors and assigns and no other Person shall have standing to require satisfaction of such conditions in accordance with their terms or be entitled to assume that Lender will refuse to advance the Loan funds in the absence of strict compliance with any or all such conditions and obligations, and no other Person shall, under any circumstances, be deemed to be a beneficiary of such conditions, any and all of which may be freely waived in whole or in part by Lender at any time if in its sole

discretion it deems it desirable to do so. All obligations of Lender under this Agreement, including the obligation to make the Loan, are imposed solely and exclusively for the benefit of Borrowers, subject to the conditions precedent in this Agreement and in the other Loan Documents to said obligations, and no other Person shall have standing to enforce on behalf of Borrowers, Lender's obligations.

9.2. No Agency. Lender is not the agent or representative of the Borrower, and the Borrower are not an agent or representative of Lender, and nothing in this Agreement shall be construed to make Lender liable to anyone for goods delivered to or labor or services performed upon the Fee Simple Property or for debts or claims accruing against the Borrower. Nothing in this Agreement shall be construed to create a relationship between Lender and anyone supplying labor or materials or services for or to the Borrower.

9.3. No Partnership or Joint Venture. Nothing in this Agreement or the acts of the parties shall be construed to create a partnership or joint venture between Borrower and Lender.

9.4. No Assignment by Borrowers. This Agreement may not be assigned by Borrower without the prior written consent of Lender.

9.5. Assignment by Lender. The Note, the Security Instruments, this Agreement and any and all of the other Loan Documents may be endorsed, assigned, and transferred in whole or in part by Lender, and any such holder and assignee of same shall succeed to and be possessed of the rights of Lender under all of the same to the extent transferred and assigned.

9.6. Entire Agreement; Confidentiality. This Agreement, together with the remaining Loan Documents, contains the entire terms of the agreement between Borrower and Lender covering the Loan and any oral communications, any commitment letters or other correspondence shall be deemed merged into this Agreement and of no further force or effect. Borrower shall keep the terms of the Commitment Agreement and the Loan Documents confidential.

9.7. Notices. Except as otherwise provided in this Agreement, all notices, covenants, requests and other communications to any party under or in connection with this Agreement shall be in writing and shall be sent via personal delivery, via certified or registered mail, return receipt requested, or via express courier or delivery service, addressed to such party at such party's address or at such other address as shall be designated by such party in a written notice given to each other party complying as to delivery with the terms of this Section 9.7:

The address of Borrower is:

Springs North Augusta, LLC
133 Bernat Drive
Greenwood, South Carolina 29649
Attn. Mr. Keith Anderson

Fax Number: 864-229-7994

With a copy to:

Callison Tighe & Robinson, LLC
1812 Lincoln Street, Suite 200 (29201)
P.O. Box 1390
Columbia, SC 29202-1390
Michael W. Tighe
Facsimile: (803) 256-6431

The address of Lender is:

D. Richard Crumpler, as Trustee of the
George B. Buchanan, Jr. Irrevocable Family Trust,
dated the 15th day of July, 2001
4728 Jenn Drive
Myrtle Beach, SC 29577

With a copy to:

Thompson & Henry, PA
1314 Professional Drive (29577)
Post Office Box 1290
Myrtle Beach, South Carolina 29578
Attn: Matthew R. Magee, Esquire
Fax Number: 843-692-0918

It is understood that whenever this Agreement, or any other Loan Document, requires Borrower to provide notice to the Lender, notice received by Lender from any Borrower pursuant to this Section 9.7 shall be deemed sufficient for providing such notice. In the case of personal delivery, notice shall be deemed given upon delivery to any front office staff person during normal business hours Monday through Friday but excepting federal holidays. In the case of overnight delivery, notice shall be deemed given one day after time stamped deposit with the express courier or delivery service for overnight delivery. In the case of certified mail, notice shall be deemed given three days after time stamped deposit with the U.S. postal service.

9.8. Successors and Assigns Included in Parties. Whenever in this Agreement any party is named or referred to, the heirs, executors, legal representatives, successors, successors-in-title and permitted assigns of such parties shall be included, and all covenants and agreements contained in this Agreement by or on behalf of Borrower or by or on behalf of Lender shall bind and inure to the benefit of their respective heirs, executors, legal representatives, successors, successors-in-title and permitted assigns, whether so expressed or not; provided, however, that nothing contained in this Agreement shall be construed in derogation of any restriction on transfer or assignment impressed upon Borrower in any of the Loan Documents.

9.9. Headings. The headings of the articles, paragraphs and subparagraphs of this Agreement are for the convenience of reference only, are not to be considered a part of this Agreement and shall not limit or otherwise affect any of the terms of this Agreement.

9.10. Invalid Provisions to Affect No Others. If fulfillment of any provision of this Agreement or any transaction related to this Agreement at the time performance of such provisions shall be due, shall involve transcending the limit of validity presently prescribed by any applicable usury statute or any other applicable law, with regard to obligations of like character and amount, then the obligation to be fulfilled shall be reduced to the limit of such validity; and if any clause or provision operates or would prospectively operate to invalidate this Agreement in whole or in part, then such clause or provision only shall be held for naught, as though not contained in this Agreement, and the remainder of this Agreement shall remain operative and in full force and effect.

9.11. Number and Gender. Whenever the singular or plural number, or the masculine, feminine or neuter gender is used in this Agreement, it shall equally include the other.

9.12. Amendments. Neither this Agreement nor any provision of this Agreement may be changed, waived, discharged or terminated orally, but only by a instrument in writing signed by the party against whom enforcement of the change, waiver, discharge or termination is sought.

9.13. Governing Law and Jurisdiction. This Loan Agreement and the other Loan Documents and all matters relating to the Loan shall be governed by and construed and interpreted in accordance with the laws of South Carolina. Borrower submits to the jurisdiction of the state and Federal courts located in South Carolina and agree that Lender may, at its option, enforce its rights under the Loan Documents in such courts.

9.14. Intentionally Omitted.

9.15. Joint and Several Liability. All references to "Borrower" shall be deemed to refer equally to each Person now or hereafter constituting such term, all of whom shall be jointly and severally liable for all of the obligations of Borrower under this Agreement and those set forth in the other Loan Documents.

9.16. Indemnification of Lender. From and at all times after the date of this Agreement, and in addition to all of Lender's other rights and remedies against Borrower, Borrower agrees to indemnify and hold harmless Lender and each director, officer, employee, agent and Affiliate of Lender against any and all claims, losses, damages, liabilities, costs and expenses of any kind or nature whatsoever (including, without limitation, reasonable attorneys' fees, costs and expenses) incurred by or asserted against Lender or any such director, officer, employee, agent or Affiliate, from and after the date of this Agreement, whether direct, indirect or consequential, as a result of or arising from or in any way relating to any suit, action or proceeding (including any inquiry or investigation) by any Person, whether threatened or initiated, asserting a claim for any legal or equitable remedy against any Person under any statute or

regulation, including, but not limited to, any federal or state laws, or under any common law or equitable cause or otherwise, arising from any liability of Lender due to the failure of Borrower, to abide by Section 6.2 and 6.3, or in connection with the Loan, the Borrower's use of the Loan proceeds, the negotiation, preparation, execution or performance of this Agreement or the other Loan Documents or any transactions contemplated in this Agreement or the other Loan Documents, whether or not Lender or any such director, officer, employee, agent or Affiliate is a party to any such action, proceeding, suit or the target of any such inquiry or investigation; provided, however, that Lender shall not have the right to be indemnified for any liability resulting from the gross negligence or willful misconduct of Lender (as finally determined by a court of competent jurisdiction). All of the foregoing losses, damages, costs and expenses of Lender shall be payable by Borrower upon demand by Lender and shall be additional Obligations under this Agreement. Borrower's Obligations under this section shall survive the repayment of the Loan and any foreclosure of Lender's collateral for the Loan.

9.17. Costs and Expenses. Whether or not the transactions contemplated by this Agreement shall be consummated, Borrower shall be obligated to pay or reimburse Lender upon demand for all fees and expenses (including, without limitation, reasonable attorneys' fees, costs and expenses) incurred or paid by Lender (except salaries of Lender's regularly employed personnel) in connection with: (i) the preparation, execution, delivery, interpretation, modification or amendment of the Commitment Agreement, this Agreement or the other Loan Documents; (ii) charges for appraisers, examiners, environmental consultants, auditors or similar Persons whom Lender may engage with respect to rendering opinions concerning the financial condition of Borrowers; (iii) any litigation, contest, dispute, suit or proceeding or action (whether instituted by Lender, Borrower, or any other Person) in any way relating to, this Agreement or the other Loan Documents; (iv) any attempt to enforce any rights of Lender against Borrower, or any other Person that may be obligated to Lender by virtue of this Agreement or the other Loan Documents; (v) any refinancing or restructuring of the credit arrangements provided under this Loan Agreement in any insolvency or Bankruptcy proceeding; and (vi) any legal fees, recording fees, documentary stamps and intangible taxes, and other costs incurred by Lender in connection with the making, documenting, and closing of the Loan.

9.18. Multiple Counterparts. This Agreement may be executed in multiple counterparts, each of which shall be deemed an original but all of which shall constitute but one and the same document.

9.19. Indirect Means. Any act which Borrower is prohibited from doing shall not be done indirectly through an Affiliate or by any other indirect means.

9.20. Time is of the Essence. The parties hereto agree that time is of the essence to this Agreement. All days counted within this Agreement shall be calendar days, including weekends and holidays, unless otherwise specifically stated.

9.21. Solvency. The Lender shall not be responsible for the solvency of any company issuing any policy of insurance in connection with this Agreement, whether or not approved by it,

or for the collection of any amount due under any such policy, and shall be responsible and accountable only for such money as may be actually received by it, and then only in accordance with the terms hereof. Nothing herein contained shall be construed as making the Lender liable in any way for any loss, damage, or injury resulting from the non-insurance of any buildings, improvements and/or personal property located on the Fee Simple Property, or of any other Loan Collateral.

9.22. All Powers Coupled with Interest. All powers of attorney and other authorizations granted to the Lender and any persons designated by the Lender and the Lender pursuant to any provisions of this Agreement or any of the Loan Documents shall be deemed coupled with an interest and shall be irrevocable so long as any of the Note remain unpaid or unsatisfied or any other Obligation remains unpaid or unsatisfied.

9.23. Survival. Notwithstanding any termination of this Agreement, (a) until the Loan, and other Obligations have been irrevocably paid in full or otherwise satisfied, the Lender shall retain its security interest and shall retain all rights under this Agreement and each of the Security Instruments with respect to such Loan Collateral as fully as though this Agreement had not been terminated, and (B) the indemnities to which the Lender is entitled under the provisions of this Article 9 and any other provision of this Agreement and the Loan Documents shall continue in full force and effect and shall protect them against events arising after such termination as well as before.

9.24. Reproduction of Documents. This Agreement, each of the Loan Documents and all documents relating thereto, including, without limitation, (a) consents, waivers and modifications that may hereafter be executed, (b) documents received by the Lender, and (c) financial statements, certificates and other information previously or hereafter furnished to the Lender, may be reproduced by the Lender for Lender's exclusive use, by any photographic, photo static, microfilm, microcard, miniature photographic or other similar process. Each party thereto stipulates that, to the extent permitted by applicable law, any such reproduction shall be as admissible in evidence as the original itself in any judicial or administrative proceeding (whether or not the original shall be in existence and whether or not such reproduction was made by the Lender in the regular course of business), and any enlargement, facsimile or further reproduction of such reproduction shall likewise be admissible in evidence.

9.25. Term of Agreement. This Agreement shall remain in effect from the date of Closing until the Loan and all other Obligations shall have been irrevocably paid and satisfied in full. No termination of this Agreement shall affect the rights and obligations of the parties hereto arising prior to such termination.

9.26. Recitals. The recitals set forth on the first page of this Agreement are incorporated herein and made a part hereof.

9.27. WAIVER OF JURY TRIAL. BORROWERS AND LENDER WAIVE, TO THE FULLEST EXTENT PERMITTED BY LAW, THE RIGHT TO A JURY TRIAL IN ANY

LITIGATION CONCERNING THIS AGREEMENT AND IN ANY LITIGATION CONCERNING ANY DEFENSE, CLAIM, COUNTERCLAIM, CLAIM OF SET-OFF OR SIMILAR CLAIM OF ANY NATURE THAT BORROWERS MAY ASSERT AGAINST LENDER.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

IN WITNESS WHEREOF, Borrowers and Lender have executed this Agreement under seal on the date first above written.

WITNESSES:

Melvin B. Mails
Witness #1

J. Elizabeth Thompson
Witness #2

LENDER:

D. RICHARD CRUMPLER, AS TRUSTEE OF THE
GEORGE B. BUCHANAN, JR. IRREVOCABLE
FAMILY TRUST, DATED THE 15TH DAY OF
JULY, 2001

By: D. Richard Crumpler, Trustee
Name: D. Richard Crumpler, Trustee

[SEAL]

BORROWER:

SPRINGS NORTH AUGUSTA, LLC,
a South Carolina limited liability company

Herbert S. Hooks
Witness #1
David L. Hylton
Witness #2

By: Herbert S. Hooks
Name: Herbert S. Hooks
Its: SPRINGS NORTH AUGUSTA, LLC
[SEAL]

LIST OF EXHIBITS AND SCHEDULES

EXHIBIT A - Description of Fee Simple Property

EXHIBIT B - Permitted Encumbrances

EXHIBIT C - Loan Documents

EXHIBIT D - Pending Litigation

List of Exhibits and Schedules

Exhibit A

DESCRIPTION OF FEE SIMPLE PROPERTY

Exhibit A

EXHIBIT A

TRACT 1:

BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, CONTAINING 1,306.369 ACRES ACCORDING TO AN "ALTA/ACSM LAND TITLE SURVEY FOR SPRINGS NORTH AUGUSTA, LLC." DATED JUNE 26, 2005; LAST REVISED 10/22/09 BY SITE DESIGN, INC. WITH THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT A 5/8" REBAR IRON PIN SET LOCATED ON THE SOUTHERN RIGHT OF WAY OF ASCAUGA LAKE ROAD (S-2-33) AND THE EASTERN RIGHT OF WAY OF I-520 (PALMETTO PARKWAY), SAID IRON PIN ALSO BEING LOCATED 1412.6 FEET +/- FROM THE EASTERN RIGHT OF WAY OF U.S. HIGHWAY 25 THENCE RUNNING ALONG SAID RIGHT OF WAY OF ASCAUGA LAKE ROAD (S-2-33) AND RUNNING ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 4483.66 FEET AND A CHORD BEARING AND DISTANCE OF N 73-35-27 E, 135.67 FEET TO POINT AT THE JOINT CORNER OF HELEN EVANS, NOW OR FORMERLY, THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG SAID EVANS PROPERTY, S23-25-49E 191.43 FEET TO AN OLD 3" OPEN TOP IRON PIN AT THE JOINT CORNER OF ALEXANDER AND PATSY LARROBEE, NOW OR FORMERLY, THENCE ALONG SAID LARROBEE PROPERTY S28-09-02E, 249.47 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF LOT 7, BLOCK B, OF BARCLAY SUBDIVISION, THENCE ALONG SAID BARCLAY SUBDIVISION S58-19-45E 221.59 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 6, BLOCK B, BARCLAY SUBDIVISION, THENCE S58-32-08E, 279.90 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 5, BLOCK B, BARCLAY SUBDIVISION, THENCE S58-20-53E 790.25 FEET TO AN OLD 1/2" REBAR IRON PIN AT THE JOINT CORNER OF LOT 1, BLOCK B, BARCLAY SUBDIVISION, THENCE S58-43-42E 200.08 FEET TO AN OLD 3/4" OPEN TOP IRON PIN ON THE WESTERN RIGHT OF WAY OF BUCKHALL ROAD, THENCE ALONG THE END OF BUCKHALL ROAD AND LOT 7, BLOCK A, BARCLAY SUBDIVISION S58-33-54E, 261.42 FEET TO AN OLD 1/2" CRIMP TOP IRON PIN AT THE JOINT CORNER OF LOT 6, BLOCK A, BARCLAY SUBDIVISION, CROSSING OVER AN OLD 1" OPEN TOP IRON PIN AT 50.07, THENCE S58-18-20E, 208.63 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 5, BLOCK A, BARCLAY SUBDIVISION, THENCE S58-36-24E 210.09 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 4, BLOCK A, BARCLAY SUBDIVISION, THENCE S58-33-13E 299.97 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 3, BLOCK A, BARCLAY SUBDIVISION, THENCE ALONG SAID LOT 3 AND PROPERTY OF NORMA M. PATE, NOW OR FORMERLY, S 58-27-56 E 952.94 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N09-47-08 W 446.47 FEET TO A POINT IN TREE NEAR THE RIGHT OF WAY OF BLANCHARD ROAD, CROSSING OVER A REFERENCE 5/8" REBAR IRON PIN SET ON LINE AT 445.16 FEET, THENCE S53-45-32E 142.86 FEET TO AN OLD 2" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 1, RIPPLERIDGE SUBDIVISION, THENCE ALONG SAID LOT 1 S09-55-18E 423.07 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE ALONG LOT 1, LOT 2, LOT 3, LOT 4, LOT 5, LOT 6, LOT 7 AND PART OF LOT 8 OF RIPPLERIDGE SUBDIVISION THE

FOLLOWING METES AND BOUNDS: S61-23-01E 186.72 FEET TO A 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 3, THENCE S61-23-12E 159.86 FEET TO AN OLD 5/8" REBAR AT THE JOINT CORNER OF LOT 4, THENCE S60-47-56E 158.24 FEET TO AN OLD 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 5, THENCE S61-58-19E 156.91 FEET TO AN OLD 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 6, THENCE S61-24-05E 155.23 FEET TO AN OLD 1/2" STEEL ROD AT THE JOINT CORNER OF LOT 7, THENCE S61-24-15E 153.93 FEET TO AN OLD 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 8, THENCE S61-28-23E 102.98 FEET TO AN OLD 3" OPEN TOP IRON PIN AT THE JOINT CORNER OF EDWARD K. & JUNE B. CARTER, NOW OR FORMERLY, THENCE ALONG SAID CARTER PROPERTY S30-48-30W 523.66 FEET TO AN OLD 1" OPEN TOP IRON PIN, THENCE S56-37-45E 71.77 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF PHILLIP L. & ALISA T. SOLESBEE, NOW OR FORMERLY, THENCE ALONG SAID SOLESBEE PROPERTY S56-38-05E 295.82 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF FAY ELLA BROCK BRYANT, NOW OR FORMERLY, THENCE ALONG SAID BRYANT PROPERTY AND PROPERTY OF EDWARD H. WOOD, NOW OR FORMERLY, AND PROPERTY OF AUSTIN R. TAYLOR, JR., NOW OR FORMERLY, S56-39-12E 433.14 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF FAY ELLA BROCK BRYANT, THENCE S56-36-54E 144.85 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF PHILLIP C. MALCOM & SUSAN H. MALCOM, NOW OR FORMERLY, THENCE ALONG SAID MALCOM PROPERTY, S56-39-04E 59.88 FEET TO AN OLD 3" AXLE AT THE JOINT CORNER OF RONALD W. & BECKY B. ALLEN, THENCE ALONG SAID ALLEN PROPERTY S25-06-54E 891.44 FEET TO AN OLD 3" OPEN TOP IRON PIN, THENCE S70-07-10E 419.10 FEET TO AN OLD ANGLE IRON AT THE JOINT CORNER OF MAURICE SAMUAL, ETAL, NOW OR FORMERLY, THENCE ALONG SAID SAMUAL PROPERTY S69-53-40E, 842.45 FEET TO AN OLD 3" OPEN TOP IRON PIN AT THE JOINT CORNER OF ELBERT J. GRINER, NOW OR FORMERLY, THENCE ALONG SAID GRINER PROPERTY S69-24-03E 462.55 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF MARGARET B. BROWN, NOW OR FORMERLY, THENCE ALONG SAID BROWN PROPERTY S69-14-04E, 146.11 FEET TO AN OLD 2" OPEN TOP IRON PIN, THENCE S69-26-27E, 254.68 FEET TO AN OLD 1" OPEN TOP IRON PIN, THENCE S69-21-24E 387.32 FEET TO AN OLD 1" SQUARE ROD AT THE JOINT CORNER OF CALVIN D. & GEORGIA D. THOMASON, NOW OR FORMERLY, THENCE ALONG SAID THOMASON PROPERTY, S69-27-06E 243.56 FEET TO OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF ARTHUR & IRENE ABRAHAM, NOW OR FORMERLY, THENCE ALONG SAID ABRAHAM PROPERTY S21-05-40W, 473.68 FEET TO AN OLD AXLE, THENCE ALONG SAID ABRAHAM PROPERTY AND PROPERTY OF IRENE ABRAHAM MAYS, NOW OR FORMERLY, S69-11-10E 479.37 FEET TO AN OLD 1/2" REBAR IRON PIN AT THE JOINT CORNER OF ERIC & DEMETRIA HOLLOWAY, NOW OR FORMERLY, THENCE ALONG SAID HOLLOWAY PROPERTY S69-26-07E 104.76 FEET TO AN OLD 1/2" REBAR IRON PIN AT THE JOINT CORNER OF ARTHUR AND CARRIE ABRAHAM, NOW OR FORMERLY, THENCE ALONG SAID ABRAHAM PROPERTY S69-14-18E 103.81 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF JAMES ABRAHAM, NOW OR FORMERLY, THENCE ALONG SAID ABRAHAM PROPERTY S69-16-09E 233.10 FEET TO A POINT IN THE CENTER OF OLD SUDLOW LAKE ROAD (S-2-1760), CROSSING

OVER AN OLD 1" OPEN TOP IRON PIN AT 211.81 FEET, THENCE DOWN THE CENTER OF SAID OLD SUDLOW LAKE ROAD THE FOLLOWING METES AND BOUNDS TO WIT: S12-12-35W, 1347.60 FEET TO A POINT, THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 1914.63 FEET AND A CHORD OF S18-59-41W 496.18 FEET TO A POINT, THENCE S28-39-51W 626.68 FEET TO A POINT, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 1147.18 FEET AND A CHORD OF S18-21-21W 492.20 FEET TO A POINT, THENCE S03-29-39W 299.73 FEET TO A POINT IN THE CENTER OF THE BRIDGE OVER ELLEN HAWKINS BRANCH AT THE JOINT CORNER OF HENRY & ELIZABETH THOMPSON, NOW OR FORMERLY, THENCE ALONG SAID THOMPSON PROPERTY AND ALONG A TRAVERSE LINE OF ELLEN HAWKINS BRANCH WITH THE CREEK AS THE LINE, S73-12-28E 62.28 FEET TO A POINT, CROSSING OVER AN OLD 1/2" REBAR IRON PIN AT 34.12 FEET, THENCE N68-08-02E 91.23 FEET TO A POINT, THENCE S78-09-25E 129.79 FEET TO A POINT, THENCE S66-12-17E 99.09 FEET TO A POINT IN THE PROPERTY LINE OF PRINCE A. WARE, NOW OR FORMERLY, THENCE ALONG SAID WARE PROPERTY S17-40-41W 92.25 FEET TO AN OLD AXLE, THENCE CONTINUING ALONG SAID WARE PROPERTY AND PROPERTY OF PRINCE A. WARE & SARAH REEVES, NOW OR FORMERLY, S71-09-56E 441.83 FEET TO A POINT AT THE JOINT CORNER OF HERMAN JACKSON, ETAL, NOW OR FORMERLY, THENCE ALONG SAID JACKSON PROPERTY S73-38-36E 159.38 FEET TO AN OLD FENCE POST AT THE JOINT CORNER OF JAMES & MARY WARE, NOW OR FORMERLY, THENCE ALONG SAID WARE PROPERTY S71-31-21E 135.07 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF JUANITA HAZEL BUTLER, NOW OR FORMERLY, THENCE ALONG SAID BUTLER PROPERTY S70-27-29E 148.62 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF JAMES & MARY WARE, NOW OR FORMERLY, THENCE ALONG SAID WARE PROPERTY S73-10-02E 214.86 FEET TO A POINT IN ELLEN HAWKINS BRANCH AT THE JOINT CORNER OF JOHN & RUTH MORRIS, NOW OR FORMERLY, THENCE ALONG SAID MORRIS PROPERTY S26-18-56W 504.22 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF DON & JUDITH KING, NOW OR FORMERLY, CROSSING OVER OTHER OLD 1" OPEN TOP IRON PINS AT 196.44 FEET AND 314.50 FEET, THENCE S26-19-26W, 913.36 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER JOYCE & JACK GREGORY, NOW OR FORMERLY, THENCE ALONG SAID GREGORY PROPERTY S30-30-02W 1830.42 FEET TO AN OLD 1/2" STEEL ROD, THENCE S30-29-15W, 260.32 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF JAMES & GWENDOLYN MCKINNEY, THENCE ALONG SAID MCKINNEY PROPERTY AND THE WESTERN RIGHT OF WAY OF PATRICIA DRIVE S19-54-10W 1098.80 FEET TO AN OLD CONCRETE MONUMENT, THENCE CONTINUING ALONG THE SAID WESTERN RIGHT OF WAY S19-56-17W 379.71 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF LOT 4, BLOCK K, BELCLEAR HEIGHTS, THENCE ALONG SAID LOT 4 N 34-53-41 W 28.39 FEET TO THE JOINT CORNER OF MARK E. & DALE C. HETT PROPERTY, NOW OR FORMERLY, THENCE ALONG SAID HETT PROPERTY AND OTHER PROPERTY OF HETT, NOW OR FORMERLY, PROPERTIES OF SAM B. & REBECCA A. CHEELY, NOW OR FORMERLY, PROPERTY OF JOHN L. CRESO, NOW OR FORMERLY, PROPERTIES OF JAMES B. & VICKI REESE, NOW OR FORMERLY, PROPERTY OF NORA D. S. NORRIS, NOW OR FORMERLY, AND PROPERTY OF

MICHAEL & BEVERLY SEAY, NOW OR FORMERLY N38-46-20W, 2333.95 FEET TO AN OLD 1" OPEN TOP IRON PIN (BENT) AT THE JOINT CORNER OF SAID SEAY PROPERTY, CROSSING OVER AN OLD 5/8" REBAR IRON PIN AT 1757.56 FEET, THENCE CONTINUING ALONG SAID SEAY PROPERTY AND ALSO ALONG THE LINE OF PROPERTY OF JOHN B. CHRISTIAN, SR., NOW OR FORMERLY, AND PROPERTIES OF W. B. COOPER, NOW OR FORMERLY N 51-02-27 W 724.96 FEET TO A POINT ON THE LINE OF CLYDE OWENS PROPERTY, NOW OR FORMERLY; THENCE TURNING AND RUNNING ALONG THE LINE OF CLYDE OWENS PROPERTY AND ALSO ALONG THE LINE OF LOUIS OWENS PROPERTY, NOW OR FORMERLY, N 38-59-32 E 219.31 FEET TO AN OLD 1" OPEN TOP IRON PIN ON THE LINE OF DOUGLAS SWEARINGEN PROPERTY, NOW OR FORMERLY, THENCE TURNING AND RUNNING ALONG THE LINE OF THE SWEARINGEN PROPERTY S 33-08-42 E 137.75 FEET TO AN OLD CONC. MONUMENT BROKEN AT THE JOINT CORNER OF THE GEORGE G. BEASLEY PROPERTY NOW OR FORMERLY, THENCE TURNING AND RUNNING ALONG THE LINE OF THE BEASLEY PROPERTY THE FOLLOWING METES AND BOUNDS: S 57-07-49 W 96.80 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 55-19-41 E 598.23 FEET TO A POINT IN A POWER POLE, THENCE S 34-59-02 E 640.13 FEET TO AN OLD 1/2" REBAR IRON PIN, THENCE N57-03-22E 1200.28 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N40-15-00W 1200.90 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N33-02-28W 437.51 FEET TO A POINT IN THE CENTER OF OLD SUDLOW LAKE ROAD, CROSSING OVER AN OLD 5/8" REBAR IRON PIN AT 404.77 FEET, THENCE ALONG THE CENTER OF SAID ROAD N56-02-55E 108.96 FEET TO A POINT, THENCE LEAVING THE CENTER OF SAID ROAD AND RUNNING ALONG PROPERTY OF JERRY DUNCAN, NOW OR FORMERLY, N19-18-00W 427.28 FEET TO AN OLD 3/4" CRIMP TOP IRON PIN, CROSSING OVER AN OLD 3/4" OPEN TOP IRON PIN AT 33.69 FEET, THENCE S57-36-26W 204.77 FEET TO AN OLD 1.25" OPEN TOP IRON PIN, THENCE S18-48-20E 400.86 FEET TO A NEW 5/8" REBAR IRON PIN ON THE WESTERN RIGHT OF WAY OF OLD SUDLOW LAKE ROAD, THENCE ALONG SAID WESTERN RIGHT OF WAY S56-38-53W 40.34 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF BERT & SHERRIE HAWKINS, NOW OR FORMERLY, THENCE ALONG SAID HAWKINS PROPERTY N18-44-55W 401.53 FEET TO AN OLD 1.25" OPEN TOP IRON PIN, THENCE S57-33-28W 199.89 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF ROBERT AND DIANNE HARRELL, NOW OR FORMERLY, THENCE ALONG SAID HARRELL PROPERTY S57-34-44W 199.89 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF SHIRLEY A. SMITH, NOW OR FORMERLY, THENCE ALONG SAID SMITH PROPERTY S57-34-38W 200.02 FEET TO AN OLD 1/2" OPEN TOP AT AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF RICHARD & SANDRA STUART, NOW OR FORMERLY, THENCE ALONG SAID STUART PROPERTY S57-34-07W, 294.71 FEET TO AN OLD 1.5" OPEN TOP IRON PIN AT THE JOINT CORNER OF ROGER D. ADERHOLDT, NOW OR FORMERLY, THENCE ALONG SAID ADERHOLDT PROPERTY, S57-35-03W 169.70 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE S60-33-30W 254.99 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT THE JOINT CORNER OF TERESA N. CHASE, NOW OR FORMERLY, THENCE ALONG SAID CHASE PROPERTY S60-37-02W 234.30 FEET TO AN OLD 3/4" OPEN TOP IRON PIN ON THE NORTHERN RIGHT OF WAY OF RIDGELAND ROAD,

THENCE CROSSING OVER RIDGELAND ROAD S60-25-43W 30.46 FEET TO AN OLD 3/4" CRIMP TOP IRON PIN AT THE JOINT CORNER OF JUDY B. HALL, NOW OR FORMERLY, THENCE ALONG SAID HALL PROPERTY AND THE SOUTHERN RIGHT OF WAY OF RIDGELAND ROAD, N17-08-49W 122.86 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE LEAVING SAID RIDGELAND ROAD AND CONTINUING ALONG SAID HALL PROPERTY S60-02-25W 367.65 FEET TO AN OLD 1.5" CRIMP TOP IRON PIN, THENCE S19-46-22E 121.79 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF T. WARREN GRIFFIN, NOW OR FORMERLY, THENCE ALONG SAID GRIFFIN PROPERTY AND PROPERTY OF MARCIA H. FOREMAN AND LARRY & TAMMY HENDRIX, NOW OR FORMERLY, S19-38-14E 443.32 FEET TO A POINT IN THE CENTER OF OLD SUDLOW LAKE ROAD, CROSSING OVER AN OLD 1/2" REBAR IRON PIN AT 409.77 FEET, THENCE ALONG SAID CENTERLINE AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 520.45 FEET AND A CHORD OF S86-40-21W 320.14 FEET TO A POINT, THENCE N74-08-52W 167.49 FEET TO A POINT, THENCE LEAVING SAID CENTERLINE AND RUNNING ALONG PROPERTY OF JAMES E. RAWL, SR, NOW OR FORMERLY, N41-26-23E 364.36 FEET TO AN OLD 5/8" REBAR IRON PIN, CROSSING OVER AN OLD 3/4" OPEN TOP IRON PIN AT 51.53 FEET, THENCE ALONG SAID RAWL PROPERTY AND PROPERTY OF DOUGLAS & ADA LOPER, NOW OR FORMERLY, N51-39-11W 515.86 FEET TO AN OLD 1" OPEN TOP IRON PIN, THENCE CONTINUING ALONG SAID LOPER PROPERTY, S46-29-01W 562.29 FEET TO A 5/8" REBAR IRON PIN SET ON THE NORTHERN RIGHT OF WAY OF CLEARWATER ROAD (S.C. HWY. 126) THENCE ALONG SAID NORTHERN RIGHT OF WAY N51-11-46W 181.08 FEET TO A 5/8" REBAR IRON PIN SET THE JOINT CORNER OF CECIL T. LASTER, NOW OR FORMERLY, THENCE ALONG SAID LASTER PROPERTY N38-57-26E 1029.95 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE N51-24-16W 208.78 FEET TO AN OLD 5/8" REBAR IRON PIN AT THE JOINT CORNER OF JAMES L. ROWLEY, NOW OR FORMERLY, THENCE ALONG SAID ROWLEY PROPERTY N49-52-12W 202.58 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF CAROLYN D. ROWLEY, NOW OR FORMERLY, THENCE ALONG SAID ROWLEY PROPERTY N52-59-14W 218.41 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF ANDREW & ANNE MARTIN, NOW OR FORMERLY, THENCE ALONG SAID MARTIN PROPERTY N51-02-01W 210.36 FEET TO AN OLD CONCRETE MONUMENT, THENCE N49-27-28W 220.65 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE S38-29-39W 855.33 FEET TO A 5/8" REBAR IRON PIN SET ON THE NORTHERN RIGHT OF WAY OF CLEARWATER ROAD (S.C. HWY. 126) AND THE NEW RIGHT OF WAY OF I-520 (PALMETTO PARKWAY) THENCE ALONG SAID NEW RIGHT OF WAY N46-17-55W 92.13 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF THE KELLOGG CORPORATION, NOW OR FORMERLY, THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG SAID KELLOGG PROPERTY N35-15-13E 1043.58 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N11-21-01W 874.34 FEET TO AN OLD 1" CRIMP TOP IRON PIN, THENCE N39-32-09W 896.27 FEET TO A NEW 5/8" REBAR IRON PIN LOCATED ON THE EASTERN RIGHT OF WAY OF I-520 (PALMETTO PARKWAY), THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY AND ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10390.01 FEET AND A CHORD BEARING AND DISTANCE OF N03-56-49W 589.86 FEET TO A 5/8" REBAR IRON PIN SET, THENCE STILL ALONG SAID RIGHT OF WAY

THE FOLLOWING COURSES AND DISTANCES N17-33-54W 681.96 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N19-04-01W 976.97 FEET TO A 5/8" REBAR IRON PIN SET, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10150.00 FEET AND A CHORD BEARING AND DISTANCE OF N16-27-36W 608.91 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N11-14-13W 514.81 FEET TO A 5/8" REBAR IRON PIN SET, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10225.00 FEET AND A CHORD BEARING AND DISTANCE OF N21-53-24W 302.08 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N19-48-00W 1404.69 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N27-13-48E 348.31 FEET TO A 5/8" REBAR IRON PIN SET, THENCE S73-33-10E 111.00 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N16-32-01E 99.56 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N73-27-59W 98.10 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N08-17-50E 407.78 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N06-11-29W 624.52 FEET TO A 5/8" REBAR IRON PIN SET, THENCE S83-48-31W 95.51 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N87-30-54W 311.57 FEET TO A 5/8" REBAR IRON PIN SET, THENCE S88-14-18W 142.43 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N03-19-13E 571.33 FEET TO A 5/8" REBAR IRON PIN SET, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10387.74 FEET AND A CHORD BEARING AND DISTANCE OF N03-30-33W 293.11 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N07-45-03W 695.80 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF C. T. HARRIS, INC. PROPERTY NOW OR FORMERLY, THENCE TURNING AND LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE LINE OF C. T. HARRIS, INC. PROPERTY N56-04-55E 156.60 FEET TO AN OLD 1/2" REBAR IRON PIN BENT, THENCE TURNING AND RUNNING N21-24-02W 351.33 FEET TO A 5/8" REBAR IRON PIN SET LOCATED ON THE EASTERN RIGHT OF WAY OF I-520 (PALMETTO PARKWAY), THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY AND ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 10320.36 FEET AND A CHORD BEARING AND DISTANCE OF N03-58-20E 169.79 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA AND DESCRIBED AS A UTILITY SITE, CONSISTING OF 5,576 SQ.FT. OR 0.13 ACRES, AS SHOWN ON A SURVEY PREPARED FOR THE CITY OF NORTH AUGUSTA BY B.P. BARBER & ASSOCIATES, INC., DATED NOVEMBER 30, 2001, REVISED MARCH 28, 2006, AS RECORDED IN THE OFFICE OF THE ROD FOR AIKEN COUNTY, SC IN PLAT BOOK 54 AT PAGE 435.

TRACT 2:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND SITUATE, LYING AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, CONTAINING 20.668 ACRES ACCORDING TO AN "ALTA/ACSM LAND TITLE SURVEY FOR SPRINGS NORTH AUGUSTA, LLC.", DATED JUNE 6, 2005, LAST REVISED 10/22/09 BY SITE DESIGN, INC. WITH THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT A 5/8" REBAR IRON PIN SET LOCATED ON THE WESTERN RIGHT OF WAY INTERSTATE I-520 (PALMETTO PARKWAY) AT THE JOINT CORNER OF JOHN L. & LARRY MURRAY, SAID IRON PIN BEING 711.1 FEET +/- SOUTH OF THE INTERSECTION OF THE SOUTHERN RIGHT OF WAY OF ASCAUGA LAKE ROAD; THENCE RUNNING ALONG SAID WESTERN RIGHT OF WAY AND ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10637.41 FEET, AN ARC LENGTH OF 1274.52 FEET AND A CHORD BEARING AND DISTANCE OF S 03-41-38 E 1273.76 FEET TO A 5/8" REBAR IRON PIN SET; THENCE TURNING AND RUNNING ALONG A NORTHERN RIGHT OF WAY FOR SAID INTERSTATE I-520 THE FOLLOWING COURSES AND DISTANCES: S 83-48-32 W 156.16 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 658.83 FEET, AN ARC LENGTH OF 127.61 FEET AND A CHORD BEARING AND DISTANCE OF S 89-21-28 W 127.41 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 66-29-10 W 94.73 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 708.83 FEET, AN ARC LENGTH OF 295.27 FEET AND A CHORD BEARING AND DISTANCE OF N 66-24-34 W 293.14 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 535-31-28 W 20.00 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 728.83 FEET, AN ARC LENGTH OF 73.51 FEET AND A CHORD BEARING AND DISTANCE OF N 51-35-10 W 73.48 FEET TO A 5/8" REBAR IRON PIN SET; THENCE N 48-41-48 W 310.79 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 41-18-12 W 50.00 FEET TO A 5/8" REBAR IRON PIN SET; THENCE N 48-41-48 W 249.64 FEET TO A 5/8" REBAR IRON PIN SET; THENCE TURNING AND RUNNING N 14-22-53 W 39.26 FEET TO A 5/8" REBAR IRON PIN SET ON THE EASTERN RIGHT OF WAY OF A FUTURE ROAD; THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY N 08-19-07 E 52.23 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 125.00 FEET AND A CHORD BEARING AND DISTANCE OF N 28-02-06 E 57.38 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF ADAMS BROS. PROPERTY, LLC, NOW OR FORMERLY; THENCE TURNING AND LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE LINE OF SAID ADAMS BROS. PROPERTY, LLC PROPERTY AND ALSO ALONG THE LINE OF JOHN L. MURRAY, JR. PROPERTY, NOW OR FORMERLY N 56-14-07 E 575.54 FEET TO AN OLD CONC. MONUMENT AT THE JOINT CORNER OF JOHN L. & LARRY MURRAY PROPERTY, NOW OR FORMERLY; THENCE TURNING AND RUNNING ALONG THE LINE OF SAID MURRAY PROPERTY N 55-49-56 E 615.83 FEET TO AN OLD 1" OPEN TOP IRON PIN; THENCE TURNING AND RUNNING N 55-48-56 E 77.99 FEET TO THE POINT OF BEGINNING.

TRACT 3:

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, LYING, SITUATE, AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, CONTAINING 92.977 ACRES ACCORDING TO AN "ALTA/ACSM LAND TITLE SURVEY FOR SPRINGS NORTH, AUGUSTA, LLC," DATED JUNE 6, 2005, LAST REVISED 10/22/09 BY SITE DESIGN, INC. WITH THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT AN OLD 2" OPEN TOP IRON PIN ON THE EASTERN RIGHT OF WAY OF U.S. HWY 25 AT THE JOINT CORNER OF RAYMOND D. TIMMERMAN, NOW OR FORMERLY, SAID OLD IRON PIN ALSO BEING S 04-09-10 W 139.98 FEET FROM THE CL-CL INTERSECTION OF US HWY. 25 AND PINECREST ROAD; THENCE ALONG SAID EASTERN RIGHT OF WAY AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 2242.40 FEET AND A CHORD OF N 27-18-37 E 729.67 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT THE JOINT CORNER OF HAROLD R. & BETTY J. HAMMETT, NOW OR FORMERLY, THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE JOINT PROPERTY LINE OF SAID HAMMETT PROPERTY, S67-22-37E, 171.64 FEET TO AN OLD 3/4" CRIMP TOP IRON PIN, THENCE N16-04-42E, 154.34 FEET TO AN OLD RAILROAD SPIKE IN THE CENTER OF AN OLD ROAD BED IN THE PROPERTY LINE OF REBECCA BENNETT, NOW OR FORMERLY, THENCE ALONG SAID BENNETT PROPERTY AND OTHER PROPERTY OF JOE O. EDWINS, NOW OR FORMERLY, N87-24-20E, 769.54 FEET TO AN OLD 5/8" REBAR IRON PIN AT THE JOINT CORNER OF JOE O. EDWINS, ETAL, NOW OR FORMERLY, THENCE ALONG SAID EDWINS PROPERTY N87-47-14E 604.21 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N14-23-00W 424.51 FEET TO A 5/8" REBAR IRON PIN SET ON THE SOUTHERN RIGHT OF WAY OF INTERSTATE I-520 (PALMETTO PARKWAY), THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES AND DISTANCES: S 39-47-08 E 386.70 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1013.83 FEET, AN ARC LENGTH OF 401.07 FEET AND A CHORD BEARING AND DISTANCE OF S 64-21-50 E 398.46 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 43-53-58 E 83.67 FEET TO A 5/8" REBAR IRON PIN SET ALONG THE WESTERN RIGHT OF WAY OF INTERSTATE I-520 (PALMETTO PARKWAY); THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES AND DISTANCES: S 11-17-10 E 559.05 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 903.94 FEET, AN ARC LENGTH OF 147.91 FEET AND A CHORD BEARING AND DISTANCE OF S 35-15-20 E 147.74 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 30-12-00 E 605.96 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING RADIUS OF 1142.39 FEET, AN ARC LENGTH OF 438.65 FEET AND A CHORD BEARING AND DISTANCE OF S 28-48-59 E 435.96 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 27-45-14 E 542.17 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF THE KELLOGG CORP. PROPERTY, NOW OR FORMERLY; THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE LINE OF SAID KELLOGG CORP. PROPERTY THE FOLLOWING COURSES AND DISTANCES: N 45-17-36 W 105.06 FEET TO AN OLD 1" CRIMP TOP IRON PIN; THENCE N49-46-06W 323.72 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N 69-45-14 W 394.95 FEET TO AN OLD 1" CRIMP TOP IRON PIN, THENCE N80-18-31W 280.13 FEET TO AN OLD 1" CRIMP TOP IRON PIN, THENCE S74-44-03W 804.31 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N73-34-29W 614.60 FEET TO AN OLD 1/2" STEEL ROD, THENCE N69-37-51W 302.01 FEET TO A POINT IN THE PROPERTY LINE OF LOT 1, BLOCK D, BONNIE GLEN SUBDIVISION, CROSSING OVER AN OLD 5/8" REBAR IRON PIN AT 299.20 FEET, THENCE ALONG SAID LOT 1, N17-32-47E 29.89 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE

JOINT CORNER OF LOT 2, BLOCK D, BONNIE GLEN SUBDIVISION, THENCE ALONG SAID LOT 2, N17-34-15E 95.25 FEET TO AN OLD 1" CRIMP TOP IRON PIN AT THE JOINT CORNER OF LOT 3, BLOCK D, BONNIE GLEN SUBDIVISION, THENCE ALONG SAID LOT 3, N17-43-51E 94.69 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LEWIS BLACK, NOW OR FORMERLY, THENCE ALONG SAID BLACK PROPERTY, N17-31-29E 188.40 FEET TO AN OLD 1.25" CRIMP TOP IRON PIN AT THE JOINT CORNER OF BRUCE GARDNER PROPERTY, NOW OR FORMERLY, THENCE ALONG SAID GARDNER PROPERTY AND PROPERTY OF RAYMOND D. TIMMERMAN, NOW OR FORMERLY, N18-00-18E 199.02 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N74-36-16W 222.22 FEET TO AN OLD 2" CRIMP TOP IRON PIN, THENCE N74-46-29W 294.15 FEET TO AN OLD 1.25" OPEN TOP IRON PIN, THENCE N74-48-47W 517.65 FEET TO THE POINT OF BEGINNING.

Exhibit B

PERMITTED ENCUMBRANCES

FEE SIMPLE PROPERTY

1. The Lien for ad valorem taxes on the Land so long as such taxes are not delinquent.
2. Liens or security interests securing indebtedness owed to Mortgagee.

Exhibit B

Exhibit C

LOAN DOCUMENTS

[TO BE INSERTED]

Exhibit C

Exhibit D

PENDING LITIGATION

NONE.

NOVEMBER 16, 2010 AMENDMENT TO LOAN AGREEMENT

THIS NOVEMBER 16, 2010 AMENDMENT TO LOAN AGREEMENT (the "Amendment to Loan Agreement"), made and entered into effective November 16, 2010 by and between HARRY P. SAKELLARIS, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED THE 15th DAY OF JULY, 2001 (hereinafter referred to as "Lender") whose address is C/O Clement & Wheatley, P. O. Box 8200, Danville VA 24543-8200; SPRINGS NORTH AUGUSTA, LLC, a South Carolina limited liability company (hereinafter referred to as "Borrower"), whose address is 133 Joe Bernat Drive, Greenwood, South Carolina 29649; and HERBERT ANDERSON, JR., HERBERT KEITH ANDERSON, A. BRUCE GREEN, WILLIAM OTHA BODIE, L. CLIFF REDD, REDD GREEN INVESTMENTS, LLC and ANDERSON NORTH AUGUSTA, LLC (hereinafter referred to collectively as "Guarantors").

WITNESSETH THAT:

WHEREAS, all the entities and individuals other than the trustee did enter into that certain Loan Agreement dated November 18, 2009 with D. Richard Crumpler, the predecessor to Harry P. Sakellaris as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001, and

WHEREAS, the parties have agreed to amend the Loan Agreement as hereinafter set forth, and

WHEREAS, Harry P. Sakellaris has succeeded D. Richard Crumpler as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001, and

WHEREAS, the parties desire to reduce their agreements regarding the amendment to writing,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for and in consideration of the mutual covenants and agreements hereinafter carefully set forth, the parties hereto do agree that the Loan Agreement is hereby amended as follows:

1. References to the "Lender" in the Loan Agreement shall mean "Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001".

2. Section 2.1 of the Loan Agreement is hereby amended, so that, as amended, the same shall read as follows:

"2.1 General Terms of the Loan. Relying upon the representations and warranties and the agreements and covenants contained below, and subject to the terms of this Agreement, Lender shall loan the aggregate total principal amount of up to Eight Million Seven Hundred Twenty-Eight Thousand Five Hundred and No/100 (\$8,728,500.00) Dollars (hereinafter referred to as the "Loan"), which is evidenced by the Note."

3. For and in consideration of the transfer to Lender of an additional five percent (5%) ownership interest in Borrower, Section 2.2 of the Loan Agreement is hereby amended so that, as amended, the same shall read as follows:

"2.2 The Note. The Loan shall be evidenced by and bear interest as provided in the Note, as modified effective November 16, 2010, the terms of which are incorporated by reference into this Agreement. The Loan shall be repaid in accordance with the terms of this Agreement and the Note. In the event of any conflict between the terms and provisions of this Agreement and those of the Note, the terms and provisions of the Note shall apply."

4. Prior to the amendment of Section 2.2 of the Loan Agreement which amendment is set forth in Section 3 above of this Amendment to Loan Agreement, Borrower was required by Section 2.2 of the Loan Agreement to reduce the original principal balance of the Note by \$990,000.00 on or before November 16, 2010. Borrower failed to make any reduction of the original principal balance of the Note on or before November 16, 2010. For and in consideration of the deferral (from November 16, 2010 until November 16, 2011) by Lender of the obligation to so reduce the principal balance, Lender, effective the date hereof, will receive an additional five percent (5%) ownership interest in Borrower.

5. Borrower acknowledges and agrees that all the terms, conditions and provisions of the Loan Documents (as that term is defined in the Loan Agreement) continue in full force and effect and remain unaffected and unchanged, except as otherwise expressly set forth in this Amendment to Loan Agreement or except as expressly set forth in other modifications to the Loan Documents executed effective November 16, 2010. This Amendment to Loan Agreement is not intended to and shall not be construed to constitute a novation of any or all of the Loan Documents, nor is it intended to create or constitute a release or relinquishment of, and shall not affect, the liens, security interests and rights under the Loan Documents, all of which are ratified, confirmed, renewed and extended in all respects. Borrower reaffirms to Lender each of the representations, warranties, covenants and agreements of the Borrower set forth in the Loan Agreement and the other Loan Documents with the same force and effect as if each were separately stated herein and made as of the date hereof. Borrower reaffirms to Lender the contents set forth in each of the exhibits to the Loan Agreement with the same force and effect as if each were separately attached hereto effective the date hereof.

6. Borrower confirms, acknowledges and stipulates that the Mortgage is and shall remain in full force and effect and that all of the Loan Collateral (at that term is defined in the Loan Agreement) securing the Loan, including, without limitation, all real and personal property,

improvements, rents, profits, plans, escrows, reserves, entitlements and development rights appurtenant to the Fee Simple Property (at that term is defined in the Loan Agreement), secures and shall continue to secure the Loan with valid liens and security interests. Borrower has not taken any action that would cause the interruption, cessation or other lapse of the aforesaid security interests in the Loan Collateral or loss of priority for said Loan Collateral; it being specifically understood and agreed that this Amendment to Loan Agreement shall constitute and be, among other things, an acknowledgement and continuation of the rights, remedies, lien and security interest in favor of Lender, and of the obligations of Borrower to Lender, which exist under the Loan Documents.

7. Effective the date of execution of the Amendment to Loan Agreement, Borrower confirms, acknowledges and stipulates that it has no defenses, counterclaims, offsets, cross-complaints, causes of action, rights, claims or demands of any kind or nature whatsoever, including without limitation, any usury or lender-liability claims or defenses, arising out of the Loan, any Loan Documents, the Loan Collateral, or any past or present relationship between or among Borrower, Guarantors, Lender, or any of their respective past, present and/or future parent, subsidiary and affiliated entities, and their successors, heirs and assigns, that can be asserted either to reduce or eliminate all or any part of Borrower's liability for the Loan, Guarantors' liability under the Guaranty Agreements (at that term is defined in the Loan Agreement), or to seek affirmative relief or damages of any kind or nature from Lender. Borrower further acknowledges that to the extent that any such claim should in fact exist, including without limitation, any usury or lender-liability claim, it is being fully, finally and irrevocably released by Borrower in this Section 7 of this Amendment to Loan Agreement.

8. In addition to the provisions of Section 9.16 of the Loan Agreement, Borrower agrees to release and indemnify Lender and hold Lender harmless for any and all claims or causes of action that may arise in connection with the consummation of the transactions contemplated by this Amendment to Agreement, including, without limitation, the transfer to Lender of an additional five percent (5%) ownership interest in Borrower. Borrower, for itself, and for each of its successors and assigns, releases and waives all claims and/or defenses they now or hereafter may have against Lender and its successors and assigns on account of any occurrence relating to the Loan, the Loan Documents and/or the Loan Collateral which accrued prior to the date of execution of this Amendment to Loan Agreement. This release and waiver shall be effective as of the date of execution of this Agreement and shall be binding upon Borrower, its successors and assigns, and shall inure to the benefit of Lender. As used in this Section 8, the term "Lender" shall include, but shall not be limited to, each of Lender's present and former trustees, its trustor, and its trust beneficiaries.

9. Section 9.7 of the Loan Agreement is amended to correct the address of Lender as follows:

The address of Lender is:

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr. Irrevocable Family Trust

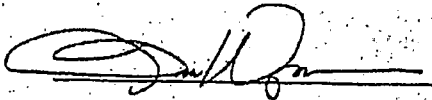
dated the 15th Day of July, 2001
C/O Clement & Wheatley
Post Office Box 8200
Danville, VA 24543-8200

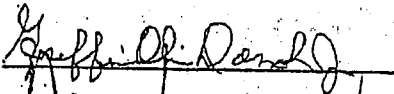
With a copy to:

Thompson & Henry, PA
1314 Professional Drive (29577)
Post Office Box 1290
Myrtle Beach, SC 29578
Attn: Clay D. Brittain, III
Fax Number: 843 692-0918

IN WITNESS WHEREOF this NOVEMBER 16, 2010 AMENDMENT TO LOAN
AGREEMENT has been executed under seal this ___ day of May, 2011 to be effective as of
November 16, 2010.

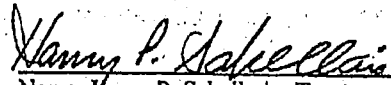
WITNESSES:


Beth C. Keese


Griffith D. Dandridge

LENDER:

HARRY P. SAKELLARIS, AS TRUSTEE
OF THE GEORGE B. BUCHANAN, JR.,
IRREVOCABLE FAMILY TRUST, DATED
THE 15TH DAY OF JULY, 2001

 (SEAL)
Name: Harry P. Sakellaris, Trustee

BORROWER:

SPRINGS NORTH AUGUSTA, LLC, a
South Carolina limited liability company

 (SEAL)
By: Keith Anderson
Its: Manager

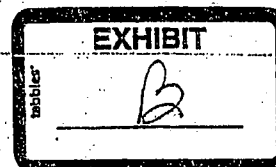
PROMISSORY NOTE

\$7,590,000.00

Aiken County, South Carolina
November 18, 2009

FOR VALUE RECEIVED, SPRINGS NORTH AUGUSTA, LLC, a South Carolina limited liability company (hereinafter referred to as "Borrower"), whose address is 133 Joe Bernat Drive, Greenwood, South Carolina 29649, hereby promises to pay to the order of D. RICHARD CRUMPLER, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED THE 15TH DAY OF JULY, 2001 (hereinafter referred to as "Lender"), whose address is 4728 Jenn Drive, Myrtle Beach, SC 29577 (hereinafter referred to as "Lender"), or such other place or places that may be hereafter designated by Lender, the principal sum of SEVEN MILLION FIVE HUNDRED NINETY THOUSAND AND NO/100 (\$7,590,000.00) DOLLARS, together with interest on the unpaid principal balance which is outstanding from time to time at the fixed rate of fifteen and No/100 percent (15.0%) per annum, computed and charged as set forth herein below. The original principal amount of this Note includes an initial loan from Lender to Borrower of Six Million Six Hundred Thousand and No/100 (\$6,600,000.00) Dollars, plus Nine Hundred Ninety Thousand and No/100 Dollars of capitalized interest, constituting one year's interest on the initial loan at the rate of fifteen and No/100 percent (15.0%) per annum. As of the date of this Note, all of such capitalized interest is fully earned and nonrefundable notwithstanding any prepayment of this Note, in whole or in part.

1. Repayment Terms. THE ENTIRE UNPAID PRINCIPAL BALANCE OF THIS NOTE, TOGETHER WITH ALL ACCRUED AND UNPAID INTEREST SHALL



BE DUE AND PAYABLE IN FULL ON NOVEMBER 16, 2010 (hereinafter referred to as the "Initial Maturity Date"). Notwithstanding the foregoing, the Borrower, in the Borrower's discretion, shall have the right to extend the term of this Note by an additional twelve (12) month period by delivering written notice of Borrower's intent to exercise such extension to Lender prior to the Initial Maturity Date. In the event that Borrower elects to exercise such extension, this Note and the Loan Documents shall be modified to: (a) increase the principal balance due by an amount equal to fifteen and No/100 percent (15.0%) of the then outstanding balance due to Lender hereunder; and (b) extend the Initial Maturity Date to November 16, 2011 (hereinafter referred to as the "Final Maturity Date"). Such additional principal added to the balance of this Note shall constitute capitalized interest for the second year of the term of this Note. Such additional capitalized interest shall be fully earned and nonrefundable as of November 17, 2010, notwithstanding any prepayment of this Note, in whole or in part.

2. Application of Payment. All payments on this Note shall be applied, first to accrued interest, then to fees, then to principal due and then to late charges. Any remaining funds shall be applied to the further reduction of principal. Notwithstanding the foregoing, upon the occurrence of an Event of Default hereunder, payments shall be applied as determined by Lender in its sole discretion.

3. Prepayment. Borrowers may prepay all or any portion of this Note at any time without prepayment compensation; provided, however, that no portion of the capitalized interest constituting a part of the principal balance of this Note shall be reduced, refunded or

otherwise discounted. Any prepayment shall be applied in the manner provided in the foregoing section.

4. Interest After Default. Any past due payments, whether of principal or interest, shall bear interest at the rate or rates herein set out until paid, except that after this Note shall become due, whether by acceleration, maturity or otherwise, this Note shall bear interest at the rate of fifteen and No/100 percent (15.0%) per annum (hereinafter referred to as the "Default Rate"). The Default Rate shall apply whether before or after any judgment hereon.

5. Loan Agreement and Collateral. This Note is made pursuant to the Loan Agreement of even date herewith (said Loan Agreement, together with all amendments, supplements, modifications and replacements thereof hereinafter referred to as the "Loan Agreement") between Lender, Borrower, and Herbert Anderson, Jr., Herbert Keith Anderson, A. Bruce Green, William Otha Bodie L. Cliff Redd, Redd Green Investments, LLC and Anderson North Augusta, LLC hereinafter collectively referred to as the "Guarantors" and is secured, inter alia, by the loan documents set forth in the Loan Agreement (said Loan Documents, together with all amendments, supplements, modifications and replacements thereof hereinafter referred to collectively as the "Loan Documents"). The terms and conditions of the Loan Documents, together with the terms and conditions contained in the Loan Agreement, shall be considered a part hereof to the same extent as if written herein.

6. Events of Default; Acceleration. The following shall constitute defaults or events of default hereunder (hereinafter referred to collectively as "Events of Default" and each an "Event of Default"): (a) Failure by Borrower to pay any payment of principal or

interest required to be paid by this Note when due; or (b) Failure by Borrower, or any other party to keep, perform or observe any other agreement, covenant, or condition contained herein or in the Loan Documents or in the Loan Agreement. The remaining unpaid principal of this Note and all accrued and unpaid interest thereon shall immediately become due and payable, at the option of the holder hereof, upon the occurrence of an Event of Default. Lender shall be entitled to recover all expenses, including reasonable attorneys' fees and expenses of legal counsel, incurred by Lender in any way arising from or relating to the enforcement or attempted enforcement of this Note, the Loan Documents, and any collateral document or other document and the collection or attempted collection, whether by litigation or otherwise, of this Note.

7. Governing Law; Changes. This Note may not be changed orally and shall be governed by and construed in accordance with the laws of the State of South Carolina without regard to principles of conflict of laws.

8. Jurisdiction; Venue. Borrower (a) submits to personal jurisdiction in the State of South Carolina, the courts thereof and the United States District Courts sitting therein, for the enforcement of this Note, (b) waives any and all personal rights under the law of any jurisdiction to object on any basis (including, without limitation, inconvenience of forum) to jurisdiction or venue within the State of South Carolina for the purpose of litigation to enforce this Note, and (c) agrees that service of process may be made upon Borrower in any manner prescribed by applicable federal rules of civil procedure or by applicable local rules or laws of civil procedure for the giving of notice to Borrower. Nothing herein contained, however, shall prevent Lender from bringing any action or exercising any rights against any security and

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against Borrower directly, and against any assets of Borrower, within any other state or jurisdiction.

9. Payments Not to Violate Law. Nothing herein contained nor any transaction related thereto shall be construed or so operate as to require Borrower to pay interest at a rate greater than it is now lawful in such case to contract for under applicable law, or to make any payment or to do any act contrary to applicable law, and Lender shall reimburse Borrower for any interest paid in excess of the highest rate allowed by applicable law or any other payment which may inadvertently be required by Lender to be paid contrary to applicable law; and if any clauses or provisions herein contained operate or would prospectively operate to invalidate this Note or the Loan Documents in whole or in part, then such clauses and provisions only shall be held for naught, as though not herein contained, and the remainder of this Note and the Loan Documents shall remain operative and in full force and effect.

10. Controlling Document. To the extent that this Note conflicts with or is in any way incompatible with any other document related specifically to the loan evidenced by this Note, this Note shall control over any other such document, and if this Note does not address an issue, then each other such document shall control to the extent that it deals most specifically with an issue.

11. Miscellaneous. Borrower and all endorsers and sureties, if any, hereby waive presentment for payment, demand, protest, notice of nonpayment or dishonor and of protest, any and all other notices and demands whatsoever, and agree to remain bound under this Note until the principal and interest are paid in full, notwithstanding any extensions of time for payment which may be granted even though the period or periods of extension be indefinite

and notwithstanding any inaction by, or failure to assert any legal rights available to the holder of this Note. Borrower acknowledges that Lender may reproduce (by electronic means or otherwise) any of the documents evidencing and/or securing this Note and thereafter may destroy the original documents. Borrower does hereby agree that any document so reproduced shall be the binding obligation of Borrower enforceable and admissible in evidence against it to the same extent as if the original documents had not been destroyed.

12. Assignment. This Note, or any portions thereof, may be assigned by Lender, with or without recourse.

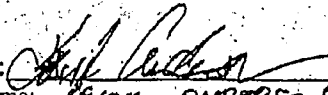
13. Binding Effect. This Note shall be binding upon and inure to the benefit of Borrower, Lender and their respective successors, assigns, heirs and personal representatives, provided, however, that no obligations of Borrower hereunder can be assigned without prior written consent of Lender.

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IN WITNESS WHEREOF, this Note has been executed under seal the day and year
first above written.

BORROWER:

SPRINGS NORTH AUGUSTA, LLC,
a South Carolina limited liability company

By: 

Name: KEITH ANDERSON

Its: MANAGER

[SEAL]

S-1

STATE OF SOUTH CAROLINA)
COUNTY OF AIKEN) NOVEMBER 16, 2010 MODIFICATION
TO PROMISSORY NOTE

THIS NOVEMBER 16, 2010 MODIFICATION TO PROMISSORY NOTE ("Modification") made and entered into by and between SPRINGS NORTH AUGUSTA, LLC, a South Carolina limited liability company (hereinafter referred to as "Borrower") and HARRY P. SAKELLARIS, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED THE 15TH DAY OF JULY, 2001 (hereinafter referred to as "Lender")

WITNESSETH THAT:

WHEREAS, by Promissory Note ("Note") in writing dated November 18, 2009, the Borrower did promise to pay to the order of the Lender the sum of Seven Million Five Hundred Ninety Thousand and 00/100 (\$7,590,000.00) Dollars, which sum included \$990,000.00 representing one year's interest on the original principal sum of Six Million Six Hundred Thousand and 00/100 (\$6,600,000.00) Dollars, said interest being capitalized and due on November 16, 2010 (the "Initial Maturity Date"), and

WHEREAS, the Note contained the following provision:

Notwithstanding the foregoing, the Borrower, in the Borrower's discretion, shall have the right to extend the term of this Note by an additional twelve (12) month period by delivering written notice of Borrower's intent to exercise such extension to Lender prior to the Initial Maturity Date. In the event that Borrower elects to exercise such extension, this Note and the Loan Documents shall be modified to: (a) increase the principal balance due by an amount equal to fifteen and No/100 percent (15.0%) of the then outstanding balance due to Lender hereunder; and (b) extend the Initial Maturity Date to November 16, 2011 (hereinafter referred to as the "Final Maturity Date"). Such additional principal added to the balance of this Note shall constitute capitalized interest for the second year of the term of this Note. Such additional capitalized interest shall be fully earned and nonrefundable as of November 17, 2010, notwithstanding any prepayment of this Note, in whole or in part ... and

WHEREAS, Borrower has given the notice permitted by the Note to extend the term of the Note as provided in the language quoted above, and

WHEREAS, the parties hereto do wish to reduce their agreements regarding the extension to writing,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that for an in consideration of the mutual covenants and conditions hereinafter carefully set forth, and in further consideration of transfer by some of the members of Borrower of additional membership interests in Borrower to Lender, the parties hereto have agreed as follows:

1. The principal balance now due under the Note is Eight Million Seven Hundred Twenty-Eight Thousand Five Hundred and 00/100 (\$8,728,500.00) Dollars (the "Final Principal Balance"), which sum includes the initial principal balance of \$7,590,000.00, plus \$1,138,500.00 in interest, which interest has been capitalized and added to the initial principal balance effective the date hereof. The interest capitalized effective the date hereof constitutes the interest due under the Note from November 17, 2010 through November 16, 2011. The Final Principal Balance of the Note shall be due and payable in full on November 16, 2011, which is the "Final Maturity Date" as that term is used in the Note. All capitalized interest is deemed fully earned and non-refundable as of November 17, 2010, notwithstanding any prepayment of this Note, as modified, in whole or in part. If Final Principal Balance is not paid in full on or before November 16, 2011, then, from that date forward, this Note shall be in Default, the holder hereof shall be entitled all remedies available to the holder, and the Final Principal Balance shall bear interest at the Default Rate from the Final Maturity Date until the Final Principal Balance has been paid in full.

2. All references to "Lender" as "D. Richard Crumpler, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th day Of July, 2001" are changed to "Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th day Of July, 2001." The address of the "Lender" is changed from 4728 Jenn Drive, Myrtle Beach, SC to C/O Clement & Wheatley, Post Office Box 8200, Danville, VA 24543-8200.

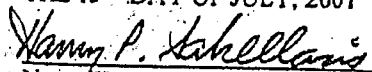
3. Except as herein provided, the terms, conditions and provisions of the Note shall remain unchanged.

IN WITNESS WHEREOF this NOVEMBER 16, 2010 MODIFICATION TO PROMISSORY NOTE has been executed under seal on the day and year first above written.

WITNESSES:

LENDER:

HARRY P. SAKELLARIS, AS TRUSTEE
OF THE GEORGE B. BUCHANAN, JR.,
IRREVOCABLE FAMILY TRUST, DATED
THE 15TH DAY OF JULY, 2001

 (SEAL)
Name: Harry P. Sakellaris, Trustee


Beth C. Keese

Shirley D. Dantz
Shirley D. Dantz

BORROWER:

SPRINGS NORTH AUGUSTA, LLC, a
South Carolina limited liability company

H. Keith Anderson (SEAL)
By: H. Keith Anderson
Its: Manager

5483.003\Modification to Promissory Note (final)

Redd Green Investments, LLC
Anderson North Augusta, LLC

GUARANTY AGREEMENT

November 18, 2009

Dear Sirs:

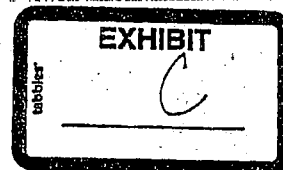
As an inducement to D. RICHARD CRUMPLER, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED THE 15TH DAY OF JULY, 2001 (hereinafter referred to as "Lender") to extend credit to and to otherwise deal with SPRINGS NORTH AUGUSTA, LLC, a South Carolina limited liability company (hereinafter referred to as "Borrower") and in consideration thereof, the undersigned (and each of the undersigned jointly and severally if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise), of Borrower at any time, now or hereafter, incurred with or held by Lender, together with interest, as and when the same become due and payable, whether by acceleration or otherwise, in accordance with the terms of any such notes, drafts, debts, obligations or liabilities or agreements evidencing any such indebtedness, obligation or liability including all renewals, extensions and modifications thereof. The obligation of the undersigned is a guarantee of payment and not of collection.

It is understood that any such notes, drafts, debts, obligations and liabilities may be accepted or created by or with Lender at any time and from time to time without notice to the undersigned, and the undersigned hereby expressly waives presentment, demand, protest, and notice of dishonor of any such notes, drafts, debts, obligations and liabilities or other evidences of any such indebtedness, obligation or liability.

Lender may receive and accept from time to time any securities or other property as a collateral to any such notes, drafts, debts, obligations and liabilities, and may surrender, compromise, exchange and release absolutely the same or any part thereof at any time with reasonable notice to the undersigned and without in any manner affecting the obligation and liability of the undersigned hereby created. The undersigned agrees that Lender shall have no obligation to protect, perfect, secure or insure any security interests, liens or encumbrances now or hereafter held for the indebtedness, obligations and liabilities for which this Guaranty is made.

This obligation and liability on the part of the undersigned shall be a primary, and not a secondary, obligation and liability, payable immediately upon demand without recourse first having been had by Lender against the Borrower or any other guarantor, person, firm or corporation, and without first resorting to any property held by Lender as collateral security; and the undersigned hereby waives the benefits of all provisions of law, for stay or delay of execution or sale of property or other satisfaction of judgment against the undersigned on account of obligation and liability hereunder until judgment be obtained therefor against the Borrower and execution thereon returned unsatisfied, or until it is shown that the Borrower has

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no property available for the satisfaction of the indebtedness, obligation or liability guaranteed hereby, or until any other proceedings can be had; and the undersigned further agrees that the undersigned is responsible for any obligation or debt, or portion thereof, of the Borrower to the Lender which has been paid by the Borrower to the Lender and which the Lender is subsequently required to return to the Borrower or a trustee for the Borrower in any bankruptcy or insolvency proceeding; and the undersigned further agrees that none of the undersigned shall have any right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of the Borrower to Lender unless and until all of the debts and obligations of the Borrower to Lender have been paid in full.

In the event that the undersigned shall advance or become obligated to pay any sums under this Guaranty or in the event that for any reason whatsoever Borrower or any subsequent owner of the Property or any part thereof is now, or shall hereafter become, indebted to the undersigned, the undersigned agree that (i) the amount of such sums and of such indebtedness and all interest thereon shall at all times be subordinate as to lien, the time of payment and in all other respects to all other sums, including principal and interest and other amounts, at any time owed to Lender under the Loan Documents, and (ii) the undersigned shall not be entitled to enforce or receive payment thereof until the debt owed to Lender has been indefeasibly paid in full. Nothing herein contained is intended or shall be construed to give the undersigned any right of subrogation in or under the Loan Documents or any right to participate in any way therein, or in the right, title or interest of Lender in or to any collateral for the Loan, notwithstanding any payments made by a Guarantor under this Guaranty, until the actual and irrevocable receipt by Lender of payment in full of all of the debt owed to it under or in connection with the Loan Documents. If any amount shall be paid to a Guarantor on account of such subrogation rights at any time when any such sums due and owing to Lender shall not have been fully paid, such amount shall be paid by the Guarantor to Lender for credit and application against such sums due and owing to Lender.

This Guaranty is unlimited and applies to all indebtedness of Borrower, whether now existing or hereafter arising.

This agreement shall inure to the benefit of Lender, its successors and assigns, and the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, and shall remain in force until a written notice revoking it has been received by Lender; but such revocation shall not release the undersigned from liability to Lender, its successors and assigns, or the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, for any indebtedness, obligation or liability of the Borrower which is hereby guaranteed and then in existence or from any renewals, extensions or modifications thereof in whole or in part, whether such renewals, extensions or modifications are made before or after such revocation, with or without notice to the undersigned. The undersigned waives presentment, demand, protest and notices of every kind and assents to any one or more extensions, modifications, renewals or postponements of the time or amount of payment or any other indulgences given to Borrower. The undersigned shall be responsible for and shall reimburse the Lender for all costs and expenses incurred by the Lender in connection with the enforcement of this Guaranty or the protection or preservation of any right or claim of the Lender in connection herewith, including without limitation costs and expenses incurred by the Lender in connection with its attempts to collect the indebtedness, obligations, and liabilities

guaranteed hereby. Cost and expenses shall include reasonable attorneys' fees.

If Borrower is a corporation or a limited liability company, this instrument covers all indebtedness, obligations and liabilities to Lender purporting to be made or undertaken on behalf of such entity by any such officer, manager or agent of said entity without regard to the actual authority of such officer, manager or agent. The term "corporation" and the term "limited liability company" shall include associations of all kinds and all purported corporations or limited liability company, whether correctly and legally chartered and organized.

This Guaranty is made in and shall be construed in accordance with the laws and judicial decisions of the State of South Carolina. The undersigned agrees that any dispute arising out of this Guaranty shall be adjudicated in either the state or federal courts of South Carolina and in no other forum. For that purpose, the undersigned hereby submits to the jurisdiction of the state and/or federal courts of South Carolina. The undersigned waives any defense that venue is not proper for any action brought in any federal or state court in the State of South Carolina.

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Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, GUARANTOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

Witness the signature and seal of each of the undersigned.

WITNESSES:

Stephanie J. Books
Witness #1

[Signature]
Witness #2

Stephanie J. Books
Witness #1

[Signature]
Witness #2

GUARANTORS:

REDD GREEN INVESTMENTS, LLC

[Signature] [L.S.]
By: E. Cliff Redd, its Member

ANDERSON NORTH AUGUSTA, LLC

[Signature] [L.S.]
By: Keith Anderson, its Member

GUARANTY AGREEMENT

November 18, 2009

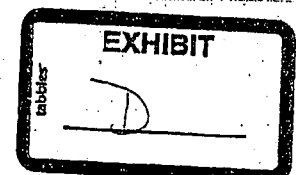
Dear Sirs:

As an inducement to D. RICHARD CRUMPLER, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED THE 15TH DAY OF JULY, 2001 (hereinafter referred to as "Lender") to extend credit to and to otherwise deal with SPRINGS NORTH AUGUSTA, LLC, a South Carolina limited liability company (hereinafter referred to as "Borrower") and in consideration thereof, the undersigned (and each of the undersigned jointly and severally if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise), of Borrower at any time, now or hereafter, incurred with or held by Lender, together with interest, as and when the same become due and payable, whether by acceleration or otherwise, in accordance with the terms of any such notes, drafts, debts, obligations or liabilities or agreements evidencing any such indebtedness, obligation or liability including all renewals, extensions and modifications thereof. The obligation of the undersigned is a guarantee of payment and not of collection.

It is understood that any such notes, drafts, debts, obligations and liabilities may be accepted or created by or with Lender at any time and from time to time without notice to the undersigned, and the undersigned hereby expressly waives presentment, demand, protest, and notice of dishonor of any such notes, drafts, debts, obligations and liabilities or other evidences of any such indebtedness, obligation or liability.

Lender may receive and accept from time to time any securities or other property as a collateral to any such notes, drafts, debts, obligations and liabilities, and may surrender, compromise, exchange and release absolutely the same or any part thereof at any time with reasonable notice to the undersigned and without in any manner affecting the obligation and liability of the undersigned hereby created. The undersigned agrees that Lender shall have no obligation to protect, perfect, secure or insure any security interests, liens or encumbrances now or hereafter held for the indebtedness, obligations and liabilities for which this Guaranty is made.

This obligation and liability on the part of the undersigned shall be a primary, and not a secondary, obligation and liability, payable immediately upon demand without recourse first having been had by Lender against the Borrower or any other guarantor, person, firm or corporation, and without first resorting to any property held by Lender as collateral security; and the undersigned hereby waives the benefits of all provisions of law, for stay or delay of execution or sale of property or other satisfaction of judgment against the undersigned on account of obligation and liability hereunder until judgment be obtained therefor against the Borrower and execution thereon returned unsatisfied, or until it is shown that the Borrower has no property available for the satisfaction of the indebtedness, obligation or liability guaranteed



hereby, or until any other proceedings can be had; and the undersigned further agrees that the undersigned is responsible for any obligation or debt, or portion thereof, of the Borrower to the Lender which has been paid by the Borrower to the Lender and which the Lender is subsequently required to return to the Borrower or a trustee for the Borrower in any bankruptcy or insolvency proceeding; and the undersigned further agrees that none of the undersigned shall have any right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of the Borrower to Lender unless and until all of the debts and obligations of the Borrower to Lender have been paid in full.

In the event that the undersigned shall advance or become obligated to pay any sums under this Guaranty or in the event that for any reason whatsoever Borrower or any subsequent owner of the Property or any part thereof is now, or shall hereafter become, indebted to the undersigned, the undersigned agree that (i) the amount of such sums and of such indebtedness and all interest thereon shall at all times be subordinate as to lien, the time of payment and in all other respects to all other sums, including principal and interest and other amounts, at any time owed to Lender under the Loan Documents, and (ii) the undersigned shall not be entitled to enforce or receive payment thereof until the debt owed to Lender has been indefeasibly paid in full. Nothing herein contained is intended or shall be construed to give the undersigned any right of subrogation in or under the Loan Documents or any right to participate in any way therein, or in the right, title or interest of Lender in or to any collateral for the Loan, notwithstanding any payments made by a Guarantor under this Guaranty, until the actual and irrevocable receipt by Lender of payment in full of all of the debt owed to it under or in connection with the Loan Documents. If any amount shall be paid to a Guarantor on account of such subrogation rights at any time when any such sums due and owing to Lender shall not have been fully paid, such amount shall be paid by the Guarantor to Lender for credit and application against such sums due and owing to Lender.

This Guaranty is unlimited and applies to all indebtedness of Borrower, whether now existing or hereafter arising.

This agreement shall inure to the benefit of Lender, its successors and assigns, and the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, and shall remain in force until a written notice revoking it has been received by Lender; but such revocation shall not release the undersigned from liability to Lender, its successors and assigns, or the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, for any indebtedness, obligation or liability of the Borrower which is hereby guaranteed and then in existence or from any renewals, extensions or modifications thereof in whole or in part, whether such renewals, extensions or modifications are made before or after such revocation, with or without notice to the undersigned. The undersigned waives presentment, demand, protest and notices of every kind and assents to any one or more extensions, modifications, renewals or postponements of the time or amount of payment or any other indulgences given to Borrower. The undersigned shall be responsible for and shall reimburse the Lender for all costs and expenses incurred by the Lender in connection with the enforcement of this Guaranty or the protection or preservation of any right or claim of the Lender in connection herewith, including without limitation costs and expenses incurred by the Lender in connection with its attempts to collect the indebtedness, obligations, and liabilities guaranteed hereby. Cost and expenses shall include reasonable attorneys' fees.

If Borrower is a corporation or a limited liability company, this instrument covers all indebtedness, obligations and liabilities to Lender purporting to be made or undertaken on behalf of such entity by any such officer, manager or agent of said entity without regard to the actual authority of such officer, manager or agent. The term "corporation" and the term "limited liability company" shall include associations of all kinds and all purported corporations or limited liability company, whether correctly and legally chartered and organized.

This Guaranty is made in and shall be construed in accordance with the laws and judicial decisions of the State of South Carolina. The undersigned agrees that any dispute arising out of this Guaranty shall be adjudicated in either the state or federal courts of South Carolina and in no other forum. For that purpose, the undersigned hereby submits to the jurisdiction of the state and/or federal courts of South Carolina. The undersigned waives any defense that venue is not proper for any action brought in any federal or state court in the State of South Carolina.

[REMAINDER OF PAGE INTENTIONALLY LEFT BLANK]

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, GUARANTOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

Witness the signature and seal of each of the undersigned.

WITNESSES:

Stephanie S. Hooks
Witness #1

[Signature]
Witness #2

Stephanie S. Hooks
Witness #1

[Signature]
Witness #2

Stephanie S. Hooks
Witness #1

[Signature]
Witness #2

Stephanie S. Hooks
Witness #1

[Signature]
Witness #2

Stephanie S. Hooks
Witness #1

[Signature]
Witness #2

GUARANTORS:

[Signature] [L.S.]
Herbert Anderson, Jr.

[Signature] [L.S.]
Herbert Keith Anderson

[Signature] [L.S.]
A. Bruce Green

[Signature] [L.S.]
William Otha Bodie

[Signature] [L.S.]
L. Cliff Redd

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA

Case No. 2013-CP- 41-42

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr. Irrevocable
Family Trust, dated the 15th Day of July,
2001,

Plaintiff,

vs.

Redd Green Investments, LLC, Anderson
North Augusta, LLC, Herbert Anderson,
Jr., A. Bruce Green, William Otha Bodie,
Herbert Keith Anderson, and L. Cliff
Redd,

Defendants.

VERIFICATION

Personally appeared before me, Harry P. Sakellaris who, being duly sworn, deposes and states that he is Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001, that he has read the foregoing Complaint in this action and, that to the best of his knowledge, the information contained therein is true and correct.

Harry P. Sakellaris

HARRY P. SAKELLARIS, AS TRUSTEE OF THE GEORGE
B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST,
DATED THE 15TH DAY OF JULY, 2001

SWORN to and subscribed before me this
15th day of March, 2013.

Sheila D. Duckett

Notary Public for State of Virginia

My commission expires: 2-29-16

SHEILA G. DUCKETT
NOTARY PUBLIC
Commonwealth of Virginia
Reg. #350017
My Commission Expires 2-29-16

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr., Irrevocable
Family Trust, dated the 15th day of
July, 2001,

Plaintiff,

vs.

Redd Green Investments, LLC,
Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce Green,
William Otha Bodie, Herbert Keith
Anderson, and L. Cliff Redd,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No.: 2013-CP-41-42

**ANSWER AND COUNTERCLAIM OF
DEFENDANTS REDD GREEN
INVESTMENTS, LLC, A. BRUCE
GREEN AND L. CLIFF REDD
(Jury Trial Requested)**

2013 MAY -1 AM 11:51
CLERK OF COURT
SALUDA CO. S.C.

TO: STANLEY H. MCGUFFIN, ATTORNEY FOR PLAINTIFF:

The Defendants, Redd Green Investments, LLC, A. Bruce Green and L. Cliff Redd,
answering the Complaint of the Plaintiff herein, would respectively show unto the Court as
follows:

FACTS COMMON TO ALL DEFENSES

1. The Defendant would show that the Plaintiff engaged in conduct prohibited by law and deceived the Court in the foreclosure process. The Plaintiff as lender and foreclosing party entered its bid at the foreclosure sale on September 4, 2012. On September 10th the Plaintiff created or caused to be created, a related corporate entity named 2nd Avenue Holdings, LLC.
2. 2nd Avenue Holdings, LLC, was created by the Plaintiff for the purpose of competitive bidding for and on behalf of the Plaintiff and was controlled by the Plaintiff.
3. Following the close of the bidding on September 4, 2012, the Plaintiff sought to

circumvent the statutory limitation on subsequent bids by the lender contained in §15-39-720.

The statute provides the mortgagee or his representative shall enter such bid as he desires at the time the first sale is held and he and all persons acting on his behalf shall be precluded from entering any other bid in any amount at any other time except the single or last bid made by him or on his behalf at the sale.

4. The Plaintiff's conspired with its agents and other persons to injure the Defendants by controlling the bidding process, by bidding through a "straw man" entity created for the purpose of deceiving the Court and allowing the Plaintiff to bid competitively in violation of law. The Plaintiff was the successful bidder at the 2nd sale which occurred October 4, 2012.

FIRST DEFENSE

5. Each and every allegation of the Complaint not herein specifically admitted, qualified or explained is denied.

6. The allegations contained in paragraph 1 of the Complaint cannot be responded to due to lack of knowledge.

7. The allegations contained in paragraphs 2-8 of the Complaint are admitted.

8. The allegation contained in paragraphs 9-23 of the Complaint are denied.

SECOND DEFENSE

9. The allegations contained herein above are repeated as if fully alleged herein verbatim, to the extent not inconsistent with the allegations of this defense.

10. Defendants would show that the Complaint is barred by the equitable doctrine of unclean hands.

THIRD DEFENSE

11. The allegations contained herein above are repeated as if fully alleged herein

verbatim, to the extent not inconsistent with the allegations of this defense.

12. Defendants would show that the Plaintiff should be barred from prosecuting this actions on the grounds of judicial estoppel.

FOURTH DEFENSE

13. The allegations contained herein above are repeated as if fully alleged herein verbatim, to the extent not inconsistent with the allegations of this defense.

14. Defendants would show that the Plaintiff should be barred from prosecuting this actions on the grounds of equitable estoppel.

FIFTH DEFENSE

15. The allegations contained herein above are repeated as if fully alleged herein verbatim, to the extent not inconsistent with the allegations of this defense.

16. Defendants would show that the rights of Plaintiff to enforce any Contract alleged to exist between the parties has been waived.

SIXTH DEFENSE

17. The allegations contained herein above are repeated as if fully alleged herein verbatim, to the extent not inconsistent with the allegations of this defense.

18. Defendants would show that the Complaint is barred by the equitable doctrine of laches.

FOR A SEVENTH DEFENSE BY WAY OF COUNTERCLAIM **(Civil Conspiracy)**

19. The allegations contained hereinabove are repeated as if fully alleged herein verbatim, to the extent not inconsistent with the allegations of this defense.

20. The Defendant would show that the Plaintiff and its agents and officers conspired to engage in conduct prohibited by law and deceived the Court in the foreclosure process.

21. The parties conspired to injure the Defendants.
22. As a direct and proximate result of the acts of the Plaintiff and its agents, the Defendants Green and Redd have suffered special damages including loss of their real property, attorney's fees and costs all of which shall be specifically be shown at trial.

FOR A EIGHTH DEFENSE BY WAY OF COUNTERCLAIM
(Constructive Fraud)

23. The allegations contained hereinabove are repeated as if fully alleged herein verbatim, to the extent not inconsistent with the allegations of this defense.
24. The Plaintiff, and 2nd Avenue Holdings, LLC, by their presence at the 2nd sale and by bidding, represented to the Court that they were legally allowed to bid. That representation was false. The Plaintiff and its agents knew of the falsity of the statement. The Plaintiff intended the Court to be deceived into allowing Plaintiff to competitively bid at the 2nd sale.
25. The Court was ignorant of the falsity of representations and relied on its truthfulness. The Court had a right to rely on Plaintiff's misrepresentations.
26. As a result, the Defendants Green and Redd have suffered such special, consequent and proximate damages and injury as may be shown by the evidence at trial.

FOR AN NINTH DEFENSE BY WAY OF COUNTERCLAIM
(Fraud and Deceit)

27. The allegations contained hereinabove are repeated as if fully alleged herein verbatim, to the extent not inconsistent with the allegations of this defense.
28. Plaintiff made a representation to the Court that it was entitled to bid. By doing so the representation was false.
29. The representation was material in that Plaintiff would not otherwise been entitled to bid.

30. Plaintiff knew representation to the Court was false or in reckless disregard for its truth or falsity.

31. The Plaintiff intended that its representation be relied upon and acted upon by the Court.

32. The Court was ignorant as to its falsity and relied upon the representation of Plaintiff in allowing it to bid.

33. The Court was entitled to rely on representations of Plaintiff.

34. As a direct and proximate result thereof, Defendants suffered injury and damages that shall be shown by the evidence at trial.

WHEREFORE, the Defendants pray for the dismissal of all claims against them and for judgment on their counterclaims with costs.

Respectively submitted,

GENE TROTTER, ATTORNEY AT LAW



Gene Trotter, Esquire
1701 Richland Street
Columbia, SC 29201
(803) 799-6000

DATED: 4/30, 2013
Columbia, South Carolina

COPY

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA

Case No. 2013-CP-41-42

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr. Irrevocable
Family Trust, dated the 15th Day of July,
2001,

Plaintiff,

vs.

Redd Green Investments, LLC, Anderson
North Augusta, LLC, Herbert Anderson,
Jr., A. Bruce Green, William Otha Bodie,
Herbert Keith Anderson, and L. Cliff
Redd,

Defendants.

**PLAINTIFF'S REPLY TO COUNTERCLAIM
OF REDD GREEN INVESTMENTS, LLC,
A. BRUCE GREEN AND L. CLIFF REDD**

2013 JUN 27 AM 11:16
CLERK OF COURT
SALUDA CO. S.C.

Plaintiff replies to the Counterclaim of North Augusta, LLC, Redd Green Investments, LLC, A. Bruce Green and L. Cliff Redd ("Defendants") as follows:

1. Plaintiff denies paragraphs 1, 2, 3 and 4.
2. In response to paragraphs 5 through 18, inclusive, such allegations do not require any reply as they are responsive to the allegations in Plaintiff's Complaint.
3. In response to paragraph 19, Plaintiff incorporates the prior responses by reference.
4. Plaintiff denies paragraphs 20, 21 and 22.
5. In response to paragraph 23, Plaintiff incorporates the prior responses by reference.
6. Plaintiff denies paragraphs 25, 25 and 26.
7. In response to paragraph 27, Plaintiff incorporates its prior responses.

8. Plaintiff denies paragraphs 28, 29, 30, 31, 32, 33 and 34.

For a Second Defense

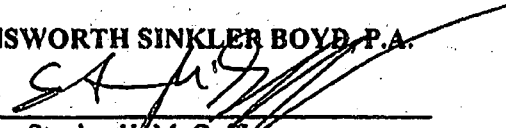
9. The Counterclaim fails to state a claim on which relief can be granted.

For a Third Defense

10. Defendants do not have standing to assert the counterclaim.

WHEREFORE, having replied to the Counterclaim, Plaintiff requests that the Counterclaim be dismissed and that Plaintiff be awarded relief as requested in its Complaint.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Stanley H. McGuffin
SC Bar No. 3830

1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 Tel
(803) 765.1243 Fax
Email Address: smcguffin@hsblawfirm.com

Attorneys for Harry P. Sakellaris, as Trustee
of the George B. Buchanan, Jr. Irrevocable
Family Trust, dated the 15th Day of July,
2001

June 26 2013

State of South Carolina

Court of Common Pleas

County of Saluda

Eleventh Judicial Circuit

Stephen Wilkinson, as Personal) Transcript of Record
 Representative of the George B.)
 Buchanan, Junior, Irrevocable) 2015-CP-41-00172
 Family Trust, dated the 15th) 2013-CP-41-00042
 Day of July, 2001,)
)
 Plaintiff,)
)
 vs.)
)
 Redd Green Investments, et al.,)
)
 Defendants.)

September 5th and 6th, 2017
 Saluda, South Carolina

B E F O R E:

The Honorable R. Knox McMahon, Judge

A P P E A R A N C E S:

Erik T. Norton, Esquire
 On behalf of the Plaintiff

M. Alan Peace, Esquire
 On behalf of A. Bruce Green, L. Cliff Redd, Redd Green
 Investments, LLC

Roy R. Hemphill, Esquire
 On behalf of Herbert Anderson, Junior, Keith Anderson,
 and Anderson North Augusta, LLC

Stacy S. Johnson
 Circuit Court Reporter

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1 (The following proceedings were held September 5,
2 2017, beginning at 11:39 AM.)

3 **BAILIFF:** All rise.

4 **THE COURT:** Thank you. Thank you. Please be seated.

5 All right. Ladies and gentlemen, as I informed you
6 previously this is Common Pleas. This is civil court. A
7 civil term of court this week in Saluda. I'm going to now
8 ask you certain questions to determine your qualifications
9 and your eligibility to serve on this particular case.
10 Please consider yourselves still under oath.

11 I'm going to -- not read, but read the caption of
12 the case; in other words, the parties to the case, and
13 then thereafter identify the attorneys, have the attorneys
14 introduce themselves to you and their clients, and ask you,
15 again, certain questions to determine your eligibility and
16 your qualifications to serve on this particular case.

17 The Case Number is 2013-CP-41-42. What all that
18 means is that case was filed in 2013. CP, that it's a
19 Common Pleas case. 41 is the numerical number of Saluda
20 County, going 1 through 46. It's just all alphabetic. I
21 know Saluda County is first in the state to all of you and
22 the 41 is just the alphabetical number. And 42 refers to
23 the particular order in which the case was filed in that
24 year of 2013.

25 The Plaintiff's represented by the individuals to

1 my front left -- again, I'll have themselves introduce
2 themselves to you -- represent the following individuals.
3 I apologize in advance for my mispronunciation. I always
4 say I can predict anything but the future. However, I'm
5 not sure I can pronounce some of the names correctly. I
6 have Harry P. Sakellaris, as Trustee of the George B.
7 Buchanan, Junior, Irrevocable Family Trust, dated the 15th
8 day of July 2001. That is the Plaintiff in this civil
9 action.

10 **MR. NORTON:** Yes, Your Honor. Just to let you know,
11 Mr. Sakellaris was substituted out by Stephen Wilkinson by
12 a subsequent order.

13 **THE COURT:** I wish I had known that before I butchered
14 the name.

15 **MR. NORTON:** Sorry about that, Your Honor.

16 **THE COURT:** I was reading off of one document and I
17 do see that. So Stephen Wilkinson, as Trustee of the
18 George B. Buchanan, Junior, Irrevocable Family Trust,
19 dated 15th July 2001, as the Plaintiff versus -- and I'm
20 going to CVS on the break. I have eight hundred pair of
21 fake glasses and couldn't find a one this morning, but
22 I'll be there at lunchtime -- Redd Green Investments, LLC;
23 Anderson North Augusta, LLC; Herbert Anderson, Junior; A.
24 Bruce Green; William Otha Bodie; Herbert Keith Anderson and
25 L. Cliff Redd, Defendants.

1 The Plaintiffs are represented by Mr. Moore and
2 Mr. Norton. If y'all would please stand and introduce
3 yourselves to the jury panel and your clients if they are
4 present at this time.

5 **MR. NORTON:** Hi, y'all. Our clients aren't here
6 quite yet. I'm Erik Norton. This is my law partner,
7 John Moore. We practice at the law firm of Nelson,
8 Mullins, Riley and Scarborough, which is based in
9 Columbia. Mr. Moore lives in Columbia and I live over
10 in Chapin.

11 **THE COURT:** And I should have told you, ladies and
12 gentlemen, the witnesses, the clients, are not required
13 to be here during these proceedings.

14 The Defendants are represented by Mr. Hemphill and
15 Mr. Peace. If y'all would, please, stand and introduce
16 yourselves to the jury panel and your clients if they are
17 present.

18 **MR. PEACE:** Good morning. My name is Alan Peace.
19 I'm a lawyer practicing out of Chapin, South Carolina. I
20 represent Bruce Green, who's seated right there, and Cliff
21 Redd, seated right there next to him, and their company,
22 Redd Green Investments, LLC.

23 **THE COURT:** Thank you, Mr. Peace.

24 Mr. Hemphill.

25 **MR. HEMPHILL:** Good morning. My name is Roy Hemphill.

1 I'm a lawyer from Greenwood. I represent Herbert Anderson,
2 Junior, and Keith Anderson, who are from Greenwood, and a
3 company that they formed called Anderson North Augusta,
4 LLC.

5 **THE COURT:** Thank you. Thank you, Mr. Hemphill.

6 And, ladies and gentlemen, as I said, this is a civil
7 case. You will get tired of me saying that probably. A
8 civil case is brought by a plaintiff by the filing of a
9 summons and complaint and service on the defendant. The
10 defendant then has X amount of time, thirty days, to
11 answer. And a defendant can also answer and counterclaim.

12 The Plaintiff's brought a complaint. The basic
13 allegations are that there's a debt owed by the Defendants
14 to the Plaintiff. The defendant answers and puts forward
15 certain defenses and can also counterclaim, which they did
16 in this case. The plaintiff has the burden of proof in
17 this case by a preponderance of the evidence, which I'll
18 explain to y'all further as we get into the trial.

19 (Pause in proceedings.)

20 **THE COURT:** All right. Well, a lot of times people
21 say what I say is not important, but this is very
22 important. It's important to the parties, both the
23 Plaintiff and the Defendants. The Defendant answered and
24 filed certain defenses and also filed counterclaims for
25 civil conspiracy, fraud and deceit -- and what others were

1 there as far as the counterclaims, Mr. Peace?

2 Mr. Hemphill?

3 **MR. PEACE:** That was the bulk of them, Judge.

4 **THE COURT:** And, of course, Defendant will have the
5 burden of proving its case by a preponderance of the
6 evidence on the counterclaims. And as I say, I will
7 explain this to you in greater or more detail as we get
8 into the trial.

9 Now let's start with the attorneys, ladies and
10 gentlemen. Is any member of the jury panel related by
11 blood or marriage, have any personal or professional
12 relationship with any of the attorneys in the case;
13 Mr. Norton, Mr. Moore, Mr. Peace or Mr. Hemphill? If so,
14 please stand.

15 Does any member of the jury panel know any of the
16 attorneys whatsoever; Mr. Norton, Mr. Moore, Mr. Peace,
17 Mr. Hemphill?

18 Has any member of the jury panel ever been a party
19 to a lawsuit in which any of the attorneys represented you
20 as a party or opposing party? If so, please stand.

21 Mr. Moore and Mr. Norton are with Nelson Mullins law
22 firm, one of which is located in Columbia. Mr. Peace is
23 with -- and I can't recall it entirely, Mr. Peace.

24 **MR. PEACE:** Harrell, Martin and Peace located in
25 Chapin.

1 **THE COURT:** And Mr. Hemphill is in Greenwood.

2 **MR. HEMPHILL:** With the McDonald Patrick law firm.

3 **THE COURT:** Any member of the jury panel know any of
4 the other attorneys or employees of the law firms of any
5 of the attorneys in this case? If so, please stand.

6 Now the named plaintiff is Stephen Wilkinson, the
7 Trustee of the George B. Buchanan, Junior, Irrevocable
8 Family Trust. Is any member of the jury panel related by
9 blood or marriage or know or have any social, business or
10 professional relationship with Stephen Wilkinson? If so,
11 please stand. Or with the named entity, George B.
12 Buchanan, Junior, Irrevocable Family Trust. If so,
13 please stand.

14 And you also were introduced by Mr. Peace to
15 Mr. Redd and Mr. Anderson; is that correct -- that stood
16 before you?

17 **MR. PEACE:** No, it's Mr. Redd and Mr. Green.

18 **THE COURT:** Is any member of the jury panel related
19 by blood or marriage or know either of those individuals?
20 If so, please stand.

21 Has any member of the jury panel or any member of
22 your immediate family ever been a named party in a civil
23 lawsuit, either plaintiff or defendant? If so, please
24 stand.

25 (Juror stands.)

1 **THE COURT:** Mr. Watson. Good morning, Mr. Watson.
2 Would that have been in your -- the capacity of your
3 business?

4 **JUROR:** Yes, sir.

5 **THE COURT:** And Mr. Watson is a peach farmer. And I
6 consider that a term of honor, Mr. Watson, when I say it
7 like that. Given that, do you think that that experience
8 would affect you one way or the other from one side or the
9 other, Mr. Watson?

10 **JUROR:** I don't think so. I will say one thing.

11 **THE COURT:** Stand up for me. Only because -- not
12 because you're standing up for me, I can just hear better.

13 **JUROR:** Didn't I hear you say Otha Bodie? I didn't
14 hear them say they were representing him when they said
15 they were representing these people. Didn't I hear you
16 say Otha Bodie?

17 **THE COURT:** Yes, sir.

18 **JUROR:** He had done work for us.

19 **THE COURT:** He what?

20 **JUROR:** He has done land work for us in the past.

21 Yes, sir.

22 **THE COURT:** Okay.

23 **MR. NORTON:** He's in default, Your Honor.

24 **THE COURT:** He's in default?

25 **MR. NORTON:** Yes, Your Honor.

1 **THE COURT:** So he won't -- all right. He is in
2 default and although he's a named party he wouldn't be
3 part of this particular suit. But given that fact that
4 you know him, can you still be a fair and impartial juror
5 in the trial of this case for both the plaintiff and the
6 defendant?

7 **JUROR:** Yes, sir.

8 **THE COURT:** Thank you. Thank you, Mr. Watson. I
9 believe you can say with us.

10 **JUROR:** Yes, sir.

11 **THE COURT:** Any others?

12 (Juror stands.)

13 **THE COURT:** Yes, ma'am. Your number, please?

14 **JUROR:** 49.

15 **THE COURT:** Would you step up here for me, please?

16 **JUROR:** 49.

17 **THE CLERK:** 49.

18 **THE COURT:** If you will stand over here and tell me
19 your response.

20 **JUROR:** Just that I had been sued before with my
21 business.

22 **THE COURT:** With your business?

23 **JUROR:** Uh-huh.

24 **THE COURT:** In a civil lawsuit?

25 **JUROR:** Uh-huh.

1 **THE COURT:** All right. Can you tell me just
2 generally what type of suit it was?

3 **JUROR:** I own an assisted living facility and one
4 of the ladies in the facility took a car out of the
5 parking lot. It was no fault of mine, but I still got
6 sued, and one of the other ladies she asked if she wanted
7 to go with her and took her with her and that particular
8 lady got hurt and her family sued me.

9 **THE COURT:** Okay. Given those -- that set of
10 circumstances that you were a party to a lawsuit in which
11 you got sued, would that tend to --

12 **JUROR:** No, sir, but I had to tell you. No, sir.
13 I'm good.

14 **THE COURT:** You can set that aside and be a fair and
15 impartial juror?

16 **JUROR:** Oh, yeah. I'm good.

17 **THE COURT:** Thank you very much.

18 Has any member of the jury panel or a member of your
19 immediate family ever been a party to a lawsuit involving
20 the collection of a debt? If so, please stand.

21 (Juror stands.)

22 **THE COURT:** Step up here for me, please. And right
23 there is good just so the attorneys can hear you. Can
24 you tell me about that?

25 **JUROR:** As a part of my job when customers don't make

1 their payments, we have to file claims to get the money
2 back or the merchandise.

3 **THE COURT:** And given those facts, can you be a fair
4 and impartial juror in the trial of this case?

5 **JUROR:** I think so.

6 **THE COURT:** And when you say you think so -- you've
7 never served on jury duty before?

8 **JUROR:** Like three years ago.

9 **THE COURT:** Here?

10 **JUROR:** Uh-huh.

11 **THE COURT:** How old are you?

12 **JUROR:** Twenty-six.

13 **THE COURT:** After this trial, I want to get in the
14 lottery with you. We'll split it. You're pretty lucky
15 at that age to get called twice.

16 **JUROR:** Yeah, I wouldn't call it luck, but okay.

17 **THE COURT:** A frequent flyer. But when you say you
18 think so, that's just semantics?

19 **JUROR:** Uh-huh. I mean, I consider myself a pretty
20 fair person.

21 **THE COURT:** Yes, sir. I do, too. Thank you. Thank
22 you very much.

23 **MR. NORTON:** Your Honor, could we just -- I didn't
24 get his name.

25 **JUROR:** Craig Powell.

1 MR. NORTON: I'm sorry. Thank you, Your Honor.

2 THE CLERK: Juror Number 96..

3 THE COURT: Thank you, Mr. Norton.

4 Has any member of the jury panel ever personally
5 guaranteed a loan for another individual? If so, please,
6 stand.

7 Has any member of the jury panel ever been a
8 guarantor, beneficiary or a trustee of a trust? If so,
9 please stand..

10 (Juror stands.)

11 THE COURT: Your number, please.

12 JUROR: 117.

13 THE COURT: Given that fact, can you be a fair and
14 impartial juror in the trial of the case for both the
15 defense and the Plaintiff?

16 JUROR: Yes, sir.

17 THE COURT: Thank you. You may be seated.

18 Do I have a witness list? There's a question about
19 asking about potential witnesses. Do I have a list?

20 MR. PEACE: Not that I'm aware of, Your Honor.

21 MR. NORTON: No, Your Honor.

22 THE COURT: Do you want to announce the names?

23 MR. NORTON: I think it's only the parties.

24 MR. PEACE: Mr. Green and Mr. Redd are our witnesses.

25 MR. NORTON: And for the Plaintiff, Mr. Wilkinson

1 will -- will testify and Mr. Buchanan may.

2 **THE COURT:** Okay. All right. And so just those
3 would be the potential witnesses in the trial of the
4 case. And, again, I'm gonna ask just in an abundance of
5 precaution, does any member of the jury panel know any
6 of these witnesses in any capacity whatsoever, social,
7 business or what have you? If so, please stand.

8 Does any member of the jury panel hold any ownership
9 interest in or is employed by a bank, financial investment
10 entity or other institution which is involved in the
11 making of mortgages or the foreclosure of mortgages? If
12 so, please stand.

13 Any additional requested voir dire from the Plaintiff,
14 Mr. Norton?

15 **MR. NORTON:** No, Your Honor. Thank you.

16 **THE COURT:** From the Defendant, Mr. Peace?

17 **MR. PEACE:** No, Your Honor.

18 **MR. HEMPHILL:** No, Your Honor.

19 **THE COURT:** And finally, ladies and gentlemen, I know
20 you got a very brief introduction to the allegations in
21 the complaint or of the defense or of the counterclaims.
22 You know it is a civil lawsuit. Plaintiffs are to my
23 front left, Defendants to my front right, and you've been
24 introduced to those parties that are present at this time.
25 You know, our purpose and goal is to select a fair and

1 impartial juror -- jury that will be fair and impartial to
2 both the Plaintiff and the Defendants that will listen to
3 the evidence and determine what the facts are in the case,
4 apply the facts as the jury finds them to be to the law as
5 I tell you the law is and reach a verdict for one side or
6 the other.

7 You also know yourselves best. Is there any member
8 of the jury panel who knows any reason whatsoever why you
9 feel why you could not be a fair and impartial juror in
10 the trial of this case for both the Plaintiff and the
11 Defendants? If so, please stand.

12 All right. No one stands.

13 I find our panel is qualified. Madam Clerk, will
14 you give us a list? How long will that computer take? I
15 just like to --

16 **THE CLERK:** Not very long.

17 **THE COURT:** Very shortly here.

18 **THE CLERK:** I've got thirty-two names. How many do
19 you want me to put in?

20 **THE COURT:** Well, you can do all thirty-two. And
21 we're just going to select from the first twenty. It will
22 be four and four, correct? And then I'll ask the lawyers
23 if they want an alternate.

24 I like to put them in a cigar box, but we don't do
25 that anymore. I have three children and my two girls are

1 the lawyers. I would take them in the eighties and they
2 would let them pull names out of the cigar box. And
3 I took my son, the baby, and he did it, too. He's -- he's
4 a Citadel graduate and a John Deere dealer, so I tell
5 everybody all of my children have got JD degrees and at
6 least one of them turned out decent. But we never could
7 get him in the --- he didn't want to go to law school.

8 (Pause in proceedings.)

9 MR. HEMPHILL: Your Honor, are the parties striking
10 from the first twenty or the entire thirty-two? There's a
11 list of thirty-two.

12 THE COURT: Yeah, the first twenty on the -- correct?
13 So let's use the numbers on the left side.

14 MR. PEACE: Yes.

15 MR. NORTON: Okay.

16 (Pause in the proceedings.)

17 THE COURT: All right. Are we ready?

18 MR. NORTON: Just one second, Your Honor.

19 THE COURT: All right.

20 MR. NORTON: I'm ready.

21 THE COURT: Okay. Ready?

22 MR. PEACE: Yes, sir.

23 THE COURT: All right, Madam Clerk.

24 THE CLERK: Plaintiff?

25 MR. NORTON: Yes, ma'am. Numbers 2, 3, 4 and 16.

1 THE CLERK: 2, 3 --
2 MR. NORTON: 4 and 16.
3 THE CLERK: -- 4 and 16. 16?
4 MR. NORTON: 16.
5 THE COURT: 2, 3, 4 and --
6 MR. NORTON: 16.
7 THE CLERK: Defense?
8 MR. PEACE: Number 5, Number 9.
9 THE COURT: 5 and what? What was the second one?
10 MR. PEACE: 9. 19 and 10.
11 THE COURT: 10?
12 MR. PEACE: 10.
13 THE CLERK: Plaintiff strikes 2, 3, 4 and 16.
14 Defense strikes 5, 9, 10 and 19.
15 MR. PEACE: Correct.
16 MR. HEMPHILL: Correct.
17 THE COURT: Do you seek any alternates?
18 MR. NORTON: Not from the Plaintiff, Your Honor.
19 MR. HEMPHILL: Not from the defense.
20 THE COURT: All right.
21 THE CLERK: Okay. When I call your name, please
22 bring all your personal belongings and have a seat in the
23 jury box. Juror Number 92, Amy Ouzts.
24 (Whereupon, Amy Ouzts, a white female, was seated in
25 the jury box.)

1 **THE CLERK:** Juror Number 106, Brooks C. Salters.
2 (Whereupon, Brooks C. Salters, a white male, was
3 seated in the jury box.)

4 **THE CLERK:** Juror Number 82, Annette McGraw.
5 (Whereupon, Annette McGraw, a black female, was
6 seated in the jury box.)

7 **THE CLERK:** Juror Number 116, Terrance Stevens.
8 (Whereupon, Terrance Stevens, a black male, was
9 seated in the jury box.)

10 **THE CLERK:** Juror Number 36, Collin Derrick.
11 (Whereupon, Collin Derrick, a white male, was
12 seated in the jury box.)

13 **THE CLERK:** Juror Number 28, Ashley Corley.
14 (Whereupon, Ashley Corley, a white female, was
15 seated in the jury box.)

16 **THE CLERK:** Juror Number 115, Raymond Stevens.
17 (Whereupon, Raymond Stevens, a black male, was
18 seated in the jury box.)

19 **THE CLERK:** Juror Number 54, Jacob Herman.
20 (Whereupon, Jacob Herman, a black male, was seated
21 in the jury box.)

22 **THE CLERK:** Juror Number 119, Melissa Stover.
23 (Whereupon, Melissa Stover, a white female, was
24 seated in the jury box.)

25 **THE CLERK:** Juror Number 49, Elizabeth Goldman.

1 (Whereupon, Elizabeth Goldman, a white female, was
2 seated in the jury box.)

3 **THE CLERK:** Johnnie Brunson.

4 (Whereupon, Johnnie Brunson, a black male, was
5 seated in the jury box.)

6 **THE CLERK:** Juror Number 20 -- I'm sorry, Juror
7 Number 74, Deborah Loughlin.

8 (Whereupon, Deborah Loughlin, a white female, was
9 seated in the jury box.)

10 **THE COURT:** Any motions regarding the jury selection
11 process from the Plaintiff?

12 **MR. NORTON:** No, Your Honor.

13 **THE COURT:** Defendants?

14 **MR. PEACE:** No, Your Honor.

15 **MR. HEMPHILL:** No, Your Honor.

16 **THE COURT:** Ladies and gentlemen of the jury not
17 selected for the trial of this case, momentarily I'm gonna
18 release you from your jury service for the remainder of
19 the day and for the remainder of the week. You do not
20 have to call back, you do not have to come back. I said
21 earlier this would be the only case for trial this week.
22 You do not have to call back, you do not have to come
23 back.

24 It has been my pleasure and privilege to be with
25 y'all this morning and I salute you for your civic

1 mindedness in fulfilling your duties as citizens of
2 Saluda County. You may now leave. You're now released.
3 Thank you very much. Good to see you, Mr. Watson.

4 (Whereupon, the jury panel was released at 12:15 PM.)

5 **THE COURT:** Ladies and gentlemen that were selected
6 in the trial of this case, as you recall I had indicated
7 we were going to select a jury today and start the trial
8 of the case at 2:30 tomorrow afternoon. I apologize I
9 have that conflict where I have to hear another matter in
10 Lexington tomorrow morning.

11 So momentarily I'm gonna release you from your jury
12 service for the remainder of the afternoon and the
13 remainder of today and ask you to report back promptly at
14 2:30 tomorrow afternoon. The bailiff will show you your
15 new temporary home here in your jury room and how to go
16 through about reporting back tomorrow.

17 I'm required to remind you of certain things that
18 you must follow while you're on jury service. You may
19 not discuss this case with others, including your fellow
20 jurors, family, friends or anyone else. You would not be
21 authorized to discuss the case until you've heard all of
22 the evidence and all the testimony by the parties, by the
23 witnesses, and the instruction on the law by the Court
24 and then directed by the Court to begin your deliberations
25 with your fellow jurors in your jury room. So, again,

1 you may not discuss this case with anyone whatsoever
2 until you've heard all of the evidence, all the testimony,
3 instruction on the law by the Court and directed by the
4 Court to discuss it only with your fellow jurors in your
5 jury room during your deliberations.

6 I would advise you that I ask jurors each and every
7 morning upon their return if they have discussed the case
8 with anyone, so please keep that in mind. You may not,
9 should there be any, read, watch or listen to any news
10 reports about the case. This is a standard charge that I
11 must instruct you. You may not read, watch or listen to
12 any news reports about the case, should there be any, or
13 should there have ever been any. I'm not implying there
14 was any or was not, but I'm advising you that you can't
15 read it, you can't watch it, you can't listen to it, you
16 can't Google it and see if there was anything in the past
17 or anything of that nature whatsoever. You may not use
18 your computers, cellular phone or any other electronic
19 device with communication capabilities or any other method
20 to obtain or disclose any information about the case which
21 is prohibited, which includes but not limited to the
22 following. You may not look up any information about a
23 party, a witness, an attorney or a court officer. News
24 accounts about the case, past or present, should there be
25 or should there have been any, information collected

1 through juror research on any topics raised or testimony
2 offered by any witness or information collected through
3 juror research on any other topic the juror might think
4 would be helpful in deciding the case. You decide the
5 case based on the evidence and the testimony presented to
6 you from this witness stand by the witnesses testifying
7 under oath; any reasonable inferences you think properly
8 may be drawn and the law as I tell you the law is meant.
9 In other words, don't do any independent research or
10 search on the Internet. You decide it based on what you
11 hear in this courtroom, the law and the facts. Y'all are
12 the judges of the facts. You decide what the facts in
13 the case are after listening to the testimony of the
14 witnesses.

15 Any questions? I hope y'all have a pleasant
16 afternoon. 2:30 tomorrow afternoon. Thank you. Be sure
17 you are in your temporary home for tomorrow. I hope y'all
18 have a pleasant afternoon and evening.

19 (Whereupon, the jury was excused for the day at
20 12:20 PM.)

21 **THE COURT:** Any objection to anything I told the
22 jury, Mr. Norton?

23 **MR. NORTON:** No, Your Honor.

24 **THE COURT:** Mr. Peace or Mr. Hemphill?

25 **MR. PEACE:** No, Your Honor.

1 **MR. HEMPHILL:** No, Your Honor.

2 **THE COURT:** One further thing. Evidently the case
3 got renumbered. I announced 2013-CP-41-42. As the case
4 came forward, it was renumbered 2015-CP-41-0172. So just
5 to get the record straight, that's the case we're trying
6 now in its present numbered form.

7 All right. 2:30 tomorrow. You have some motions?

8 **MR. NORTON:** Yes, Your Honor. We had some motions
9 in limine. We'll try to work it out with opposing counsel
10 and see how far we can get and we'll -- maybe we can get
11 in here a little early tomorrow.

12 **THE COURT:** I'll be here by two in the afternoon.

13 All right. Thank you very much.

14 **MR. PEACE:** All right. Thank you, Your Honor.

15 **MR. HEMPHILL:** Thank you, Judge.

16 (Whereupon, the proceedings were concluded for
17 September 5, 2017, at 12:21 PM.)

18 (Whereupon, the following proceedings were held on
19 September 6, 2017, beginning at 2:05 PM.)

20 (Plaintiff's Exhibits 1 through 10 were marked for
21 identification.)

22 **BAILIFF:** Good afternoon.

23 **THE COURT:** Thank you. Y'all be seated.

24 All right. Let's see. I believe, Mr. Norton, you
25 have some motions in limine. Is that what y'all want me

1 to hear first?

2 MR. NORTON: Yes, Your Honor. I think that's right,
3 if that's okay?

4 MR. PEACE: That's correct.

5 MR. NORTON: And, Your Honor, I don't know -- I can't
6 remember if I handed this up to you yesterday or not.

7 THE COURT: I do not -- I do not think you did,
8 Mr. Norton.

9 MR. NORTON: If you don't mind me approaching, Your
10 Honor.

11 THE COURT: No, sir. Thank you.

12 MR. NORTON: And, Your Honor, you may recall
13 yesterday we said that counsel would confer about the --
14 and see sort of what we could resolve on our own and we've
15 been pretty successful in getting most of these taken care
16 of.

17 You'll see in the first paragraph there, there are
18 five different items that Plaintiff would like excluded.
19 Item Number 1 is any testimony that refers to the value
20 of the trust. I'm told that the Defendants don't intend
21 to introduce any evidence like that, so that's not a
22 problem.

23 THE COURT: Is that correct, Mr. Hemphill and
24 Mr. Peace?

25 MR. PEACE: Yes, Your Honor.

1 **MR. HEMPHILL:** Yes, Your Honor.

2 **THE COURT:** The other is any testimony or other
3 evidence related to the health condition of Herbert
4 Anderson or Herbert Anderson, Junior. I've spoken to
5 Mr. Hemphill about this and have an idea what he wants
6 and so we've resolved that. We'll withdraw that request.

7 **THE COURT:** That's withdrawn by the Plaintiff?

8 **MR. NORTON:** That's withdrawn by the Plaintiff. Yes,
9 Your Honor, based upon Mr. Hemphill's representations of
10 where we go. If we go afield, we'll deal with it when it
11 happens.

12 **THE COURT:** Yes, sir.

13 **MR. NORTON:** The third item is any testimony from
14 Defendants regarding the events that transpired at the
15 foreclosure sales. Your Honor, the reason we brought that
16 up is because the Defendants did not actually attend the
17 foreclosure sales. We've conferred about this and I'm
18 told that the Defendants aren't gonna go into -- they're
19 not gonna go towards that hearsay information. They had
20 some information they may talk about including why their
21 clients did not attend the foreclosure sale, which seems
22 acceptable, so at this point we'll withdraw the motion in
23 limine and reserve the right to object if we get into an
24 area that we think is out of bounds.

25 **THE COURT:** Is that right, Mr. Peace and

1 Mr. Hemphill?

2 MR. HEMPHILL: Yes, Your Honor.

3 MR. PEACE: That's correct.

4 MR. NORTON: I want to skip -- skip Number 4 just
5 for a second, Your Honor, because we've got -- that's
6 where we'll need a little help, I think. Number 5 is any
7 testimony from the Defendants that they cannot afford to
8 pay the debt at issue. I understand we're not gonna get
9 any testimony of that nature, so there's no need for any
10 ruling on that.

11 THE COURT: Is that correct?

12 MR. PEACE: That's correct.

13 MR. HEMPHILL: Correct, Your Honor.

14 THE COURT: Okay.

15 MR. NORTON: And that leaves us with Number 4, Your
16 Honor, which is any testimony related to any negotiations
17 for the subsequent sale of the property that did not
18 result in a written contract or a purchase agreement.
19 That -- the logic there, Your Honor, is that this is an
20 action to collect on a guaranty and because that is all
21 that's at issue in the case there's no reason to go into
22 the issue of whether it could have been sold for more or
23 for less after the foreclosure sale. It's just simply not
24 relevant to either whether the guaranties are collectible
25 or the amounts that the Defendants would be responsible

1 for, so we don't believe that that's a permissible area
2 of inquiry.

3 **THE COURT:** Thank you. Mr. Peace?

4 **MR. PEACE:** May it please the Court? Yes, Your
5 Honor. We don't agree with that. The basis of our
6 defense revolves around the Plaintiff's violation of the
7 foreclosure statute in participating in both the first
8 sale and the -- through its representative the second
9 sale, the upset bid sale, and issues and testimony related
10 to the value of the property is directly relevant to the
11 Plaintiff's motive in participating in both of those sales
12 because, you know, what the testimony's gonna show is that
13 the amounts bid in at the first sale and at the upset bid
14 sale are a fraction of what this -- this property is
15 actually worth out on the market and so that was tremendous
16 motive for the Plaintiff to dispatch its other company or
17 its affiliated company to come down here and bid in at the
18 second sale in violation of the statute and so, Your Honor,
19 we believe testimony concerning the value of the property
20 and discussions among the Plaintiff's representatives --
21 Plaintiff or the Plaintiff's representatives with others,
22 including the lawyers or the Plaintiff's lawyer's
23 discussions with other lawyers, is irrelevant to reflect
24 on that value which shows the motive that the Plaintiff
25 had in violating the statute.

1 **THE COURT:** And what -- what would the motive have
2 been?

3 **MR. PEACE:** Well, Your Honor, their bid at the first
4 sale was like \$6.6 million. The bid at the second sale
5 was like \$7.1 million. We -- we were provided just last
6 night with an appraisal of the property that they received
7 in 2016 that put the value at \$15 million. So -- so
8 clearly that second sale -- they didn't want anybody coming
9 in at the second sale and taking the property out from
10 under them and so that's why they dispatched Mr. Buchanan
11 down here to participate in the second sale so they could
12 make sure they got the property because they knew what it
13 was worth whenever they were bidding on it.

14 **THE COURT:** Thank you, Mr. Peace. Mr. Norton.

15 **MR. NORTON:** Yes, Your Honor. I don't -- I don't
16 think there's any question that the motive of Mr. Buchanan
17 and Second Avenue Holdings, LLC, who put the second bid
18 in was to make a profit. I mean, that's why you would
19 buy a piece of commercial property at a foreclosure sale
20 regardless of who you are. I just don't think that that
21 speaks to what is owed on these particular guaranties.

22 The only issues before the Court as I understand it
23 are, you know, the typical collection matters of whether
24 there's a valid guaranty and the amount owed and then
25 their defense of whether the foreclosure statute was

1 violated or not. That comes down to the question of
2 whether Mr. Buchanan was a representative of the trust or
3 he wasn't a representative of the trust. The value of the
4 property has no bearing on that.

5 **MR. PEACE:** My argument is the same, Judge. It is
6 directly relevant to show his motive in coming down here
7 was to make sure he got the property and I believe the
8 jury's entitled to hear that.

9 **THE COURT:** Isn't a person in business to make a
10 profit?

11 **MR. PEACE:** I don't have any problem with -- with --
12 with anybody's desire or willingness to make a profit, but
13 the problem here is they violated the statute in their
14 efforts to make a profit. That's the basis of our defense
15 and we believe the jury is entitled to hear that.

16 **THE COURT:** In violating the statute, then how then
17 is the testimony related to negotiations of the subsequent
18 sale of the property that did not result in a written
19 contract or purchase agreement relevant to the fact that
20 they violated the statute -- allegedly violated the
21 statute? I'm not saying they did or didn't, but how was
22 that relevant?

23 **MR. PEACE:** Your Honor --

24 **THE COURT:** I'm just trying to track it, Mr. Peace.

25 **MR. PEACE:** Yes, I understand. I understand. The

1 Plaintiff's position, I assume, is going to be that they
2 did not violate the statute, so the jury is gonna be asked
3 to decide based on the circumstantial evidence that they're
4 being provided with whether the Plaintiff did so or not and
5 the issue of such an enormous difference in what the bids
6 were and what the actual value of the property was is an
7 indication of their motive. There was enough at risk to
8 violate the statute and the difference between the actual
9 value of the property and the bid was big enough to make
10 them take that risk and violate the statute.

11 **MR. NORTON:** Your Honor, if I could?

12 **THE COURT:** Yes, sir. Of course, Mr. Norton.

13 **MR. NORTON:** Thank you, Your Honor. I think part of
14 the problem here is not only it is not relevant, but the
15 kind of information we're talking about here is inherently
16 unreliable. I mean, that's why -- it would be one thing
17 if they -- there was a written offer to purchase. It
18 would be one thing if you had, you know, an actual
19 agreement where the property was sold. We're talking
20 about negotiations and appraisals and stuff like that
21 that are inherently unreliable with regard to the value
22 of the property today. The property could have gone down
23 in value, it could have gone up in value. We're talking
24 about an appraisal that's more than a year old. You know,
25 there's just -- it's inherently unreliable evidence as to

1 the value of the property and the jury could be prejudiced
2 and misunderstanding both the import of that information
3 because it's not relevant to whether the statute was
4 violated and to the actual value of the property. I just
5 think that it's not a proper of area of inquiry both
6 because it's not relevant and because it could be overly
7 prejudicial.

8 **THE COURT:** Now the -- I brought it up again, 403,
9 I think.

10 **MR. PEACE:** Your Honor, we've got e-mail
11 communications between the Plaintiff's lawyer and another
12 lawyer from October of 2012, which was less than a month
13 after the second sale took place, to where the Plaintiff's
14 lawyer was telling another lawyer that they would -- the
15 Plaintiff would be willing to sell the property for
16 \$15 million. We've got an appraisal that was given to us
17 -- or that's dated February 17th of 2016 that we got last
18 night that says that the property is worth \$15.3 million.
19 We've got deposition testimony of -- of the Plaintiff
20 Trustee saying that the property's worth \$15 million. So
21 it was relevant in 2012, it's relevant today. Or it was
22 reliable information in 2012 whenever they were making the
23 proposal. It was -- apparently the appraisal was reliable
24 enough where they requested it and got it and presumably
25 paid for it, so it is reliable information.

1 **MR. NORTON:** I think -- you know, the problem, Your
2 Honor, is that -- excuse me. The problem here is that
3 it's not reliable and if you go down this slippery slope,
4 then there's also deposition testimony that there were
5 these offers made to purchase that the Andersons actually
6 turned down according to the deposition testimony of the
7 Defendants themselves and so, you know, if you go down
8 this slippery slope of what was the property worth, who
9 should have taken what deal, who told who what, it's just
10 gonna be completely distracting to the jury as to the
11 relevant issues and potentially prejudicial towards my
12 client if the jury is somehow led to believe that this is
13 somehow impermissible just because the property is worth
14 an awful lot more than what was paid at the foreclosure
15 sale. I think we all know it was. It's not a big secret.

16 **THE COURT:** What was paid at the foreclosure sale?

17 **MR. NORTON:** It was \$7.1 million and change, Your
18 Honor.

19 **THE COURT:** And what was paid at the second sale?

20 **MR. NORTON:** That was the second sale. It was
21 6.6 million and change for the first sale and 7.1 million
22 and change for the second sale. Correct me if I'm wrong,
23 gentlemen. I think that's right.

24 **MR. PEACE:** Correct, Judge.

25 **THE COURT:** So the total, by my math, 13.7?

1 **MR. NORTON:** No. 13.7 between the first sale and the
2 second sale?

3 **THE COURT:** Yes, sir.

4 **MR. NORTON:** No, it was -- the first sale was the
5 trust's bid and the second sale was Second Avenue Holdings,
6 LLC, so two entirely separate bids.

7 **THE COURT:** I understand that.

8 **MR. NORTON:** The second sale was about \$560,000 more
9 than the first sale.

10 **THE COURT:** Well, is -- the issue is motive or intent
11 of the Plaintiff in your point of view, correct, Mr. Peace?

12 **MR. PEACE:** Yes, Your Honor, motive and intent.
13 Motivation for -- for willingness to violate the statute,
14 which is the basis of the Defendant's defense in this case.

15 **MR. NORTON:** And I guess what I'm struggling with,
16 Your Honor, is I don't believe that motive or intent is a
17 factor in whether the statute's violated or not. The
18 statute was either violated or it wasn't. I'm not sure
19 how motive or intent comes to bear on the question of
20 whether his clients have to pay under the guaranty.

21 **MR. PEACE:** Your Honor, it's directly relevant if
22 Plaintiff is taking the position that they didn't violate
23 the statute, which they are.

24 **THE COURT:** I thought -- of course, as y'all know I
25 spend more time in criminal court than I do in civil court,

1 and I know it's not a criminal violation, but I thought
2 motive and intent was always an issue not -- not for
3 purposes of criminal liability, but for purposes of whether
4 or not there was or was not a violation of the statute.

5 **MR. NORTON:** No, Your Honor, I don't believe that
6 there is. In this case there's no question that the trust
7 did not put in a bid at the second sale.

8 **THE COURT:** I understand.

9 **MR. NORTON:** The only question is whether Second
10 Avenue Holdings, LLC, is a representative of the trust and
11 so I don't see how the question of motive or intent bears
12 on whether they are a representative of the trust.

13 **THE COURT:** All right. I agree with you at this
14 point, Mr. Norton. It is not admissible at this point
15 with the understanding that this is a motion in limine.
16 If at some point in time, Mr. Peace, you think it becomes
17 -- not relevant because you already think it's relevant,
18 but at some point in time you think it would then be
19 admissible based on testimony that develops, all you -- as
20 you know, all you have to tell me is we have a matter of
21 law to take up and I'm delighted to take it up.

22 All right. Anything further?

23 **MR. NORTON:** Yes, Your Honor. A couple of things
24 that I think will help from a housekeeping perspective.
25 First of all, directly related to the ruling we have

1 premarked the exhibits and the parties have stipulated as
2 to those exhibits. I know a couple of those would fall
3 under your ruling with regard to negotiations. I know
4 that the Defendants would want to proffer those at some
5 point to the Court for a direct ruling on those particular
6 exhibits, I would imagine, and -- but they are premarked
7 and ready to go, right, Madam?

8 **THE COURT REPORTER:** (Nods head.)

9 **MR. NORTON:** Thank you.

10 The other thing is without objection from Defendants,
11 we have a request for judicial notice that we think will
12 help streamline the proceedings to day. With your
13 permission, I'd like to hand it up.

14 **THE COURT:** Yes, sir.

15 **MR. NORTON:** And I think y'all have copies, don't you,
16 Alan?

17 **MR. PEACE:** Yes.

18 **MR. NORTON:** Thank you.

19 **THE COURT:** All right. Any objections to this
20 Plaintiff's request for judicial notice?

21 **MR. HEMPHILL:** No, Your Honor.

22 **MR. PEACE:** No, Your Honor.

23 **THE COURT:** All right. Thank you.

24 All right. Anything further?

25 **MR. NORTON:** No. No, Your Honor. I think -- I think

1 that's it. Am I forgetting anything?

2 **THE COURT:** Mr. Peace, anything else further?

3 Mr. Hemphill?

4 **Mr. PEACE:** No.

5 **MR. HEMPHILL:** We have premarked -- we have -- I don't
6 know if you've marked those.

7 **THE COURT REPORTER:** No.

8 (Defendant Anderson's Exhibit Number 1 was marked for
9 identification.)

10 (Defendant Green's Exhibit Number 1 was marked for
11 identification.)

12 (Defendant Green's Exhibit Number 2 was marked for
13 identification.)

14 **THE COURT:** Do y'all have any specific requests to
15 charge?

16 **MR. NORTON:** I e-mailed jury charges to the Clerk.

17 **THE COURT:** All right. Anything before we bring in
18 our jury, Mr. Norton?

19 **MR. NORTON:** No, Your Honor.

20 **THE COURT:** Defendants?

21 **MR. PEACE:** No, Your Honor.

22 **MR. HEMPHILL:** No, Your Honor.

23 **THE COURT:** Thank you. Thank you very much. If you
24 will bring in our jury. And Juror Number 28, Ms. Corley --
25 Juror Number 28, Ms. Corley, if you will place her in the

1 foreperson's seat, please.

2 (Whereupon, the jury enter the courtroom at 2:36 PM.)

3 **THE COURT:** Madam Clerk, will you swear our jury,
4 please.

5 **THE CLERK:** Please stand and raise your right hand.

6 (Whereupon, the jury was duly sworn by the Clerk of
7 Court.)

8 **THE COURT:** Good afternoon. Thank you. Thank you
9 again for indulging me this morning. I did -- did work
10 this morning, but I wasn't -- wasn't here with y'all this
11 morning. And also, Ms. Corley, I have appointed you our
12 foreperson. Thank you for volunteering for that very
13 important position. I had an election vote, there's no
14 recount whatsoever, but thank you. Thank you very much
15 for serving as foreperson of our jury.

16 Before we begin the case, I would like to tell you
17 just generally and briefly how we will proceed. The
18 first thing that will occur is that the attorney for the
19 Plaintiff -- the Plaintiff, again, is the party to my
20 front left -- the named Plaintiff, Stephen Wilkinson, as
21 Trustee of the George B. Buchanan, Junior, Irrevocable
22 Family Trust, dated 15 July 2001, and Mr. Norton will make
23 an opening statement, which may be followed by a similar
24 statement by Mr. Peace and Mr. Hemphill on behalf of their
25 clients, the named Defendants in the case.

1 Ladies and gentlemen, opening statements are not
2 arguments. The argument will come at the conclusion of
3 the case after all of the evidence and testimony has
4 been presented from the witness stand by the witnesses
5 testifying under oath and any documents or exhibits that
6 may be introduced during the trial of the case. The
7 purpose of the opening statements is for each party to
8 outline his claims and the evidence which he intends to
9 present in support of the claims.

10 Again, ladies and gentlemen, what the attorneys say
11 is not evidence. It's important for you to give them your
12 complete and undivided attention, of course, but it is not
13 evidence. The closing arguments are not evidence. The
14 questioning by the attorneys of the witnesses is not
15 evidence. That's the framework by which the testimony,
16 the evidence, is extracted from those witnesses that are
17 called to the witness stand testifying before you under
18 oath. But, again, please give the parties, the attorneys,
19 the witnesses, the Court, your complete and undivided
20 attention.

21 Following the opening statements, each side will
22 present his evidence with, again, the Plaintiff, the
23 party who brought the complaint, once again, going first.
24 Evidence may take many forms. It may be testimony, the
25 spoken word of the witness. It may be documents, it

1 could be photographs or the like. You should pay close
2 attention to all of the evidence which is presented to
3 you by each party. You, the jury, are the sole judges of
4 the findings of the facts in this case and no one else,
5 including myself, will be permitted to weigh the evidence
6 and render a verdict based on the evidence.

7 After all the evidence has been presented by the
8 Plaintiff, by the Defendants, the attorneys will make
9 their closing arguments. Now unlike the opening
10 statements, the final remarks will be true arguments.
11 That means each side will emphasize certain portions of
12 the evidence and try to persuade you to agree with their
13 version of the facts. Again, keep in mind that the
14 opening statements, as well as the closing arguments of
15 the attorneys, do not represent evidence in the case.

16 After the arguments are finished, after the parties,
17 the attorneys, have made their closing arguments to you, I
18 will explain to you the law which you are to apply, which
19 you have sworn that you will apply, to the facts of the
20 case as you find those facts to be. You will then retire
21 to your jury room to consider the facts and once you have
22 done so, you will return a verdict in favor of one side or
23 the other.

24 During the course of the trial, the Plaintiff has
25 the burden of proving his or its claims. The Plaintiff

1 must meet this burden by proving his claims by the greater
2 weight or the preponderance of the evidence. What we
3 mean by the greater weight or the preponderance of the
4 evidence has traditionally been illustrated by imagining
5 a traditional set of scales. When the case begins, the
6 scales are even. After all the evidence has been
7 presented if the scales should remain evenly balanced or
8 if they should tip even slightly in the favor of the
9 Defendants, then the Plaintiff would have failed to meet
10 the burden of proof and your verdict would be for the
11 Defendants. If, on the other hand, the scale should tip
12 even slightly in favor of the Plaintiff, then the
13 Plaintiff will have met its burden of proof and your
14 verdict would be for the Plaintiff.

15 Just a few additional comments. First, as I have
16 mentioned earlier, although I am the only person who can
17 tell you what the law is, you are the only ones who can
18 determine the facts. I do not have the right to indicate
19 how I may feel about the evidence presented in this case
20 and will have no opinion one way or the other. My
21 intention will be to act impartial and fairly towards
22 each of the parties.

23 Second, from time to time, and these are very good
24 and experienced trial lawyers that we have before the
25 Court and before you today, maybe one of the attorneys

1 would object to some bit of testimony or evidence which
2 the other side is seeking to present. As in business or
3 sports or any other structured activity, there's certain
4 rules that both sides must obey in presenting evidence.
5 These rules have a definite purpose. It is not to hide
6 anything from you. They ensure that the information you
7 receive is the most trustworthy and reliable evidence
8 available. An objection is the procedure that is used
9 for an attorney to call attention to a particular rule
10 of evidence and for this reason you should not hold an
11 attorney's objection against him or his client, nor should
12 you conclude from my ruling on any objection that I favor
13 one side or the other. At times I may ask you to retire
14 to your jury room while I take up an attorney's objection
15 because I may comment as to the facts of the case in
16 ruling whether or not a particular law applies.

17 Also I would ask you to please pay close attention to
18 all of the evidence that is presented, to the attorneys,
19 to the witnesses, because it will be up to you, the jury,
20 to determine the facts in this case and as a result you
21 will have to evaluate the credibility, the believability,
22 of each and every witness who testifies in this matter.

23 You are participating in a time-tested, honorable
24 system and it is extremely important for each of you to
25 listen very carefully to all of the evidence presented.

1 I am confident that each of you will perform your duties
2 accordingly.

3 Just as an administrative matter, ladies and
4 gentlemen, there is a sound system in the courtroom;
5 however, if you cannot hear a particular witness or see
6 a particular witness, please get my attention or the
7 attention of the clerk or one of our fine bailiffs and
8 we'll have them speak up or sit up.

9 Also, physical items of evidence, and perhaps there
10 will be documents that are presented, sometimes they're
11 handed -- a document may be handed to the foreperson and
12 passed among the members of the jury while you're here in
13 the box in the jury (sic) room. Sometimes they can be
14 displayed electronically, sometimes they may be displayed
15 by a diagram presented before you. You may look at and
16 review all those documents all you like, take as much
17 time as you want while you're out here in the jury box.
18 Remember, if I allow a document or the like into evidence,
19 you will also have that document with you in your jury
20 room at the time of your deliberations. I tell you that
21 just to remind you that in the courtroom will not be your
22 only opportunity to look at any physical item of evidence
23 or documents.

24 Seating, as far as when you're in the jury box, I
25 have unscientifically studied over the course of many

1 years that jurors can be very territorial about where
2 they sit. They want to sit in the same seat each and
3 every time and have the same view of the parties and the
4 courtroom and the witnesses. I'm the same way. I like
5 where I sit. I like to be in the same place each and
6 every time. You may sit anywhere you like in those first
7 two rows as far as -- you don't have to sit in the same
8 seat, but you may do so if you want to. I need for our
9 foreperson to always maintain that seat for me, please.
10 Again, that's just an unscientific study that I've
11 observed over the course of many years. And when I tell
12 jurors that they either do one or two things. They either
13 always sit in the same seat or they change seats and I
14 can't decide what message I'm getting from them in that
15 regard.

16 So, finally, at the end of the day what I'm in charge
17 of, I'm in charge of taking breaks. I have a real simple
18 rule about taking breaks. When I want to take a break, we
19 take a break. It works out great.

20 Ladies and gentlemen, this is not a judicial marathon.
21 As I said earlier, these are very good attorneys. This
22 case is a very, very important case. It's important to
23 the Plaintiff, it's important to the Defendants. There is
24 not a case of any greater importance being tried than this
25 case to the parties, to the attorneys and to this Court.

1 If you sit out here too long -- listening takes an effort,
2 it takes energy, and it can drain your energy and your
3 focus can get off a little bit. It's just human nature.
4 The same with me. If at any time any of you need to take
5 a break, please raise your hand. Please do so and y'all
6 will take y'all's break and we'll take our break.

7 Any objections to anything I've told the jury from
8 the Plaintiff, Mr. Norton?

9 MR. NORTON: No, Your Honor.

10 THE COURT: Mr. Peace? Mr. Hemphill?

11 MR. PEACE: No, Your Honor.

12 MR. HEMPHILL: No, Your Honor.

13 THE COURT: Thank you. Thank you very much.

14 Mr. Norton, you may address the jury.

15 MR. NORTON: Thank you, Your Honor.

16 Good afternoon, y'all. Thank you. Are you doing
17 good? Everybody can hear me okay? I don't like the
18 microphone too much, so I'll try to talk to you, but if
19 you can't hear me let me know even though we do have a
20 sound system.

21 I am Erik Norton and I am here on behalf of the
22 Plaintiff. As you've heard from the Judge, the Plaintiff
23 is sitting right here with me. It's Mr. Wilkinson. He is
24 the Trustee of the George B. Buchanan, Junior, Irrevocable
25 Family Trust. That's Mr. Buchanan back there sitting in

1 the front row along with my law partner, Mr. Moore.

2 We are here today on a real simple premise, and that
3 is that you should pay for your debts. That's really the
4 question. There is in our -- in our system, there's a
5 very simple way we determine that and that is we submit
6 evidence to you and then you decide if our side is right
7 or their side is right.

8 So what I want to do is give you a little bit of a
9 preview of what you're gonna hear and the first thing I
10 want to do is help explain to you exactly what a trust is.
11 Some of you may know exactly what it is, some of you may
12 not be too familiar with it. It's a legal creation kind
13 of like a company, but unlike a company a trust is set up
14 for one person to benefit somebody else. It could be
15 their children or a disabled person or anything.

16 In this case what you'll hear is that the trust was
17 set up for the benefit of Mr. Buchanan's children. What
18 happens is in the trust certain money or property is set
19 aside for the benefit of these other people and the
20 person who puts the money or the property in the trust
21 can't control it and can't benefit from it in an
22 irrevocable trust like this one. Instead the money and
23 the property has to be used for the health, welfare,
24 benefit of the beneficiaries, which in this case are the
25 children, the other people. So who gets to decide what's

1 in the best interest of the children? Well, in this case
2 Mr. Wilkerson, as the Trustee, gets to decide who gets
3 the benefit. So that's what a trust is.

4 And so sometimes trusts do all kinds of things. They
5 can own property, they can hold money, they can invest in
6 stocks. A trust can, as they did in this case, give a
7 loan with an expectation of a return in the form of
8 interest and so that you'll hear about today is what this
9 trust did.

10 Our story though actually starts with a company
11 that's not here today. It's a company called Springs
12 North Augusta, LLC. It is a company that the Defendants,
13 sitting over there, and their companies were members
14 of, a part of, controlled, and that company and some
15 affiliated companies that existed before then brought a
16 piece of property over in Aiken at the intersection of
17 I-520 and Highway 25. It's undeveloped property and they
18 had big plans for it.

19 In order to fulfill those plans, they had to borrow
20 some money initially not from the trust. The trust didn't
21 have anything to do with their initial purchase of the
22 property. What you'll hear is that the trust came in
23 later when they needed some additional money for other
24 reasons and they wanted to borrow a little bit more money
25 and so the trust gave North Springs Augusta, LLC, a loan.

1 Okay. Does everybody follow where we are so far
2 hopefully? And so you'll see when we get through the
3 documents that the initial loan that was given was a big
4 one, \$7,590,000, and then that loan was upped a little bit
5 more to \$8,728,500, and so the trust gave a loan to North
6 Springs Augusta, LLC, for the purpose of developing that
7 property.

8 Well, the trust wanted to make sure that it got paid
9 back like lenders do. So in exchange for giving that
10 money, the company, North Springs Augusta, LLC, gave a
11 mortgage on the property. Y'all know the way a mortgage
12 works. If you don't pay the debt, then the person who
13 you owe it to can go to the court and they can get the
14 property sold in order to get their money back, or at
15 least part of their money back, and that's where the
16 second part of our story comes in.

17 Because the other thing the trust did is that it got
18 what's called a guaranty and a guaranty is a promise by
19 one person or one company to pay the debts of somebody
20 else if they don't pay them, okay? So if a -- so if a
21 person guarantees the debt of another person and that
22 person doesn't pay it, then the person who's owed the
23 money can look to the guarantor to collect.

24 And so what the trust did here is they said not only
25 do we have a mortgage on the property, but we are going to

1 get guaranties from the people who control North Springs
2 Augusta, LLC, the Defendants in this case. So you'll hear
3 and you'll see that each of these Defendants and their
4 companies signed what's called a guaranty agreement where
5 they promised to pay the debts of North Springs Augusta,
6 LLC.

7 Our story and the reason we're here today is because
8 North Springs Augusta, LLC, as you probably guessed
9 didn't pay the loan back. So what ended up happening is
10 the trustee of the trust, who was a gentleman named
11 Mr. Sakellaris at the time -- Mr. Wilkinson wasn't the
12 trustee yet, you'll see all of this -- a gentleman named
13 Mr. Sakellaris began what's called a foreclosure lawsuit.
14 It was another lawsuit filed against North Springs
15 Augusta, LLC, and the Court there ordered the property
16 sold and entered what's called a deficiency judgment
17 against North Springs Augusta, LLC.

18 Now a deficiency judgment is a document that you get
19 when the property at foreclosure doesn't sell for as much
20 as the debt. So, for example, if somebody loans another
21 person \$10,000 and they don't pay it back and then the
22 Court says well, you've got to sell your property in order
23 to pay the debt and the property only sells for \$7,000,
24 then the person who borrowed the money still owes 3,000,
25 okay? So that's as simple as it gets. When you have a

1 deficiency judgment, it's just the difference between
2 what the property sells for and what's owed.

3 Well, in this particular case, the deficiency
4 judgment that was entered on behalf of -- against
5 North Springs Augusta, LLC, was \$2,753,192.72 -- 70 cents,
6 excuse me, okay? So there's a deficiency judgment
7 against Springs North Augusta. Well, Springs North
8 Augusta couldn't pay that deficiency judgment, so the job
9 of the trustee, which by this time at least partly was
10 Mr. Wilkinson, but the trustee has to initiate a lawsuit
11 to try to collect that money from the guarantors if they
12 don't pay it right away. That's what happened in this
13 case. The guarantors didn't pay the debts of North
14 Springs Augusta, so this lawsuit was filed to try to
15 collect that money and that's what we're here today
16 about.

17 What the Trust would like you to do is to say that
18 these guarantors have to fulfill their promise to pay
19 the deficiency judgment, which is \$2,753,192.70, plus
20 15 percent interest over the long period of time that
21 that debt has gone unpaid. So the actual amount that is
22 owing as of today is \$4,781,882.55 and that's because the
23 deficiency judgment was entered in October 4th -- October
24 of 2012 and it hasn't been paid all that time, so all
25 that time it's been accruing interest. Just like if you

1 don't pay any other debt it accrues interest over time,
2 it gets more and more expensive, so that's what the trust
3 is asking you to do today.

4 There's no dispute about how much the deficiency
5 judgment is and there's no dispute between the parties
6 about whether the guaranties were signed. Everybody
7 acknowledges that. Instead what you're gonna hear from
8 the Defendants or we have heard from the Defendants is
9 that they shouldn't have to pay because of a technical
10 issue with how the foreclosure sale was conducted, and
11 let me explain just a little bit about what happened in
12 this particular case.

13 The way a foreclosure sale works when you look for a
14 deficiency judgment is you have -- you actually have two
15 sales and the sales are just like an auction. They're a
16 public auction just like Rawl's Auto Auction, just like
17 any other auction that you have, is the public goes in
18 higher and the high bidder wins. There's no bottom
19 number or anything like that. It's whoever comes in
20 highest wins.

21 And in this particular case, the way that the two
22 sales work is that at the first sale the person who is
23 owed the money can put in a bid for the property. They
24 can try to buy it so that they can hold onto the property
25 themselves and try to develop it or resell it or whatever

1 they want to do. They're allowed to do that at the first
2 sale. There's then a second sale, what might be referred
3 to as the upset bid, okay? At the second sale, the person
4 who's owed the money is not allowed to bid, nor is that
5 party's representative allowed to bid, and the reason for
6 that is to try to encourage the party who is owed the money
7 to put in the highest bid possible, okay? So that's --
8 that's the background down of this.

9 What happened in this case is at the first sale the
10 trust put in a bid for 6.6 million. And you're gonna hear
11 about this in testimony from all of the witnesses. You
12 don't have to take my word for it. The trust put in a bid
13 for 6.6 million and then after that Mr. Buchanan, who was
14 concerned that someone else might come in and take this
15 property and leave the trust in a bad position, losing
16 some money, decided that it would be better for one of
17 his companies to own it rather than the -- rather than
18 somebody other than the trust. So Mr. Buchanan, on behalf
19 of a company he owned called Second Avenue Holdings, LLC,
20 it was a company he had set up to hold some property
21 previously, went to the second sale and there were other
22 bidders there and multiple bids were put in. In the end,
23 Second Avenue Holdings, LLC, won the bid and held the
24 property.

25 After that point, Mr. Buchanan after consulting with

1 some others and the trustee decided that it would be
2 better from a tax perspective and from his children's
3 perspective for the trust to hold onto that property
4 rather than Second Avenue Holdings, LLC. So Second
5 Avenue Holdings, LLC, assigned the bid that it won back
6 to the trust so the trust could hold on to the property.

7 The question for you is whether Second Avenue
8 Holdings, LLC, and the trust are essentially the same
9 thing. That's what you're gonna be asked today and I
10 submit to you that that's not the case, it's clearly a
11 different group of people, but we'll talk about that a
12 little bit more. The important question for you is
13 whether someone who owes a debt should have to pay it.
14 Because there's no question that there's a debt owed here
15 and that it hasn't been paid and so what we would ask --
16 what the Plaintiff, the trust, asks from you today is that
17 you simply hold the guarantors responsible for what they
18 promised to do and find that they owe the trust the full
19 amount of the deficiency judgment, which is \$4,781,882.55.

20 Thank you very much for your time and attention.

21 **THE COURT:** Thank you, Mr. Norton. Mr. Hemphill.

22 **MR. HEMPHILL:** May it please the Court?

23 Good afternoon, ladies and gentlemen of the jury.

24 Again, my name is Roy Hemphill. I'm a lawyer from
25 Greenwood. I'm seated over here at what you call defense

1 counsel table. There's a number of folks over here and
2 Mr. Alan Peace represents the two gentlemen that are
3 seated in the back, Mr. Green on the left and Mr. Redd on
4 the right, and he'll introduce them further. My clients
5 are not here today. I represent Herbert Anderson, Junior,
6 and Keith Anderson who are from Greenwood. They are not
7 here not because this isn't an important day for them,
8 it's not because they don't care, it's because they -- if
9 you've heard some of the dates that have been tossed out
10 here, this loan was made in 2009 by Mr. Buchanan's Trust,
11 so we're eight years down the road now. Both my clients
12 are in poor health. Mr. Anderson is eighty years old and
13 he has a doctor's excuse. It's placed up here for your
14 consideration should you wish to look at it to know that
15 he's too ill to be here, but this is still an important
16 case for him, his son and a company that's also listed
17 that he formed with his son in this case.

18 The Andersons have lived their entire life in
19 Greenwood. They have a construction company and they do
20 grading construction, grading contracts really using
21 bulldozers and things like that moving heavy dirt, and
22 that's been what their family business has been. But
23 every once in a while they'd come across a piece of real
24 estate, you know, that looked like it would be something
25 that they could create value in, something that they could

1 buy and grow, whether they develop it or turn around and
2 sell it, okay?

3 So every once in a while they'd come across something
4 and that's what happened in this case. It didn't happen
5 in Saluda County, instead it happened in Aiken County, in
6 North Augusta, about 1400 acres down there. And Mr. Peace
7 is probably gonna show you a map of where this was, but
8 we'll just say it was in the path of progress. It was at
9 the intersection of I-20 and I-520. And if Mr. Peace
10 shows you, there's neighborhoods all around it and it's
11 about 1400 acres. My clients were asked to go look at it,
12 they looked at it, got into discussions with Mr. Green and
13 Mr. Redd and the four of those folks got together and
14 said, you know, one or two of us can't get in here and
15 buy this, the selling price it too much, but four of us
16 can get in here and do it and we'll set up a company,
17 and so they set up a company called Springs North Augusta,
18 LLC. LLC just means limited liability corporation, okay?
19 And that's allowed under the laws of most states and
20 certainly in South Carolina.

21 So they set this company up and they went out and
22 borrowed money. They didn't borrow the money -- this was
23 before 2009. They didn't initially borrow the money from
24 Mr. Buchanan and his trust, they borrowed it from a bank.
25 And guess what happened before they could do anything

1 with the property, develop it, improve it, sell it or
2 whatever? We had something in this country called the
3 Great Recession and they really couldn't do anything.
4 They were stuck with it. They were just idle with that
5 piece of property.

6 So the bank that loaned them the original amount of
7 money said, you know, we can't just keep on extending
8 this loan, so they went out and sought a loan from
9 somebody else to loan them money. They were introduced
10 to Mr. George Buchanan, who has been previously introduced
11 to you. Mr. Buchanan is from Virginia. He said he would
12 be interested in loaning the money, but it would loaned
13 through the trust, okay? So they were introduced to
14 Mr. Buchanan and Mr. Buchanan came and looked at the
15 property and they -- I think the testimony will be that he
16 looked at the property and made certain recommendations
17 to the trust, his trust, to loan the money, so he did that
18 deal. It was about seven and a half million dollars that
19 my clients, Mr. Green and Mr. Redd, in the form of their
20 LLC, Springs North Augusta, was loaned. So Mr. Buchanan
21 loaned them seven and a half million dollars and he took
22 back a promissory note for seven and a half million
23 dollars, that is the trust did, and he took back a mortgage
24 which allowed if the money wasn't paid -- unfortunately,
25 we've all got to know what foreclosures are like during

1 this great recession. The mortgage allows the lender,
2 which is what Mr. Buchanan's trust was, to take the
3 property back by filing or by following proper legal
4 procedures as set forth by the folks who make the laws
5 down in Columbia, the Legislature. He also took back a
6 document called a guaranty, okay, and that guaranty
7 basically said my clients need -- who are not here, but
8 Mr. Green and Mr. Redd and the Andersons, if he so chose
9 through the trust, then they could go after him
10 on this guaranty, okay?

11 So three documents: A note, a mortgage and a
12 guaranty, okay? The note and the mortgage have already
13 been dealt with, but they are relevant for you to review
14 and consider. What we're here for today is what
15 Mr. Norton was referring to, this guaranty, and him
16 saying that our clients have not paid this back, okay?

17 Now let's talk about proper ways to get the property
18 back through foreclosure. In South Carolina, if you're
19 not pursuing a deficiency judgment -- and Mr. Norton took
20 you through what a deficiency judgment is, if you're not
21 going after that, all you want is the property back, what
22 you do is you file this thing, this lawsuit, and -- and
23 you basically wind up at a foreclosure sale. And that is
24 a public sale. That's an opportunity for -- for anybody
25 to come in and bid, okay, and -- even the lender -- the

1 lender can show up. Now the lender doesn't have any --
2 won't be out any more money because he's already out the
3 money, okay, so he can show up and make a deal and that
4 sale would be final on that day as long as you're not
5 pursuing a deficiency judgment, but in South Carolina if
6 you're pursuing a deficiency judgment, you've got to have
7 two sales, okay? You have a first sale and thirty days
8 later you have something called an upset bid sale, okay?

9 We hope -- it is our hope that at the end of this
10 case His Honor, who's the judge of the law, you-all are
11 the judges of the facts, that he will read you and
12 instruct you about this statute that I'm telling you
13 about, that this statute says that if you're pursuing a
14 deficiency judgment and you're the lender, you've got to
15 be all in on that first sale. You've got to put all of
16 your debt forward. You've got to show up at the sale and
17 bid you -- your debt, okay? Either all of your debt or if
18 you want to bid less than your debt, that's fine. Someone
19 can come in at that second sale and outbid you by a dollar
20 and you will have not recovered your debt, okay? That's
21 how these sales work.

22 We contend that what happened in this case, and
23 Mr. Norton's made reference to it, that this property was
24 valuable to Mr. Buchanan and his trust. Valuable enough
25 that he decided to show up, he himself, and put in a

1 higher bid. And there were other bidders there. I think
2 there will be testimony there were other bidders there.
3 He put the higher bid himself in order to get the property.

4 Ladies and gentlemen of the jury, we think that is a
5 violation of the statute. We don't think it's technical
6 as Mr. Norton referred. We think it's important that the
7 folks in Columbia who make the laws set them up the way
8 they do and we ask that out of sheer fairness we be
9 afforded the protection of the law. Nothing unreasonable
10 about that.

11 Thank you for your patience, thank you for your
12 attentiveness, and as we go through this case I thank you
13 for your continued attention.

14 **THE COURT:** Thank you. Thank you, Mr. Hemphill.
15 Mr. Peace.

16 **MR. PEACE:** May it please the Court?

17 **THE COURT:** Yes, sir.

18 **MR. PEACE:** Ladies and gentlemen, we introduced
19 ourselves until we're full of it, but we appreciate you
20 being here today and hearing what we have to talk about.
21 I promise you that Mr. Hemphill and I are not wearing the
22 same tie intentionally. That's just the way it happened.

23 Mr. Norton has described the Plaintiff's version of
24 the case, the Plaintiff's version of the facts that they
25 hope to prove. Mr. Hemphill did a very good job of

1 explaining the Defendant's side. Seated with me at
2 counsel table is Bruce Green. He's in the blue shirt.
3 Cliff Redd is in the, I guess, peach colored shirt. They
4 are my clients and they're a part of the Defendants in
5 this case, as well as a company that they own named Redd
6 Green Investments. And just like Mr. Norton and just like
7 Mr. Hemphill described they were also part owners in a
8 company called Springs North Augusta. Springs North
9 Augusta owned roughly a 14-acre tract of land in Aiken
10 County and just like Mr. Hemphill said it's a valuable
11 piece of property. I put this it up here just so you can
12 get kind of a perspective of what the property was like.
13 This is the 14-acre tract of land and all of this is
14 colored like it was going to be developed, but it never
15 was developed because just like he said the economy went
16 bad and the property ended up being foreclosed on.

17 But you can see the how the highways are running
18 through it, it was a valuable piece of property that was
19 going to be developed, but they didn't because the debt
20 couldn't be paid back. Springs North Augusta approached
21 Mr. Buchanan about loaning the money and that was roughly
22 in 2009. My clients signed guaranties on those loans just
23 as -- we've never denied that, but Springs North Augusta
24 ended up not being able to pay the money back either. So
25 just like everybody has talked about, the foreclosure

1. action in Aiken County was brought in roughly 2011, 2012
2. to foreclose on that property. Whenever they brought that
3. action in Aiken County to foreclose on the property, they
4. could have named these two gentlemen and Mr. Hemphill's
5. clients, they could have named them as guarantors as part
6. of that lawsuit, but they didn't. They foreclosed on the
7. property, they went through the bid process that
8. Mr. Hemphill described, but they violated the statute
9. whenever they went through the bid process.

10. Now the Plaintiff wants you to think that this is a
11. simple case, this is just about collection on a guaranty,
12. this is a simple case about a debt and that whenever
13. Second Avenue Holdings went to that second sale to bid on
14. it that it was entirely separate from the Trust, from the
15. George B. Buchanan Trust, that whenever Second Avenue
16. Holdings went to that second sale that one really didn't
17. have anything to do and he just wanted to get that property
18. from the investors, but the facts in this case are not
19. gonna show that.

20. Let's go over these dates with you because these
21. dates are gonna be important. On September 4th that's
22. going to be when the first foreclosure sale happened.
23. September 4th of 2012. The George B. Buchanan Trust
24. attended that first foreclosure sale and bid in
25. \$6.6 million to get the property. Six days later, six

1 days later on September 10th of 2012, George B. Buchanan
2 started up a company called Second Avenue Holdings, LLC.
3 On October 4th, less than a month later, Second Avenue
4 Holdings and Mr. Buchanan went to that second sale and bid
5 in on it. They bid \$7.1 million and they were the high
6 bid. Twenty days later, twenty days, Second Avenue
7 Holdings transferred that bid to the George B. Buchanan
8 Trust, transferred it back to them, okay? And what did
9 they pay for it? Not a dime. They -- Second Avenue
10 Holdings transferred that bid back to George B. Buchanan,
11 the trust, so the trust would end up with the property.

12
13 So that's what our problem is with what they're trying
14 to do today. The statute is very clear, the statute that
15 Mr. Hemphill talked about, the statute is very clear that
16 if you're a lender you've got one bite at the apple. At
17 that first sale you've got a good faith duty to put your
18 best shoe forward -- put your best foot forward and make
19 your bid what it's gonna be and you, as the lender, nor
20 anyone acting on your behalf, can participate in that
21 second sale. Based on the dates that I've gone over with
22 you here, it's clear that the George B. Buchanan Trust
23 and Mr. Buchanan saw that this was a valuable piece of
24 property, that somebody else may be bidding on it at the
25 second sale, set up this second company, dispatched that

1 second company to the second sale in violation of the
2 statute. They bid on it at the second sale, they were the
3 high bidder. They got it, they turned around less than
4 three weeks later and transferred it back to the trust who
5 the statute says can't participate in that sale.

6 Ladies and gentlemen, that's a violation of the
7 statute. We're going to be asking you to not award the
8 Plaintiff the relief they're requesting because they
9 violated the statute. They had a responsibility to play
10 fair according to what the statute requires, they didn't
11 do it and shouldn't profit from it today. Thank you very
12 much.

13 **THE COURT:** Thank you. Thank you, Mr. Peace.

14 Mr. Norton, you may call your first witness.

15 **MR. NORTON:** Thank you, Your Honor. We call Stephen
16 Wilkinson to the stand.

17 **THE COURT:** All right. Mr. Wilkinson, come around
18 and be sworn, please.

19 (Whereupon, Stephen Wilkinson was duly sworn by the
20 Clerk of Court.)

21 STEPHEN WILKINSON,

22 having been duly sworn, testified as follows:

23 DIRECT EXAMINATION

24 BY MR. NORTON:

25 Q. Good afternoon, Mr. Wilkinson.

1 A. Good evening.

2 Q. Where do you currently reside?

3 A. Ringgold, Virginia.

4 Q. And what's your current occupation?

5 A. CPA.

6 Q. Can you tell the jury a little bit about your
7 educational background?

8 A. I received a bachelor's degree from Virginia Tech and
9 passed the CPA exam and have been practicing since 1975.

10 Q. Tell us a little bit about that work history.

11 A. I started working in the tobacco fields, then went
12 to college, as I said, and graduated from Virginia Tech
13 and went to work with a firm, Harris, Harvey, Neal and
14 Company, in Danville, Virginia. Ringgold and Danville
15 are all right -- they kind of join each other, and I was
16 there for twenty-five years. I left there, had to take a
17 little sabbatical and went into the investment business
18 for about three years because of a noncompete agreement
19 and then in 2003 I set up my own practice and that's where
20 I am today.

21 Q. All right. And can you explain your relationship to
22 the Plaintiff in this case?

23 A. I'm the trustee.

24 Q. And -- and tell me exactly what your job is as
25 trustee.

1 A. A trustee is -- basically what I'm -- I'm required to
2 follow the trust documents and basically look after the
3 distributions for the health, education and welfare of
4 whatever the children may be because the children are the
5 beneficiaries of the trust and I'm the trustee of the
6 trust on their behalf, so I guess that's basically my
7 responsibilities.

8 Q. And are you paid for those responsibilities?

9 A. Yes.

10 Q. How much are you paid to do that?

11 A. I'm paid \$3,000 a year as the trustee.

12 Q. So this is a service you provide in the regular
13 course of business as a CPA; is that right?

14 A. Yes.

15 Q. Is the trust -- in the caption it says it's an
16 irrevocable trust. Can you tell the jury what it means
17 for it to be an irrevocable trust?

18 A. The irrevocable trust is -- it's sort of set up by
19 the IRS guidelines and it basically says if you put it in
20 there, you can't get it back and you can't benefit from
21 it, so whatever is put in that trust, and it's all been
22 put in there by Mr. Buchanan or either the attorneys for
23 the trust, the grantor, Mr. Buchanan, cannot take it back
24 or benefit from it in any way as far as any disbursements
25 go.

1 Q. Who does benefit from it?

2 A. Mr. Buchanan's children.

3 Q. When was the trust created?

4 A. I wasn't the trustee at the time, but I think it was
5 2001, somewhere around that ballpark.

6 Q. And when did you become trustee?

7 A. I believe that was 2013.

8 Q. And why did you become trustee?

9 A. I was doing the accounting work for the trust and
10 the trustee was an attorney. It was Harry Sakellaris, the
11 one that was referred to in opening statements, and he was
12 on one side of the town and I was on the other one and we
13 were writing all the checks and doing all the book work
14 and we'd have to send the checks back and forth to be
15 signed and just for convenience we decided just to put it
16 all in one office.

17 Q. All right. We'll let's turn a little bit to what's
18 at issue in this particular -- in this particular case.
19 Can you tell me how you first learned about the loan from
20 the trust to North Springs Augusta?

21 A. I guess I became aware of it before I was trustee
22 just from doing the accounting work.

23 Q. Okay. And what -- what do you know about how that
24 loan came to be?

25 A. Mr. Buchanan was contacted by someone, and I have no

1 idea who it was, what their names are, and told him there
2 was an opportunity to -- you know, if he wanted to loan
3 some money, you know, there was an opportunity to make
4 some money and we had done this on -- or they had done
5 this on a previous property in Wyoming and it worked out
6 well, so that's really all -- you know, I can't really
7 lead you anywhere else than that.

8 Q. Okay.

9 MR. NORTON: What I'd like to do, Your Honor, with
10 your permission is show the witness Exhibit Number 6.

11 THE COURT: Of course.

12 BY MR. NORTON:

13 Q. Mr. Wilkinson, do you recognize that document?

14 A. Yes, sir. It's the original promissory note for
15 \$7,590,000.

16 Q. Is that a part of the records of the trust that
17 you're responsible for keeping?

18 A. Yes.

19 Q. Okay. And I'll show you -- to your knowledge, was
20 that agreement ever modified?

21 A. Yes, it was. It was modified -- it may have been
22 eighteen months or two years later, I don't recall the
23 date, it was modified to eight million and -- I think it
24 was eight million and something for -- to add the accrued
25 interest that hadn't been paid to the note.

1 Q. I'll hand you Plaintiff's Exhibit 7 and see if that
2 will refresh your memory about how much the modification
3 was for?

4 A. \$8,728,500.

5 THE COURT: May I see those, Mr. Wilkinson? Any
6 time you need them, just ask me for them.

7 THE WITNESS: All right.

8 BY MR. NORTON:

9 Q. Okay. And as part of that promissory note and the
10 loan agreement with August North -- or Springs North
11 Augusta, did the Trust do anything else to secure payment?

12 A. The foreclosure sale, yes, was initiated by -- again,
13 the last trustee, Mr. Sakellaris.

14 Q. And that was through the mortgage; is that right?

15 A. Yes.

16 Q. Did the trust gain any other security -- request any
17 other security?

18 A. Originally the guarantors we had.

19 Q. I'll show you what's been marked as Exhibits 8 and 9
20 and ask if you can recognize -- recognize those documents?

21 A. They're guaranty -- guaranty agreements to the note.

22 Q. And are they signed by the Defendants?

23 A. Yes, signed by Cliff Redd and Keith Anderson, I
24 believe, on this one with two witnesses and this one is
25 signed by Herbert Anderson, Junior -- Herbert Keith

1 Anderson, Bruce Green, William Bodie and Cliff Redd.

2 Q. And were you Trustee at the time that the foreclosure
3 action that you mentioned was referenced -- or initiated?

4 A. No, I was not.

5 Q. Do you know what the outcome of that foreclosure
6 action was?

7 A. The Second Avenue Holdings at the second sale bought
8 it for the seven million and I don't recall the exact
9 dollars.

10 Q. I'll show you what's been marked as Plaintiff's
11 Exhibit 5. Do you -- do you recognize that document from
12 the foreclosure action?

13 A. It's an order of the Court to -- stating that the
14 highest bidder was 7,160,000.

15 Q. And what does it say about what the highest bidder
16 did?

17 A. It says the highest bidder on the sale date,
18 October 4, 2012, for the sum of \$7,160,000. The bid
19 without -- with the bid as provided and said order and
20 assigned the bid to Harry P. Sakellaris, as Trustee of
21 the George B. Buchanan, Junior, Irrevocable Family Trust,
22 dated the 15th day July, 2001.

23 Q. And who's that signed by?

24 A. M. Anderson Griffith.

25 Q. And who's he?

1 A. Master of Equity, Aiken County.

2 Q. This was a court document?

3 A. Yes, sir.

4 Q. And that court document outlines the transfer --

5 A. Yes.

6 Q. -- from Second Avenue Holdings to the trust; is that
7 right?

8 A. That's correct.

9 Q. I want to show you a couple of other documents just
10 so we have a complete record. This is Exhibit Number 1 and
11 I'll ask you if you recognize that document?

12 A. Judgment of foreclosure sale.

13 Q. And who were the parties to that?

14 A. Harry P. Sakellaris, as Trustee of the George B.
15 Buchanan, Junior, Irrevocable Family Trust, Plaintiff,
16 versus, Springs North Augusta, LLC, Defendant.

17 Q. And these are, again, part of the court records that
18 were provided to the trust; is that right?

19 A. Yes, sir.

20 Q. I'll show you what's marked as Plaintiff's
21 Exhibit 2 --

22 A. Uh-huh.

23 Q. -- and ask you the same question. If you can
24 identify it for us and tell us if it was part of the trust
25 records.

1 A. Judgment in civil case, State of South Carolina,
2 County of Aiken, Court of Common Pleas. Decision by the
3 Court. The action came to trial or hearing before the
4 Court, the issues were tried and heard and decision
5 rendered, and it's a judgment against Springs North
6 Augusta for \$2,484,163.95.

7 Q. Okay. And I'll show you what's been marked as
8 Plaintiff's Exhibit 3. Can you tell us what that document
9 is and whether it was part of the trust records provided
10 by the Court?

11 A. Let's see. Court of Common Pleas, County of Aiken --
12 it says that -- do you want me to read it all?

13 Q. No, just tell us what it is.

14 A. It says it's a \$7,160,000, Master of Aiken County,
15 in consideration for the sum, the receipt is hereby
16 acknowledged --

17 **THE COURT REPORTER:** I'm sorry. You're going to have
18 to speak up.

19 **THE WITNESS:** I'm sorry.

20 BY MR. NORTON:

21 Q. Can you just -- you don't have to read it. Just tell
22 us generally what it is. If you'll look to the -- it's
23 not on the front page. Look to the back page. Maybe that
24 will refresh your memory. That's the right page. Tell us
25 what that is.

1 A. It's a recording title to real estate to Harry
2 Sakellaris from M. Anderson Griffin, Master in Equity,
3 County of Aiken, to Harry P. Sakellaris, as Trustee of the
4 George B. Buchanan Irrevocable Family Trust.

5 Q. Slow down.

6 A. It's from the County of Aiken by M. Anderson Griffith,
7 Master, to Harry P. Sakellaris, as Trustee of the George B.
8 Buchanan, Junior, Irrevocable Family Trust.

9 Q. And that indicates it's the title to the --

10 A. Title to real estate.

11 Q. Thank you. And I'll show you what's been marked as
12 Exhibit 4 and ask you the same and tell us exactly what it
13 is and if it's part of the trust records.

14 A. Yeah, this is an amendment to the original deficiency
15 order.

16 Q. Okay.

17 A. What it was originally for and changed to.

18 MR. NORTON: Your Honor, I'd like to move Exhibits 1
19 through 9 into evidence.

20 MR. PEACE: Without objection.

21 MR. HEMPHILL: No objection.

22 THE COURT: Plaintiff's Exhibits 1 through 9 in
23 evidence without objection.

24 (Plaintiff's Exhibit Number 1 through 9 were
25 admitted into evidence.)

1 BY MR. NORTON:

2 Q. Let me ask you, Mr. Wilkinson, currently has -- have
3 you calculated the amount that is due from the guarantors
4 in this case to the trust?

5 A. Yes, using 15 percent and through September the 1st I
6 believe the calculation was made.

7 Q. I'm showing you Exhibit 10. Is that your calculation?

8 A. Yes, 4,781,882.55.

9 Q. And has that amount been paid by any of the Defendants
10 in this case?

11 A. No, nothing has been paid period by anybody.

12 Q. During the entire history of the loan?

13 A. Right.

14 Q. What is the interest rate on the loan?

15 A. 15 percent.

16 MR. NORTON: Thank you, Mr. Wilkinson. Answer any
17 questions from Mr. Peace and Mr. Hemphill.

18 THE COURT: Thank you, Mr. Norton.

19 Mr. Peace.

20 MR. PEACE: May it please the Court?

21 THE COURT: Yes, sir.

22 CROSS-EXAMINATION

23 BY MR. PEACE:

24 Q. Mr. Wilkinson, as I understand it you've been the
25 trustee of the George B. Buchanan, Junior, Trust since

1 August of 2013?

2 A. I think that's correct, yes.

3 Q. You weren't the trustee for any activity prior to
4 August of 2013; is that correct?

5 A. No, sir. Just the accountant.

6 Q. Okay. Who set this trust up?

7 A. You mean the legal people or who donated the property?

8 Q. Yeah, who -- I mean, who's trust is it? Who set it up
9 originally?

10 A. It was a trust set up by Mr. Buchanan to put assets
11 for his children and also to try to eliminate the estate
12 taxes.

13 Q. So George B. Buchanan, Junior, set this trust up
14 originally?

15 A. Yes, sir.

16 Q. Okay... And who founded the trust originally?

17 A. Mr. Buchanan.

18 Q. George B. Buchanan, Junior, funded the trust
19 originally?

20 A. That's correct.

21 Q. Now does the trust still own this 1400 acres in Aiken,
22 South Carolina that we're talking about?

23 A. Yes, sir.

24 Q. Okay. He talked to you about the loan to Springs
25 North Augusta, LLC. You weren't the Trustee whenever --

1 whenever the mortgage was foreclosed on, were you?

2 A. No, sir.

3 Q. Okay. Did you have any involvement in that action?

4 A. No, sir.

5 Q. Okay. Did -- so you didn't participate in the
6 decision made at the time to leave Bruce Green, Cliff
7 Redd, Redd Green Investments out of that lawsuit, did you?

8 A. No.

9 Q. Did you participate in the decision on what price was
10 gonna be bid at that first foreclosure sale on September
11 4th of 2012?

12 A. No.

13 Q. Okay. Did he -- did you participate in the decision
14 to send Second Avenue Holdings, another of Mr. Buchanan's
15 companies, did you participate in the decision to send
16 Second Avenue Holdings to Aiken, South Carolina to
17 participate in that second sale?

18 A. No.

19 Q. Had no involvement in that?

20 A. No, sir.

21 Q. Okay. Did you participate in the decision for Second
22 Avenue Holdings to assign that bid back to the George B.
23 Buchanan, Junior, trust?

24 A. No, I did not.

25 Q. Okay. Did you participate in the decision for the

1 George B. Buchanan, Junior, Trust not to pay Second Avenue
2 Holdings anything for that assignment?

3 A. No, I did not.

4 Q. Have you, as the trustee of the George B. Buchanan
5 Trust, received an appraisal on this property?

6 A. Yes, I believe we got one in January of '16 I believe
7 it was that y'all referred to earlier.

8 Q. And what was the value on that appraisal?

9 MR. NORTON: Objection, Your Honor.

10 THE COURT: Sustained.

11 MR. PEACE: No further questions of Mr. Wilkinson.

12 THE COURT: Thank you, Mr. Peace.

13 Mr. Hemphill.

14 CROSS-EXAMINATION

15 BY MR. HEMPHILL:

16 Q. Mr. Wilkinson, you are the trustee of the trust,
17 correct?

18 A. That's correct. Currently.

19 Q. Does Mr. Buchanan hold some sort of title in relation
20 to the trust?

21 A. At this time he can -- I think it refers to him as he
22 can give me financial advice as needed.

23 Q. Okay. Have you ever heard of the term "protector"?

24 A. Protector? No, not really.

25 Q. Okay. Does he have any --

1 A. I mean, I know it's in some trust documents, but, I
2 mean, that's --

3 Q. Okay. Does he have the ability to remove you as
4 trustee?

5 A. No, I don't believe so.

6 Q. Has he removed prior trustees before you?

7 A. The -- you'd have to ask him.

8 Q. There have been prior trustees before you?

9 A. Yeah, two prior.

10 Q. Mr. Crumpler?

11 A. Yes, sir.

12 Q. And Mr. Sakellaris?

13 A. That's correct. I mean, to my knowledge that's the
14 only other two.

15 Q. All right. And does he -- does the trust hold other
16 real estate?

17 A. Yes.

18 **THE COURT:** Say that again, Mr. Hemphill.

19 Q. Does the trust hold other real estate?

20 A. Yes.

21 Q. This is not the only real estate the trust holds,
22 correct?

23 A. No, sir.

24 Q. Is there -- is there any debt on this 1400 acres that
25 is owed by the trust to a bank say?

1 A. No.

2 Q. So that 1400 acres in North Augusta is owned lock,
3 stock and barrel by the trust?

4 A. Correct.

5 Q. It's the trust's to do as it sees fit with, correct?

6 A. Correct.

7 Q. Is it actively on the market to sell?

8 A. It's available for sale. We've basically talked to
9 some development people, but it just doesn't seem to --
10 we've had a couple of overtures, ridiculous offers, but
11 nothing in writing.

12 Q. Okay. But it's actively on the market?

13 A. Yeah.

14 Q. Does -- does Mr. Buchanan from time to time make
15 recommendations to the trust about either buying property
16 or selling property?

17 A. From time to time. I don't think -- we haven't bought
18 any, I mean, since I've been trustee, but we've talked
19 about a lot of investments. He brings most of it to the
20 table. As successful as he is, it would be stupid not to
21 listen to him.

22 Q. So you -- you listen to his advice and act on his
23 advice, correct?

24 A. I listen to his advice and act on what I think is
25 prudent for the trust.

1 Q. All right. Have you ever turned down one of his
2 recommendations?

3 A. No, but I can't say he's given me any recently.

4 MR. HEMPHILL: Okay. Thank you, sir.

5 THE COURT: Redirect?

6 MR. NORTON: Nothing further, Your Honor.

7 THE COURT: Thank you. Thank you very much,
8 Mr. Wilkinson.

9 THE WITNESS: Thank you.

10 (Witness excused.)

11 THE COURT: All right, Mr. Norton.

12 MR. NORTON: The Plaintiff rests at this time, Your
13 Honor.

14 THE COURT: All right. The Plaintiff has rested,
15 ladies and gentlemen. Perhaps now would be a good time
16 to take a brief afternoon recess. We'll take seventeen
17 minutes, 1600 hours, all right? Thank you very much. You
18 may go to your jury room. Do not discuss the case during
19 this brief recess.

20 (Whereupon, the jury retires to the jury room at
21 3:43 PM.)

22 (Recess taken.)

23 BAILIFF: All rise.

24 THE COURT: Thank you. Please be seated. Thank you.
25 All right. Anything from the Plaintiff before we

1 bring in our jury?

2 MR. NORTON: Just a couple of things, Your Honor.
3 One, I just wanted to ask you how you wanted to handle
4 the judicial notice. Were you gonna --

5 THE COURT: How do you want to handle it? Do you
6 want to publish it?

7 MR. NORTON: We were thinking maybe --

8 THE COURT: Do you want to mark it as an exhibit?
9 Y'all tell me how you want -- y'all are trying the case.
10 See, I don't like trying the case. I'm on cruise control.

11 MR. PEACE: I'm fine with you just giving it to them
12 during the charge.

13 MR. NORTON: Yeah, I think that would be fine, Your
14 Honor.

15 THE COURT: All right.

16 MR. NORTON: Just -- I would like to mark it as an
17 exhibit just so we've got it.

18 THE COURT: You want to mark it as a Court's Exhibit?

19 MR. NORTON: Yes, sir. I believe that's all right.

20 THE COURT: Madam Court Reporter, mark this as a
21 Court's Exhibit 1.

22 (Court's Exhibit Number 1 was marked for
23 identification.)

24 THE COURT: And it wouldn't go to the jury. If it's
25 part of the charge, it wouldn't go to the jury.

1 **MR. PEACE:** Well, as a Court's exhibit it would not
2 go to the jury?

3 **THE COURT:** If you want me to, I'll send it to them.

4 **MR. PEACE:** I'd rather not. I mean, I'm fine with
5 you charging -- you charging it just the same as the other
6 law. I'd rather it not go to the jury as an exhibit.

7 **THE COURT:** All right.

8 **MR. NORTON:** I mean, I don't think I have the right
9 to ask for -- I mean, you know, I'd love for it to, but I
10 don't think I have a basis to send it.

11 **THE COURT:** I would agree it wouldn't go. I don't
12 think it should go.

13 **MR. NORTON:** Right.

14 **THE COURT:** Anything else?

15 **MR. PEACE:** Yeah, Your Honor. The Defendants are
16 withdrawing the counterclaims, withdrawing the
17 counterclaims as counterclaims, but not as the factual
18 basis for the defenses, if that makes sense.

19 **THE COURT:** All right. I think it makes sense. The
20 evidence can come in if relevant and it's not unduly
21 prejudicial.

22 **MR. PEACE:** Correct. We agree.

23 **THE COURT:** Anything further?

24 **MR. PEACE:** No, sir.

25 **MR. HEMPHILL:** No, sir.

1 **THE COURT:** All right.

2 (Whereupon, the jury returns to the courtroom at
3 4:02 PM.)

4 **THE COURT:** All right. Welcome back, ladies and
5 gentlemen. As you'll recall, the Plaintiff has rested.
6 We will now move our attention to the Defendant. The
7 Defendant will now present evidence and testimony in its
8 case. I would ask you to please continue to give the
9 parties your complete and undivided attention as you have
10 done throughout the trial of this case.

11 Mr. Peace.

12 **MR. PEACE:** Your Honor, may it please the Court?
13 We'd call Bruce Green to the stand.

14 **THE COURT:** All right. Mr. Green, come around and
15 join us, please.

16 (Whereupon, Arvil Bruce Green was duly sworn by the
17 Clerk of Court.)

18 ARVIL BRUCE GREEN,

19 having been duly sworn, testified as follows:

20 DIRECT EXAMINATION

21 BY MR. PEACE:

22 Q. Mr. Green, will you tell the jury what your full name
23 is, sir, please.

24 A. Arvil Bruce Green.

25 Q. Okay. And, Mr. Green, where do you live?

1 A. I live in Waynesville, North Carolina.

2 Q. Okay. How long have you lived in Waynesville, North
3 Carolina?

4 A. At the particular time about twelve years.

5 Q. Okay. What have you done for a living?

6 A. I've been in the off-price clothing business my entire
7 life. I have, you know, some -- a couple of outlet stores,
8 buying the closeouts and reselling.

9 Q. Okay. And where are those outlets located?

10 A. One's in Spartanburg, South Carolina, and I have one
11 in Sylva, North Carolina and one in Bryson City, North
12 Carolina.

13 Q. All right. And are you actively involved in those
14 stores?

15 A. No, I'm retired now. My wife does most of it now.
16 And -- and then in Spartanburg, I've got a couple that's
17 worked for me for thirty-three years right out of high
18 school that are still running my business. It's their
19 business now.

20 Q. If you'll lean kind of down into that microphone a
21 little bit so the jury can be sure to understand you.

22 A. Okay.

23 Q. You say you're retired. How old are you, sir?

24 A. I'm seventy-two years old.

25 Q. Okay.

1. A. Seventy-two and a half.

2. Q. Okay. I want to talk to you just a minute about your
3 -- your relationship with Redd Green Investments, LLC,
4 which is one of the Defendants in this case. Tell the jury
5 what your involvement is with Redd Green Investments, LLC.

6. A. That was an entity that Cliff and I formed when we
7 made this loan and started the North Augusta, LLC, and that
8 was just an entity to hold our percentage of ownership in.

9. Q. Okay. And how many owners were there or are there in
10 Redd Green Investments?

11. A. Just two. Just myself and Cliff Redd.

12. Q. And does that company do any business now?

13. A. No, it was just for that sole purpose and it's never
14 done any business before or since.

15. Q. Okay. All right. Was it set up to deal with Springs
16 North Augusta, LLC?

17. A. Yes, it strictly was.

18. Q. All right. Tell me about Springs North Augusta, LLC.
19 Who owned that company?

20. A. Redd Green Investments, LLC, and I think it was the
21 Anderson North Augusta, LLC.

22. Q. Another Defendant in this lawsuit?

23. A. Yes.

24. Q. Okay.

25. A. Yes, sir.

1 Q. And what was the reason that Springs North Augusta was
2 opened up?

3 A. To hold title to this 1420 acres from when we had
4 acquired it as North Springs.

5 Q. Okay. And the 1400 acres is shown on that board right
6 there?

7 A. Yes, sir. That was it.

8 Q. Now what did you intend to do with that piece of
9 property?

10 A. Well, we intended to sell it if we could and pay the
11 note off and hopefully make some money off it.

12 Q. Okay. All right. Now whenever your company owned
13 that piece of property, what was it worth?

14 A. Well, I would say it was worth in the -- you know,
15 several million dollars. I mean, it's -- we had it -- at
16 one time it was worth over \$30 million.

17 Q. Okay. So that piece of property at one time was worth
18 over \$30 million while you owned it?

19 A. Yes, when we initially owned it.

20 Q. All right. Now did it have a mortgage on it?

21 A. Prior to this mortgage?

22 Q. Yes, sir.

23 A. Yes, it did. It was with Mercantile Bank in Florida
24 and we had -- we owed them -- we paid them and owed them
25 six million and that's what we had borrowed from the

1 Buchanan Trust was the six million and that figure you
2 heard earlier, which was seven million something was
3 prepaid interest and whatever else they put on there, but
4 the note to Mercantile Bank, what he actually paid to the
5 bank, was six million dollars.

6 Q. All right. So that was the actual amount of money
7 that was advanced by the George B. Buchanan Trust?

8 A. Yes, six million.

9 Q. Okay. And on that loan -- I mean, you acknowledge
10 that you were a guarantor on that loan, correct?

11 A. I was, yes, sir.

12 Q. Okay. Now what did being a guarantor on that loan
13 mean to you?

14 A. Well, I'd never -- I'd never been a guarantor and
15 I'd never read that much about it, but I thought since
16 the loan -- amount of the loan was several times what the
17 value of the property was, that that never seemed to be a
18 problem.

19 Q. Okay. When you say several times the amount of the
20 property, you got that reversed. You thought that the
21 property was worth more than --

22 A. Several times more than the loan.

23 Q. All right. And you acknowledge that Springs North
24 Augusta couldn't pay off the loan?

25 A. No, we couldn't because the real estate values started

1 tanking about that time or they had been tanking and they
2 didn't pick up any since, so we just didn't have no means
3 to pay it back.

4 Q. Okay. And whenever that foreclosure action was
5 started in Aiken, who was the defendant in that case?

6 A. Springs North Augusta, which did not include Redd
7 Green or myself or any of the guarantors at the time.

8 Q. Okay. And that was gonna be my next question to you.
9 You were not named as a defendant in that case?

10 A. No, I was not.

11 Q. Okay. Were any of the Defendants that are in the
12 case that we're here about today named as a Defendant in
13 that foreclosure case?

14 A. No, it was strictly just against the Springs North
15 Augusta, LLC.

16 Q. Okay. And what was your reaction to not being named
17 in that case as a defendant even though you were a
18 guarantor?

19 A. Well, since we wasn't included, I thought that the
20 Buchanan Trust was satisfied with what they had; they had
21 the value of the land -- the value of a piece of land and
22 we was clear on it.

23 Q. Okay. Did you have any prior experience with
24 foreclosure or the foreclosure process prior to that time?

25 A. No, I've never been in foreclosure predicaments.

1 Q. Okay. Did you have any prior experience with a
2 deficiency judgment at the time that the Aiken case was
3 filed?

4 A. No, I'd never -- I'd never had a deficiency judgment.
5 I'd never -- I'd never borrowed that much money to tell
6 you the truth.

7 Q. Okay. Let me focus your attention on that first
8 foreclosure sale in the foreclosure case. Is it your
9 understanding that the Plaintiff bid in at that first
10 foreclosure sale?

11 A. Yes, I understood that he bid \$6.6 million.

12 Q. Okay. Now at that point in time you still didn't
13 know anything about a deficiency judgment?

14 A. No, because they hadn't finished the foreclosure,
15 so the deficiency judgment hadn't been discussed at that
16 time.

17 Q. Okay. And did you know at that point in time what
18 the purpose of the second sale was, the upset bid sale?

19 A. Well, the purpose of it was to -- to -- when a lender
20 forecloses on the property, he makes its first bid and then
21 thirty days later there's an upset bid and so that gives
22 all the people who want to bid a chance to come bid in the
23 upset the bid after thirty days.

24 Q. Okay. And did you know prior to the second sale that
25 Mr. Buchanan or his company was going to be participating

1 in that second sale?

2 A. I didn't know that he was going to be, no.

3 Q. Okay. Do you know why he participated in that second
4 sale?

5 A. Yeah, because of the value of the property. He
6 couldn't stand to see it go to someone else.

7 Q. Okay. Do you know whether him participating in that
8 second sale was proper based upon your understanding?

9 **MR. NORTON:** Objection.

10 A. That's the reason we're in --

11 **THE COURT:** Restate the question, Mr. Peace.

12 **MR. PEACE:** I asked the witness, Mr. Buchanan, do you
13 know whether him participating in that second sale was
14 proper?

15 **THE COURT:** I'll sustain that objection.

16 **MR. PEACE:** That's all the questions I have. Thank
17 you. Please answer any questions that --

18 **THE COURT:** Mr. Norton and then Mr. Hemphill.

19 **MR. HEMPHILL:** Your Honor, I have no questions.

20 **THE COURT:** Thank you, Mr. Hemphill.

21 **MR. NORTON:** We solved that procedural problem.

22 **THE COURT:** Mr. Norton.

23 CROSS-EXAMINATION

24 BY MR. NORTON:

25 Q. Just a couple -- couple of questions, Mr. Green. You

1 acknowledge that you signed the guaranty; isn't that right?

2 A. I did.

3 Q. And you knew that that meant that you were responsible
4 for the debts of Augusta North Springs, didn't you?

5 A. Well, it would have been at the -- had both of the
6 bidding processes went smooth and that's the reason we're
7 here today because of the bid done by Second Avenue
8 Holdings was really an arm of the George B. Buchanan Trust
9 so, therefore, we're here and that's the reason we're here.

10 Q. And so you think you don't have to pay any of the
11 money back?

12 A. Not when it was acquired the way it was and had --
13 had he allowed other people to bid, we would -- we would
14 have been responsible for our guaranty and at that point,
15 which was five, six, seven years ago, it would have been
16 much less and we would have tried to get some assets
17 together to pay him -- pay the thing, but as it turned out
18 we just felt like we wasn't liable for something that he
19 acquired in the way it was acquired.

20 MR. NORTON: No more questions, Your Honor.

21 THE COURT: Redirect, Mr. Peace?

22 MR. PEACE: None, Your Honor.

23 THE COURT: Thank you. Thank you very much,
24 Mr. Green. You may step down.

25 (Witness excused.)

1 **MR. PEACE:** May it please the Court? We'll call
2 Cliff Redd to the stand.

3 **THE COURT:** All right. Mr. Redd, come forward,
4 please, and be sworn.

5 (Whereupon, Larry Clifton Redd was duly sworn by the
6 Clerk of Court.)

7 **THE COURT:** Yes, sir, Mr. Peace.

8 LARRY CLIFTON REDD,
9 having been duly sworn, testified as follows:

10 DIRECT EXAMINATION

11 BY MR. PEACE:

12 Q. Okay. Cliff, will you tell the jury what your name
13 is.

14 A. Larry Clifton Redd.

15 Q. Okay. And where do you live?

16 A. In Bradley, South Carolina.

17 Q. Okay. Where is Bradley, South Carolina?

18 A. Just outside of Greenwood.

19 Q. Okay. Greenwood County?

20 A. Yes, sir.

21 Q. How long have you lived there?

22 A. All my life.

23 Q. What do you do for a living?

24 A. I work for my wife's recycling company.

25 Q. Okay. And how long have you done that?

1 A. Since 2011.

2 Q. Okay. Now you sat here and you heard the testimony
3 of Mr. Green sitting right there, didn't you?

4 A. Yes, sir.

5 Q. Okay. Now if I ask you those same questions that I
6 asked Mr. Green, would your testimony be the same?

7 A. Yes.

8 Q. All right.

9 MR. PEACE: Your Honor, that's all the questions I
10 have of Mr. Redd.

11 MR. HEMPHILL: No questions.

12 MR. NORTON: I don't have any questions, Your Honor.

13 THE COURT: Thank you. Thank you very much, Mr. Redd.
14 You may step down.

15 (Witness complies.)

16 THE COURT: All right. You may call your next
17 witness.

18 MR. PEACE: Your Honor, we would call George B.
19 Buchanan to the stand.

20 THE COURT: All right. Mr. Buchanan, if you'd come
21 around and be sworn, please.

22 (Whereupon, George B. Buchanan, Junior, was duly sworn
23 by the Clerk of Court.)

24 GEORGE B. BUCHANAN, JUNIOR,
25 having been duly sworn, testified as follows:

DIRECT EXAMINATION

BY MR. PEACE:

Q. Mr. Buchanan, will you tell the jury your name, please, sir?

A. George B. Buchanan, Junior.

Q. Okay. And, Mr. Buchanan, where do you live?

A. Danville, Virginia.

Q. And how long have you lived in Danville, Virginia?

A. Since 1965.

MR. PEACE: Your Honor, pursuant to Rule 611(c), we think that Mr. Buchanan qualifies as a hostile witness or affiliated with the adverse party and, therefore, under 611(c) I believe that we're entitled to question him using leading questions.

MR. NORTON: No objection.

THE COURT: No objection. You may continue, Mr. Peace.

BY MR. PEACE:

Q. Mr. Buchanan, you set up the George B. Buchanan Trust, which is the Plaintiff in this case, didn't you?

A. That's correct.

Q. And when did you set that up?

A. 2001.

Q. Okay. And who funded that Trust whenever it was set up?

1 A. I did.

2 Q. You did. And you funded it out of your own assets?

3 A. Yes.

4 Q. Okay. Let me talk to you about the loan to Springs
5 North Augusta, LLC. What was the amount that was
6 originally loaned to Springs North Augusta, LLC?

7 A. Let's see. The closing statement or the actual cash
8 that was funded?

9 Q. Well, let's just talk about the actual cash.

10 A. I believe it was 6.1 million.

11 Q. Okay. All right. So that -- that was the amount of
12 money that was out of your pocket -- or out of the trust's
13 pocket to fund that loan?

14 A. I believe that's correct.

15 Q. Okay. It wasn't the \$7.1 million we've been talking
16 about here today?

17 A. Well, that was loan fees and pre-accrued interest.

18 Q. Okay. So that was interest that was factored into the
19 loan at the time that the loan was made?

20 A. I think that was the first -- first year's interest.

21 Q. Okay. Does the trust still own this property?

22 A. It does.

23 Q. Okay. And the property is 1420 acres?

24 A. Approximately 1420.

25 Q. Is the -- is the property for sale?

1 A. It is.

2 Q. Okay. Does it have a loan on it -- have a mortgage
3 on it?

4 A. No, it doesn't.

5 Q. Okay. Did -- tell me what your involvement was in
6 the foreclosure action.

7 A. I really -- I didn't have any involvement in the
8 foreclosure action. That was the trustee.

9 Q. The trustee did that solely without your consent?

10 A. Well, he told me what he -- what he proposed to do and
11 I agreed with it.

12 Q. All right. Did the trustee talk with you about not
13 listing the Defendants as -- or the Defendants in this case
14 as the Defendant in that case?

15 A. The trustee didn't, but our attorney did.

16 Q. Okay. Well, I can't talk to you about what your --
17 what your attorney told you, but they weren't named in that
18 lawsuit, were they?

19 A. I think that's correct.

20 Q. Okay. So they would not have had the chance to defend
21 themselves personally in that lawsuit, would they?

22 MR. NORTON: Objection.

23 THE COURT: I'll sustain that objection.

24 BY MR. PEACE:

25 Q. Then let me talk to you about the first foreclosure

1 sale. That happened on September 4th of 2012; is that
2 correct?

3 A. I -- that sounds about right, uh-huh.

4 Q. Okay. And at that first foreclosure sale, the amount
5 of \$6,600,000 was bid in by the lender -- by your trust at
6 that sale?

7 A. Right.

8 Q. Okay. And why was that amount bid in?

9 A. Let's see. I think that's the figure that the trustee
10 came up with that he felt like would -- that would be
11 enough to -- to repay the trust for the cash that way and
12 then expenses.

13 Q. Okay. And you agreed with that amount?

14 A. Yes.

15 Q. Okay. Now were you aware at the time of the first
16 sale that there was to be a second sale?

17 A. Yes.

18 Q. Okay. And what was the purpose of the second sale to
19 your understanding?

20 A. Well, that should give other parties an opportunity
21 to enter bids.

22 Q. Okay. And was it your understanding that South
23 Carolina law prohibits the lender from participating in the
24 second sale?

25 A. That was.

1 Q. Okay. And do you know why that that's the case?

2 A. Do I --- no, I don't.

3 Q. You don't know what the South Carolina -- the reason
4 South Carolina law's like that?

5 A. No.

6 Q. Okay. All right. Now let me talk to you about the
7 second sale. It occurred on October 4th of 2012, right?

8 A. That sounds about right.

9 Q. Okay. I mean, you were -- you were there, weren't
10 you?

11 A. Yeah, but I don't recall the exact date.

12 Q. Okay. Well, I'll represent to you that it took place
13 on October 4, 2012.

14 A. Okay.

15 Q. Who is Second Avenue Holdings?

16 A. That was an LLC that had been in existence for at
17 least three or four years that owned property in Myrtle
18 Beach.

19 Q. Okay. And you say it had been in existence at least
20 two or three years?

21 A. Several years, yes.

22 Q. It had?

23 A. (Nods head.)

24 Q. Okay. Let me show you what's been marked as
25 Defendant's Exhibit -- Defendant Green's Exhibit Number 1.

1 And I'll represent to you that that's a copy of the
2 articles of incorporation that were filed in the State of
3 South Carolina on behalf of Second Avenue Holdings, LLC.
4 Does that look correct?

5 A. Well, it does look correct.

6 Q. Okay. What is the date of filing of those articles
7 of organization for Second Avenue Holdings, LLC?

8 A. Where would I find that?

9 Q. Right there, sir.

10 A. That is 9-10-12.

11 Q. Okay. So that's September 10th of 2012; is that
12 correct?

13 A. That's correct.

14 Q. Let me get my question out first so she can get it.
15 That was September 10th of 2012, correct?

16 A. Right, but that's not when that LLC was formed. What
17 I'm saying is it's a possibility that's when it was
18 domesticated in South Carolina or the lawyer who formed it
19 failed to file the articles originally, but that company
20 had been in existence. They'd purchased property, which
21 this same attorney had closed on, several years previously
22 and still owns the property in Myrtle Beach.

23 Q. Is it a South Carolina LLC?

24 A. It is. That's what it says.

25 Q. Okay. And the filing data on the articles of

1 organization for that South Carolina LLC says that it was
2 filed on September 10, 2012, doesn't it?

3 A. It does say that, but I'm also saying that it was in
4 existence several years before that.

5 Q. Well, can you explain to me then why the filing
6 data --

7 A. No, I can't.

8 Q. Let me finish my question, please, sir. Can you
9 explain to the jury then why the filing data on the
10 official record from the South Carolina Secretary of
11 State's Office says that that company was organized on
12 September 10th of 2012, which was six days after your
13 trust bid in on the first sale?

14 A. I can tell you I absolutely did not request this
15 company be set up after that bid. It was already in
16 existence.

17 Q. Well, my question is the same, sir. Can you explain
18 to me then why --

19 A. No, I can't. I can't explain.

20 Q. Okay. And you attended the second sale on behalf of
21 Second Avenue Holdings, didn't you?

22 A. That's correct.

23 Q. Okay. And you submitted the bid on behalf of Second
24 Avenue Holdings, didn't you?

25 A. Right.

1 Q. Okay. What did you do with that bid after -- from
2 Second Avenue Holdings after you bid in on the property?

3 A. Well, the Trustee in a meeting subsequently told me
4 that he would like to have the property back in the trust
5 as a long-term investment and I agreed that that probably
6 would be the best use for it because it seemed like it
7 would be a long time before any sale of the property would
8 occur or the property could be developed and I might not
9 be alive by then, so I agreed with him that assigning that
10 bid to the trust would be in everybody's best interest.

11 Q. All right. Now let me show you what's been marked as
12 Defendant Green's Exhibit Number 2. Can you identify that
13 document for me, please, sir?

14 A. That's the assignment of the bid.

15 Q. Okay. That's where Second Avenue Holdings assigned
16 the bid back to the George B. Buchanan Trust, correct?

17 A. That's correct.

18 Q. All right. When did that assignment take place?

19 A. Well, it says August 29th of '17 -- well, no, that's
20 -- that's the date that the deputy clerk stamped it. Let
21 me see if I can find it here. October the -- let me see.
22 October the 4th.

23 Q. October the 24th, 2012, does that sound correct?

24 A. Yeah, that's right. That's correct.

25 Q. Okay. So twenty days after you participated in the

1 second sale, your company assigned the bid back to the
2 George B. Buchanan Trust?

3 A. That's correct.

4 Q. Less than three weeks, correct?

5 A. Well, that's more than three weeks.

6 Q. Twenty days?

7 A. Twenty-four days.

8 Q. All right. The date of the sale was October the 4th?

9 A. All right. That's slightly less than three weeks.

10 Q. Less than three weeks. Let me ask you what did the
11 trust pay Second Avenue Holdings for that assignment?

12 A. They didn't pay Second Avenue Holdings. Well, they
13 did pay -- I think Second Avenue had to make a deposit of
14 500,000 with the Court and I believe the trust repaid
15 Second Avenue.

16 Q. Just reimbursed them for a cost?

17 A. Right.

18 Q. Didn't pay them any extra money for it at all?

19 A. No, and I wasn't trying to make a profit on it either.

20 Q. Right. Now the -- the trust ultimately received the
21 property as a result of the foreclosure action, didn't it?

22 A. Ultimately received it?

23 Q. Yes, sir. In this foreclosure -- in the foreclosure
24 action, your lawyer pointed out a master deed earlier from
25 the master in equity where the property was transferred to

1 the trust in the foreclosure action.

2 A. Right. Okay.

3 Q. All right. So the trust bid in on the first sale,
4 correct?

5 A. (Nods head.)

6 Q. The trust didn't bid in on the second sale, but the
7 trust ended up with the property?

8 A. The trust did not bid on the second sale.

9 Q. Correct.

10 A. It ultimately ended up with the property after I had
11 purchased it in one of my LLC's.

12 Q. One of your companies?

13 A. Right.

14 Q. And you did all of that before you ever named the
15 Defendants in a law suit?

16 A. Well, that was -- that was on the advice of my
17 attorney.

18 Q. Okay. But the result was the same. All of that
19 happened before you ever sued these Defendants?

20 MR. NORTON: Objection.

21 THE COURT: No, sir. No, sir. You've got to rephrase
22 that question.

23 BY MR. PEACE:

24 Q. You ended up -- or the George B. Buchanan Trust ended
25 up with the property before the George B. Buchanan Trust

1 sued these Defendants to try to collect on the guaranty?

2 A. I don't remember when this suit was filed.

3 Q. Okay. So let me go over your testimony on what you've
4 just admitted. The trust was set up and funded by you,
5 correct?

6 A. That's correct.

7 Q. Okay. And the trust loaned approximately \$6.6 million
8 on the property originally to Springs North Augusta, LLC?

9 A. Correct.

10 Q. All right. The trust foreclosed on that property, but
11 didn't name these Defendants in that lawsuit?

12 A. I believe that's correct.

13 Q. Okay. The trust bid in on the foreclosure at the
14 first foreclosure sale on September 4th of 2012?

15 A. Okay.

16 Q. Is that correct?

17 A. I agree with you on the date.

18 Q. Okay. You knew that the trust could not participate
19 in the second -- the upset bid sale?

20 A. Right.

21 Q. Okay. Second Avenue Holdings based on the document
22 that we looked at was set up on October 4, 2012?

23 A. No, that's not correct.

24 Q. Okay.

25 A. I don't care what your document says. That is not

1 correct.

2 Q. Okay. The document that we looked at indicates that
3 -- that that company was organized on October 4th of 2012.

4 MR. NORTON: Objection.

5 THE COURT: Yes, sir.

6 MR. NORTON: Objection to that question.

7 THE COURT: Well, it's not factually correct either.

8 You're talking about Defendant's Exhibit Green Number 1,

9 correct?

10 MR. PEACE: The articles of organization, Your Honor.

11 THE COURT: The State of South Carolina Secretary of
12 State articles of organization?

13 MR. PEACE: Correct.

14 THE COURT: He can ask him about the document. What's
15 your objection?

16 MR. NORTON: My objection is that he's misstating
17 facts.

18 MR. PEACE: I'll ask the question again.

19 MR. NORTON: I mean, I'll be glad to argue it, Your
20 Honor. I don't want to --

21 THE COURT: All right. Step out, please, ladies and
22 gentlemen momentarily. Do not discuss the case during this
23 brief recess.

24 (Whereupon, the jury retires to the jury room at
25 4:33 PM.)

1 **THE COURT:** All right. Yes, sir, Mr. Norton. I'll
2 be glad to hear from you.

3 **MR. NORTON:** Yes, Your Honor. He's using the date
4 of filing to suggest that's the date that the company is
5 actually set up when, in fact, as a matter of law it could
6 have been set up prior to that time and the articles of
7 incorporation could have been filed later.

8 **THE COURT:** I don't know if it's a matter of law.
9 Here's what I think. He's got to rephrase the question.
10 According to Defendant Green's Exhibit Number 1, this
11 document indicates that the State of South Carolina
12 Secretary of State articles of incorporation, Second
13 Avenue Holdings, LLC, that this document was filed
14 9-10-2012. I agree. I don't know what -- I don't know
15 if that means when it was set up. I don't know that
16 there's a document -- if that's the same thing or not,
17 but that's the question that needs to be asked. It's not
18 according to Mr. Buchanan because Mr. Buchanan's testimony
19 is it's been set up for several years. He said two or
20 three years.

21 **MR. NORTON:** Right. So, Your Honor --

22 **THE COURT:** I took that -- I started to ask that
23 question, was that two or three years prior to 2012, but
24 I didn't. I don't like to interject myself except when I
25 interrupt and interject myself, then I like it very much.

1 But I agree. I'd probably rephrase the question.

2 **MR. NORTON:** Your Honor, then I would -- a further
3 objection is asked and answered. We've already been down
4 this road. He's already testified about it, he's already
5 explained it, and now we're just going back and re-plowing
6 the same grounds. There's no reason for him to ask the
7 question again. He's already said -- he's already said
8 that it was filed on that date, he's already explained
9 that it existed in advance. There's nothing further to
10 be gained by continuing on in my opinion.

11 **MR. PEACE:** The jury needs to understand the facts,
12 Judge.

13 **THE COURT:** I understand. I mean, I do understand
14 the asked and answered, but I guess --

15 **MR. NORTON:** I mean, Your Honor, it gonna prejudice
16 the jury. He's making -- he's jumping up and down about
17 this document and trying to make it seem as if there's
18 some kind of grand conspiracy and if you allow him to keep
19 going down -- keep going down this path, it's gonna unduly
20 prejudice us. Just end it. He's asked this question, he's
21 made his record. The filing's the filing. Mr. Buchanan's
22 explained it. Let's move on. That would be my suggestion.

23 **THE COURT:** Well, Mr. Norton, you're bringing back
24 memories. And I don't address this to Mr. Peace, but I've
25 jumped up and down trying to get testimony in and the only

1 person it ended up prejudicing was me, not -- not the party
2 on the other side. And that's no reflection on Mr. Peace
3 whatsoever. This document has got that on there. That's
4 all I'm saying. This document has the date filed and that
5 date -- I'll allow that question. And I understood also
6 Mr. Buchanan's testimony. Not about when it was filed, but
7 when it was -- I've even lost the terminology -- organized,
8 set up, in existence, what have you.

9 MR. NORTON: All right. Thank you, Your Honor.

10 THE COURT: Here's the document.

11 All right.

12 (Whereupon, the jury returns to the courtroom at
13 4:38 PM.)

14 THE COURT: All right. Thank you, Mr. Norton. Thank
15 you, Mr. Peace. You may ask your next question.

16 MR. PEACE: Yes, sir, Your Honor.

17 BY MR. PEACE:

18 Q. Mr. Buchanan, based on Defendant Green's Exhibit
19 Number 1, the date that the articles of organization for
20 Second Avenue Holdings was filed was September 10, 2012,
21 correct?

22 A. Well, that -- that was the document we were just
23 looking at?

24 Q. Yes, sir.

25 A. Okay. September 6th.

1 Q. No, that was the date it was signed. The date that
2 it was filed was September 10, 2012, correct?

3 A. Oh, okay.

4 THE COURT: Right here.

5 A. Right. Okay.

6 Q. Thank you, sir.

7 A. All right.

8 Q. And then Second Avenue Holdings bid in at the second
9 sale on October 4, 2012, correct?

10 A. I believe that's correct.

11 Q. And then twenty days later they assigned that bid back
12 to the trust?

13 A. Right.

14 Q. For no additional money?

15 A. Okay.

16 Q. Okay. And the trust still owns the property today?

17 A. Correct.

18 MR. PEACE: No further questions of Mr. Buchanan.

19 Thank you, sir.

20 THE COURT: Thank you.

21 MR. HEMPHILL: May it please Court?

22 THE COURT: Yes, sir. Please, Mr. Hemphill.

23 CROSS-EXAMINATION

24 BY MR. HEMPHILL:

25 Q. Mr. Buchanan, a few questions in follow-up. I believe

1 your testimony is that the trust -- you established that
2 trust in 2001; is that correct?

3 A. That's correct.

4 Q. This loan was made to Springs North Augusta in 2009;
5 is that correct?

6 A. Yes, that's correct.

7 Q. Okay. And this foreclosure went on in 2012, right?

8 A. Right.

9 Q. Okay. Now this isn't the only real estate that the
10 trust has held as property, correct?

11 A. That's correct.

12 Q. There has been a good bit of property that the trust
13 has held situated down in Myrtle Beach; isn't that true?

14 A. Yes.

15 Q. Okay. And Mr. Wilkinson is the third trustee of the
16 trust?

17 A. Correct.

18 Q. The two prior trustees were relieved of their duties?

19 A. No, I wouldn't call it relieved. You want -- you want
20 the reason that we changed?

21 Q. Well, let me rephrase my question. Mr. Crumpler was
22 the first trustee; is that correct?

23 A. Crumpler.

24 Q. The first one?

25 A. Right.

1 Q. And when did his duties stop approximately?

2 A. I would say probably 2008 or '9.

3 Q. Okay. And then Mr. Sakellaris was sometime between
4 then and 2013 when Mr. Wilkinson took over; is that
5 correct?

6 A. Right. Right.

7 Q. Okay. Now when you identify a property that you want
8 to put in this trust, it is you that identify the property
9 and you make a recommendation to the trustee?

10 A. Well, that's -- that's all I can do is make a
11 recommendation, yeah.

12 Q. Right. And specifically with regards to this 1400
13 acres outside of North Augusta, you were the one that went
14 and met with all or some of these folks at defense table to
15 identify that property, correct?

16 A. That's correct.

17 Q. You didn't bring the trustee along with you, did you?

18 A. No.

19 Q. You went back and reported to the trustee in Virginia
20 that this would be good -- this would be a good loan to
21 make, correct?

22 A. Well, in my estimation it would be, yeah.

23 Q. Okay. So you made a recommendation and he acted on
24 that recommendation; is that --

25 A. That wasn't such a good one, but I made it.

1 Q. All right, sir. Tell me about -- do you hold a title
2 within the trust?

3 **THE COURT:** Hold what now?

4 Q. Do you hold a title over your trust?

5 A. Well, not -- I wouldn't say over -- over my trust,
6 but in the current structure I'm named as the financial
7 advisor.

8 Q. Okay. Are you also known as the protector?

9 A. No.

10 Q. Okay. But you are the financial adviser; is that
11 correct?

12 A. Right.

13 Q. All right. Now whenever Second Avenue Holdings was
14 formed, whether it was a few days after the first sale or
15 sometime prior, isn't it true that the only owner of Second
16 Avenue Holdings is you?

17 A. That's correct.

18 Q. You didn't issue shares of stock where there are
19 multiple owners or anything like that?

20 A. No.

21 Q. Okay.

22 **MR. HEMPHILL:** Thank you, sir. Those are the
23 questions I have.

24 **THE COURT:** Mr. Norton.

25 **MR. NORTON:** Just a few follow-ups, Your Honor.

CROSS-EXAMINATION

BY MR. NORTON:

Q. Mr. Buchanan, where did Second Avenue Holdings, LLC, get its name?

A. That's -- that's -- it was named after a corner lot that I purchased on the corner of Second Avenue and Ocean Boulevard.

Q. And do you remember when that was?

A. I'm gonna guess around 2010.

Q. Okay. And after you purchased the property in 2010 with Second Avenue Holdings, LLC, would you have filed tax returns for it?

A. Yes.

Q. You weren't paying taxes for a company that wasn't in existence, were you?

A. I hope not.

Q. Okay. Let me show you what I think is marked as -- let's see. Let me make sure I get the numbers right here. Excuse me just one second -- Plaintiff's Exhibit 5.

MR. NORTON: Your Honor, do you have the assignment of bid exhibit?

THE COURT: I think they're right -- I think that's what you want right there; is that right?

MR. NORTON: It is. Thank you, Your Honor.

BY MR. NORTON:

1 Q. Mr. Buchanan, this document that you're looking at is
2 titled master's report on sale. Do you see that?

3 A. Yes, I do.

4 Q. Who signed this document?

5 A. It's signed by M. Anderson Griffith, master in equity,
6 Aiken County.

7 Q. Okay. And if you look at the very first paragraph on
8 this order from the Aiken County master in equity -- by the
9 way, do you know what master in equity is?

10 A. Well, I've dealt with a few of them. He's some sort
11 of judge.

12 Q. He's a judge. That's right.

13 THE COURT: About half the people think they're good
14 judges.

15 BY MR. NORTON:

16 Q. So if you can look at the -- do you see the section up
17 there where it says pursuant to order of the court after
18 due notice and advertisement? Do you see that?

19 A. Yes.

20 Q. What does it say that the master in equity did in
21 here?

22 A. The undersigned master in equity sold the property
23 described therein to.

24 Q. And who -- who did he sell it to?

25 A. The highest bidder on sale day October 4, 2012, for

1 the sum of \$7,160,000.

2 Q. And what did the bidder -- who's the bidder by the
3 way?

4 A. Harry P. Sakellaris, as Trustee of the George B.
5 Buchanan, Junior, Irrevocable Family Trust.

6 Q. Well, that's who it was assigned to. Is that what it
7 said?

8 A. Yes.

9 Q. Who assigned it to the trust or which entity did?

10 A. Second Avenue.

11 Q. So the master in equity signed this; is that right?

12 A. Yes.

13 Q. Mr. Buchanan, were you trying to do anything
14 surreptitious or secret by bidding at the second sale?

15 A. No. No.

16 Q. In fact, the court knew about it, didn't it?

17 A. They did.

18 Q. And the court assigned the bid and granted the
19 property to the trust anyway, didn't it?

20 A. They did, yes.

21 Q. And that assignment of bid that the Defendant was
22 talking about, Defendant's Exhibit Green 2, this is where
23 you assigned -- you signed for Second Avenue Holdings, I
24 believe, assigning the bid to the trustee. Do you see
25 that?

1 A. Okay. Yes.

2 Q. And if you look on the first page of that document,
3 Mr. Buchanan, does it indicate that it was filed in the
4 court?

5 A. Is that here at the bottom?

6 Q. Well, that -- does it indicate it's a certified copy
7 from the court?

8 A. Uh-huh.

9 Q. What does that say?

10 A. Here at the top?

11 Q. Yes, sir. Does it indicate it was filed in the court?

12 A. It was filed somewhere. I can't read that writing,
13 but --

14 Q. So after you assigned -- after you assigned the bid
15 on behalf of Second Avenue Holdings, LLC, you didn't put
16 it in a drawer somewhere, you filed it in the court for
17 everybody to see, right?

18 A. Right. Correct.

19 MR. NORTON: I don't have any questions, Your Honor.

20 THE COURT: Mr. Peace.

21 MR. PEACE: Just in follow-up, Your Honor.

22 REDIRECT EXAMINATION

23 BY MR. PEACE:

24 Q. Mr. Buchanan, you said you paid taxes on -- for
25 Second Avenue Holdings, filed tax returns for Second Avenue

1 Holdings?

2 A. Well, I assume that Second Avenue Holdings, LLC, was
3 reported on my tax return along with a number of other
4 LLC's.

5 Q. And you didn't bring those tax returns with you today?

6 A. No.

7 Q. So there's no way for the jury to verify when it was
8 set up, is there?

9 A. That's correct.

10 Q. Do you remember when I took your deposition and we
11 talked about Second Avenue Holdings on February 12, 2015?

12 A. I've got a vague recollection of that.

13 Q. In Danville, Virginia. It was in your lawyer's office
14 in Danville, Virginia.

15 A. Right.

16 Q. And remember we talked about who the members of Second
17 Avenue Holdings was and you indicated that you were the
18 only member of Second Avenue Holdings?

19 A. I feel sure I would have, yeah.

20 Q. And my recollection is that we had a discussion about
21 the reason that you set it up was -- was, again, for you to
22 purchase this lot in -- somewhere down on the beach?

23 A. Correct.

24 Q. Okay. And do you remember that I asked you the
25 question about whether that oceanfront lot was purchased?

1 A. No.

2 Q. Let me show you your deposition, sir, beginning at
3 Page 12. Start at Page 12 and go down to -- I'm sorry,
4 Page 43, Line 12, and read for the jury down to Line 19,
5 please.

6 A. All right. I think it was in September because it was
7 simultaneous with setting up -- it wasn't purchased until
8 this LLC was established because that is who it was deeded
9 to. That's talking about Second Avenue Holdings.

10 Q. Yes, sir. Read on.

11 A. Let's see. And you think the oceanfront lot was
12 purchased in September of 2012? Yes, September or
13 October. It would be right shortly after this LLC was
14 formed.

15 Well, that -- that's incorrect. If I said 2012,
16 that's incorrect.

17 Q. But that was your testimony at a deposition on
18 February 12th of 2016?

19 A. Well, I tell you if you want a definitive answer to
20 this question, call Clay Brittain in Myrtle Beach who set
21 it up and closed on the oceanfront lot and he'll verify
22 that this LLC was set up for the purpose of purchasing that
23 oceanfront lot.

24 Q. And the LLC based on your deposition testimony was
25 set up just prior to purchasing that lot in September or

1 October of 2012, right?

2 A. No, it was before that.

3 Q. Okay. Well, don't you think that we got enough
4 verification by the articles -- filed articles of
5 organization saying that it was filed on September 10th
6 and your own sworn deposition testimony on February 12th
7 of last year verifying that?

8 A. You're trying to make the fact that it was set up for
9 the purpose of bidding on -- on this property in North
10 Augusta and I'm telling you it was set up for the purpose
11 of receiving ownership of this lot that I had purchased in
12 Myrtle Beach.

13 Q. Well, sir, the jury will have to make that
14 determination. My point is that you set up Second Avenue
15 Holdings based on your deposition testimony and based on
16 what's on record with the South Carolina Secretary of
17 State's Office just prior to purchasing the lot in Myrtle
18 Beach in September -- or October of 2012. That's contrary
19 to your previous testimony that that company was set up two
20 or three years before that.

21 A. Well, this might be a mistake, but the only thing I
22 can say is that when I purchased the lot I had Clay
23 Brittain form an LLC to have the lot deeded to. Regardless
24 of the date, it had nothing to do with this property in
25 North Augusta. At a later date it was determined well,

1 since we've got this LLC, let's just -- if we're gonna bid
2 on that property, let's bid in the name of this LLC and
3 that that's the reason for that.

4 Q. All right. I understand.

5 MR. PEACE: Thank you, sir. No further questions.

6 THE COURT: Mr. Hemphill?

7 MR. HEMPHILL: No, sir.

8 THE COURT: Mr. Norton?

9 MR. NORTON: No, sir.

10 THE COURT: Thank you very much, Mr. Buchanan. You
11 can step down.

12 THE WITNESS: Yes, sir.

13 (Witness excused.)

14 THE COURT: All right. Next witness.

15 MR. PEACE: Your Honor, the Defendant has no further
16 witnesses.

17 MR. HEMPHILL: This defense rests as well.

18 THE COURT: Both rest?

19 MR. PEACE: Yes, Your Honor.

20 THE COURT: Let's see. Any evidence or testimony in
21 reply, Mr. Norton?

22 MR. NORTON: No, Your Honor.

23 THE COURT: So the parties have now rested; is that
24 correct?

25 MR. NORTON: That's correct, Your Honor.

1 **THE COURT:** All right. Well, I think it would be a
2 good time for the jury to take their evening recess
3 perhaps.

4 Ladies and gentlemen of the jury panel, you've heard
5 all of the evidence and all of the testimony that you're
6 gonna hear in the trial of this case from both -- from
7 all of the parties. We're at the stage of the closing
8 arguments by the attorneys and the instruction on the law
9 by the Court and then the case will be submitted to you
10 for your deliberations and for your verdict. I tell people
11 all the time, and there's probably somebody I'm misquoting
12 somewhere because I don't have original thoughts, I just
13 read what they tell me to read, I can predict anything but
14 the future. I have no idea how long closing arguments may
15 take or my instruction to you, so what we'll do is we'll
16 break now and we'll start back at 9:30 in the morning,
17 promptly at 9:30 in the morning.

18 Please remember do not discuss this case with anyone,
19 fellow jurors, family, friends or anyone else. I must
20 instruct you do not read, watch or listen to any news
21 accounts about the case should there be any. Do not do
22 any independent investigation or any investigation on the
23 Internet or otherwise. You can't use your computer,
24 cellular phone or any other electronic device that
25 communicates to look up or research information which is

1 prohibited, which includes but is not limited to,
2 information about a party, a witness, an attorney or court
3 officer, news accounts about the case, past or present
4 should there have ever been any, topics discussed by any
5 witness during the trial of the case or topics that any
6 juror -- that you might think would be helpful in deciding
7 this case. You decide the case on the evidence and the
8 testimony you hear from the witness stand testifying under
9 oath before you and on the law as I tell you. As we all
10 know, you can go and -- some people can, not me, but you
11 can go and Google any term you want. It doesn't matter
12 what Google says. At the end of the day it matters what I
13 say is the law. So don't do any research, independent or
14 otherwise.

15 Okay. Any questions? All right. Thank you. Thank
16 you very much for your attention you've shown to all the
17 parties throughout the trial of the case. I hope y'all
18 have a pleasant evening and we'll see you promptly at 9:30
19 in the morning.

20 (Whereupon, the jury was excused for the evening at
21 4:56 PM.)

22 **THE COURT:** Anything from the Plaintiff?

23 **MR. PEACE:** Your Honor, before we move on to anything
24 else, as a housekeeping matter we want to make sure that
25 we've moved in -- all of our exhibits into evidence. I

1 don't think that the Plaintiff has any objection.

2 MR. NORTON: Correct, Your Honor. No objection.

3 THE COURT: Have you looked at them all? Do we have
4 them all?

5 THE COURT REPORTER: Yes.

6 (Defendant Green's Exhibit Number 1 and 2 were
7 admitted into evidence.)

8 (Defendant Anderson's Exhibit Number 1 was admitted
9 into evidence.)

10 THE COURT: All right. Anything further, Mr. Norton?
11 Do you want to go over the charges?

12 MR. NORTON: I think, you know, we probably have --
13 both have motions for directed verdict, Your Honor. I
14 don't know if you want to hear them now.

15 THE COURT: Nobody asked at the close of testimony.
16 I mean, if you have motions, I'll be glad to hear them.

17 MR. NORTON: All right. Plaintiff would move for a
18 directed verdict, Your Honor, and we'll be glad to argue
19 that.

20 THE COURT: Mr. Peace?

21 MR. PEACE: Responding to their motion for directed
22 verdict?

23 THE COURT: Yes, sir.

24 MR. PEACE: Your Honor, viewing the evidence most
25 favorable to the Defendant, there are material issues of

1 fact that need to be decided by the jury. Number one,
2 whether Plaintiff has violated South Carolina Code
3 Annotated Section 15-39-720. Plaintiff is a trust set up
4 by George B. Buchanan. Mr. Buchanan set up Second Avenue
5 Holdings six days after the first foreclosure sale.
6 Second Avenue Holdings is solely owned by Mr. Buchanan and
7 Second Avenue Holdings was the high bidder at the second
8 sale on October 4, 2012. Twenty days later, on October 24,
9 2012, Second Avenue Holdings assigned that bid to the
10 Plaintiff with no consideration, with no additional payment
11 whatsoever, and the trier of fact should determine if
12 Second Avenue Holdings was acting as a representative of
13 the Plaintiff at the second sale in violation of the
14 statute and, if so, recognize that he's in breach of the
15 covenant of good faith and fair dealing applied in terms
16 of the agreement, including guaranties, which are at issue
17 in this case, and whether that constitutes a waiver of
18 their right to bring this action on the guaranties to seek
19 recovery from the Defendant in this case.

20 So viewing the evidence presented in the light most
21 favorable to the Defendant, the directed verdict should be
22 denied.

23 **MR. HEMPHILL:** Your Honor, the Anderson defendants
24 join in that response to the motion for directed verdict.

25 **THE COURT:** Thank you. Thank you. Mr. Norton.

1 **MR. NORTON:** Yes, Your Honor. Thank you. As we
2 telegraphed, Your Honor, at the beginning we really think
3 that this matter should have never been in this court to
4 begin with.

5 **THE COURT:** Mr. Norton, please, can you speak up,
6 speak up just a little?

7 **MR. NORTON:** Yes, Your Honor.

8 **THE COURT:** This air-conditioning -- I hear so much
9 better when it's hot in here when the air-conditioning is
10 not running.

11 **MR. NORTON:** Yes, Your Honor. I apologize. I'm not
12 often told to speak up, so I apologize gladly. The -- as
13 we telegraphed at the beginning, we really don't believe
14 that the guarantors here can collaterally attack the
15 master's order finding that the sale was done properly.
16 Their -- the master's order is a matter of public record,
17 of course. It is advertised to the public and any
18 participate or any person interested has the right to
19 intervene or object to the way in which that sale is
20 conducted. So whether the -- whether the Defendants are
21 a party or not a party, they are on notice as a matter of
22 law because the master found that the public sale was
23 properly advertised, everyone had a chance to participate
24 and object and the master found that the sale -- that the
25 sale was conducted properly and that the bid was assigned

1 properly as evidenced by his orders. So the jury could
2 not possibly be permitted to overturn a valid order of the
3 master in equity and we respectfully submit, Your Honor,
4 that neither could this Court. That if that is the basis
5 of their defense to the action --

6 **THE COURT:** You respectfully submit what?

7 **MR. NORTON:** That if it is their defense to this
8 action that the foreclosure statute was violated, that
9 the -- they cannot assert that in this court at this time
10 because the master's order is binding on the public, on
11 everyone. At the report of sale and the public notice
12 everyone puts them on notice, they had an opportunity to
13 object and they did not. That order should be binding and
14 the sale should be final.

15 The second thing that we would point out, Your Honor,
16 is that whether there is a violation of the bidding statute
17 and how to interpret that statute is a matter of law, not a
18 question of fact for the jury. We would submit to you that
19 the facts here show that the second bid was put in by
20 Second Avenue Holdings, LLC, and not the trust and not a
21 representative of the trust in any way, shape or form, and
22 so the bidding statute wasn't violated as a matter of law.

23 Third, even if the bidding statute was violated, the
24 proper remedy for that would be to set aside the sale, not
25 to forgive the debt. There is nothing in law or otherwise

1 that would permit a valid debt to be obliterated by an
2 improper sale if, in fact, that had occurred.

3 And then, finally, to the extent that the argument
4 here is that it was a breach of the covenant of good faith
5 and fair dealing, we would argue that any violation of the
6 bidding statute would not be a material breach of the
7 guaranty in that the guarantors undisputedly and admittedly
8 received the benefit of the loan. They received the money
9 and used the money to their own benefit and they should not
10 be permitted to escape liability based on a violation of
11 the bidding statute after -- long after they were in
12 default, which gets us to the last argument, Your Honor,
13 which is if it is a breach of the covenant of good faith
14 and fair dealing it's a subsequent breach anyway and so at
15 best they could argue that there should be some sort of
16 offset based on the breach, but they can't do that here
17 because there's no evidence that somebody may or may not
18 have bid more than Mr. Buchanan at the second sale.
19 There's absolutely no evidence in this record that somebody
20 else would have bid more. It would be purely speculative
21 to suggest that there would have been a higher bid. The
22 only evidence is that these borrowers benefitted by the
23 amount of \$560,000 by Mr. Buchanan bidding on the behalf of
24 Second Avenue Holdings at the second sale.
25 So just to summarize, Your Honor, we've got five

1 grounds. The guarantors can't collaterally attack the
2 master's order, the bidding statute was not violated as a
3 matter of law, a bidding -- a violation of the bidding
4 statute does not excuse the debt, the violation of the
5 bidding statute would only result in an offset which has
6 not been proven in this case because no one testified
7 that any higher bid would have been received. And then,
8 finally, Your Honor, at best what they could prove or the
9 jury could conclude is a subsequent breach after these
10 guarantors were already in default of the guaranty
11 agreement and that would not excuse their performance.

12 **THE COURT:** Thank you.

13 Anything in response, Mr. Peace?

14 **MR. PEACE:** Yes. Yes, Your Honor. May it please the
15 Court? The argument about the Defendants are trying to
16 collaterally attack the -- the orders from the foreclosure
17 action, that's totally off base, Judge. That is exactly
18 the motion that the Plaintiff made three months ago that
19 was heard by this Court; that they filed the motion to
20 dismiss and used the same argument in that motion to
21 dismiss and it was denied because it should be denied. We
22 have never tried to maintain the position that that order
23 is subject to collateral attack. That order is a
24 deficiency judgment against Springs North Augusta, LLC.
25 It's not a judgment against the Defendants in this case.

1 It has never been a judgment against the Defendants in this
2 case. These Defendants were not named in that case, which
3 we tried to make the point ad nauseam that these Defendants
4 were not parties to that case. If they want to make that
5 argument, they should have named us in Aiken County instead
6 of Saluda County.

7 **THE COURT:** Should have doesn't mean they have to.

8 **MR. PEACE:** I understand. I understand. They
9 certainly didn't have to and that's their decision, but
10 they're now bound to that decision. But our point is that
11 if you choose to not name us there and you violate the
12 statute, we're not a party to that case in Aiken County,
13 so we don't have the standing because we're not parties to
14 come in and object to what you're doing, but if you sue us
15 in a different county on a separate document, their claim
16 is based on the guaranties that they got. If you bring a
17 separate document -- if you bring a separate lawsuit based
18 on a separate document, which they have done here, then
19 we should have the defenses available to us based on you
20 violating the statute. And those defenses were -- there's
21 evidence in this trial to support those defenses that the
22 jury needs to hear. And, you know, that -- that argument
23 is the same for virtually all of the points that the
24 Plaintiff has made. We were not parties to that lawsuit,
25 we are parties to this lawsuit. You're suing on the

1 guaranty, but the basis of your suit against us on the
2 guaranty is tainted by what you did in violating the
3 statute in the separate case. And, you know, based on the
4 violation of that statute we've got, you know, the defenses
5 associated with unclean hands, waiver, a violation of the
6 covenant of good faith and fair dealing, and all of those
7 issues are factual issues that this jury should be
8 deciding.

9 **THE COURT:** Thank you. Do you join in, Mr. Hemphill?

10 **MR. HEMPHILL:** I join in.

11 **THE COURT:** Yes, sir.

12 **MR. NORTON:** Just very briefly, Your Honor. If the
13 deficiency is not being attacked, then the Plaintiff is
14 entirely entitled to directed verdict because the only
15 elements that we are required to prove here are the
16 existence of a debt, which has been judicially noticed and
17 is not being attacked so I'm told, and the valid guaranty,
18 which has not been contested. The affirmative defenses
19 that he just mentioned, unclean hands, waiver, the breach
20 of the covenant of good faith and fair dealing, can't exist
21 where all you're doing is enforcing your legal right under
22 the guaranty to collect a valid existing debt. You can't
23 have it both ways. You can't say I'm not attacking the
24 master's order and then attack the existence of the valid
25 debt. There are only two elements we have to prove here

1 and that is the valid guaranty and the existence of the
2 debt. They're conceding the existence of the debt if
3 they're not attacking the master's order and, therefore --
4 and they're not contesting the guaranty and, therefore, the
5 Plaintiff is entitled to directed verdict.

6 The other thing -- and I'll defer back to Mr. Peace,
7 maybe he just left it out, but I didn't hear him address at
8 all the argument that the violation of the bidding statute
9 is that -- for a violation of the bidding statute, if it
10 happened, the sole remedy would be to set aside the
11 foreclosure sale. There's absolutely no authority I'm
12 aware of that says that when you violate the bidding
13 statute that it just obliterates the debt. There's no
14 authority at all. There's lots of authority and examples
15 from case law that I'm sure I don't have to tell Your
16 Honor, you know, from day to day experience that if we
17 know that if the bidding statute isn't complied with it
18 doesn't mean a debt's forgiven, it means that the sale is
19 set aside and the sale is re -- is conducted correctly.
20 It is not one of those things that invalidates the debt.

21 So, Your Honor, I don't see how -- if we're living
22 in a world where the master's order is valid and the
23 deficiency judgment lives on unattacked, then that means
24 that the bidding statute was not violated because
25 otherwise the deficiency judgment wouldn't be valid. So

1 they can't have it both ways here. If they're not
2 attacking the deficiency judgment, then that means there's
3 a valid debt, it means the bidding statute wasn't
4 violated and it means that these guarantors owe under the
5 guaranty. Even if they could get to a world where they
6 were arguing that the bidding statute was violated, the
7 sole remedy would be to set aside the sale, not to excuse
8 the debt, and that's not an issue for the jury to
9 determine, Your Honor, respectfully. That's an issue for
10 Your Honor.

11 **THE COURT:** Thank you. Thank you, Mr. Norton.

12 All right. Madam clerk, will you hand me up the
13 exhibits, please.

14 **THE CLERK:** (Handing.)

15 **THE COURT:** In looking at the standard in a motion
16 for a directed verdict, directed verdict should be not
17 granted unless only one reasonable inference can be
18 drawn from the evidence. If the evidence as a whole is
19 susceptible of more than one reasonable inference, the
20 case should be submitted to the jury. I'm citing
21 Creighton versus Coligny Plaza Limited Partnership, South
22 Carolina Court of Appeals, 1998, 334 S.C. 96. Further,
23 in ruling on motions for directed verdict, the Court views
24 the evidence and the inferences that reasonably can be
25 drawn therefrom in the light most favorable to the

1 nonmoving party -- to the party -- in the light most
2 favorable to the party opposing the motions, that would
3 be in the light most favorable to the Defendants. The
4 motion must be denied where either the evidence yields
5 more than one inference or if the inference is in doubt,
6 citing Buff versus the South Carolina Department of
7 Transportation, South Carolina Court of Appeals 1998,
8 332 S.C. 472.

9 Although I think there is more than one inference
10 that can be drawn from parts of the testimony, I do not
11 think they are significant. Even if -- and that -- I say
12 it like that because I'm not interested in the weight of
13 the evidence but the existence of the evidence. If we're
14 looking at the evidence in the light most favorable to the
15 Defendants, there was a violation of Section 15-39-720,
16 upset bid within thirty days on foreclosure or execution
17 sale. That's an inference that can be drawn. To this
18 Court that makes not a whit of difference. Not a whit
19 of difference. I look at Plaintiff's Exhibit Number 8,
20 Plaintiff's Exhibit Number 9, which is the guaranty
21 agreements that are the documents upon which this lawsuit
22 has been brought. I do not think a violation of the
23 statute that I just cited is a defense on a guaranty of
24 a debt. Again, tight-roping -- not tight-roping, but
25 following the standard of directed verdict, drawing that

1 inference, it would be in the light most favorable to the
2 Defendant, and I do not think there was a violation. I
3 don't think you can turn Rambo into Superman or Superman
4 into Rambo. Second Avenue Holdings is not the irrevocable
5 trust. They're two separate and distinct legal existing
6 entities, so for that reason I will direct a verdict for
7 the Plaintiff in the amount of the deficiency judgment
8 and the interest for that \$4,781,882.65.

9 All right. Anything further, Mr. Peace?
10 Mr. Hemphill?

11 **MR. PEACE:** No, Your Honor. Just so I can make --
12 have my record clear, that under this statute it's not
13 just the lender or anyone acting on behalf of the lender's
14 part?

15 **THE COURT:** And I understand and I cited the statute.
16 As I say, I don't want to weigh the evidence and say it's
17 -- based on my ruling that there wasn't a violation, I
18 assume there was a violation of the statute for purposes
19 of my ruling.

20 **MR. PEACE:** Thank you, Your Honor.

21 **THE COURT:** All right. Thank you. Thank y'all very
22 much. It's always a pleasure to be with all of y'all,
23 quite frankly.

24 **MR. NORTON:** Thank you, Your Honor.

25 **THE COURT:** This may be my last term of court in

1 Saluda County, I'm not sure, as a judge. Thank y'all
2 very much.

3 MR. HEMPHILL: Thank you.

4 MR. NORTON: Thank you, Your Honor.

5 (Whereupon, the proceedings were concluded for
6 September 6, 2017, at 5:28 PM.)
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1 C E R T I F I C A T E

2
3 I, Stacy S. Johnson, Official Court Reporter for
4 the Eleventh Judicial Circuit of the State of South
5 Carolina, do hereby certify that the foregoing is a true,
6 accurate and complete transcript of record of all the
7 proceedings had and the evidence introduced in the trial
8 of the captioned case in Circuit Court on the 5th and 6th
9 days of September, 2017.

10 This transcript may contain quoted material. Such
11 material is reproduced as read by the speaker.

12 I do further certify that I am neither of kin,
13 counsel, nor have an interest to any party hereto.

14
15 October 25, 2017

16
17 ISI Stacy S. Johnson
18 STACY S. JOHNSON
19 CIRCUIT COURT REPORTER
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STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr. Irrevocable
Family Trust, dated the 15th Day of July,
2001,

Plaintiff,

vs.

Springs North Augusta, LLC,

Defendant.

IN THE COURT OF COMMON PLEAS

Case No. 2012-CP-02-0173, 12
FILED

Liz England
Jude, P.A. S.
Anita Knepper 12ak
Deputy Clerk

**MASTER IN EQUITY'S ORDER AND
JUDGMENT OF FORECLOSURE AND
SALE**

I, the undersigned, Master in Equity for Aiken County, hereby find that pursuant to the Order of Default and Mandatory Order of Reference entered on April 18, 2012 in the above captioned case, a hearing was held on May 31, 2012, attended by Stanley H. McQuillin of Haynsworth Sinkler Boyd, P.A., attorneys for the Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001 ("Plaintiff") and *C. Rauch Wise, Esq. on behalf of the defendant: (MAG)* Testimony was proffered, which is herewith reported, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT

1. The Lis Pendens was filed on January 20, 2012.
2. The Civil Action Coversheet, Certificate of Exemption from May 2, 2011 Administrative Order, Certificate of Exemption from ADR, Summons and Verified Complaint with Exhibit were filed on January 20, 2012.
3. The Civil Action Coversheet, Certificate of Exemption from May 2, 2011 Administrative Order, Certificate of Exemption from ADR, Summons and Verified Complaint with Exhibit will hereinafter be collectively referred to as "Pleadings."

#1 MAG



4. Said Pleadings were served upon the defendant Springs North Augusta, LLC ("Defendant") via personal service on its registered agent, Michael W. Tighe on February 20, 2012, as evidenced by the Affidavit of Service item on file with the Court.

5. After a period of more than thirty (30) days, no notice, motion, or other pleading was filed by or on behalf Defendant and said Defendant is now, and has been, in default.

6. On April 18, 2012, the Order of Default and Mandatory Order of Reference was signed, and on April 18, 2012, it was entered by the Court, wherein the above captioned case was referred to M. Anderson Griffith, Master in Equity for Aiken County, for the purpose of taking testimony and making findings of fact and conclusions of law, and to enter a final decree of foreclosure and sale.

7. Defendant is not an individual, therefore is not entitled to protection under the Servicemembers Civil Relief Act, 50 USCS Appx. §§ 501 *et seq.* (2004). Additionally, this action involves the foreclosure of a commercial loan. The real property that is the subject of this foreclosure action is not the principal residence of the Mortgagor.

8. The Defendant was notified of the time, date, and place of the hearing in this matter.

9. Defendant made, executed, and delivered unto Plaintiff a Loan Agreement dated November 18, 2009, which was modified by the November 16, 2010 Amendment to Loan Agreement (collectively "Loan Agreement").

10. Pursuant to the terms of the Loan Agreement and for valuable consideration given, on or about November 18, 2009, Defendant executed and delivered to Plaintiff a promissory note in the original principal amount of Seven Million Five Hundred Ninety Thousand and 00/100 (\$7,590,000.00) Dollars, which was modified by November 16, 2010 Modification to Promissory Note in the amount of Eight Million Seven Hundred Twenty Eight Thousand Five Hundred and 00/100 (\$8,728,500.00) Dollars (collectively "Note").

11. To secure the repayment of the Note, and the debt evidenced thereby, Defendant made, executed, and delivered to Plaintiff, a certain Mortgage and Security Agreement dated November 18, 2009, whereby, Defendant mortgaged to Plaintiff the real property described in the Mortgage. The Mortgage was recorded on November 18, 2009, in the Office of the Register of Mesne Conveyance for Aiken County in Book RB 4284 at Page 1885. Said Mortgage was modified by November 16, 2010 Amendment to Mortgage and Security Agreement recorded on May 13, 2011 in Book RB 4357 at Page 676. The Mortgage and Security Agreement and November 16, 2010 Amendment to Mortgage and Security Agreement are collectively referred to herein as the "Mortgage."

12. A portion of the property originally encumbered by the Mortgage has been conveyed to the City of North Augusta and was released by the Mortgage subsequent to the filing of this action and is further described in Exhibit A-1 to the order.

13. As additional and further security for the Note and the debt evidenced thereby, Defendant executed and delivered to Plaintiff an Assignment of Leases, Rents and Profits dated November 18, 2009 whereby Defendant did, among other terms, assign, grant a security interest in and convey to Plaintiff all of Defendant's present and future rights, interest, and estates in and to the leases, agreements, rental agreements, property management agreements, rents, rentals, monies, awards, revenues, profits, royalties, rights and benefits ("Rents") from the Mortgaged Property. The Assignment of Rents was recorded on November 18, 2009 in the Office of the Register of Mesne Conveyance for Aiken County in Book RB 4284 at Page 1920. Said Assignment of Leases, Rents and Profits was modified by November 16, 2010 Amendment to Assignment of Leases, Rents and Profits recorded on May 13, 2011 in Book RB 4357 at Page 679. The Assignment of Leases, Rents and Profits and November 16, 2010 Amendment to Assignment of Leases, Rents and Profits are collectively referred to herein as the "Assignment of Rents."

14. The Loan Agreement, Note, Mortgage and Assignment of Rents will be collectively referred to herein as the "Loan Documents."

15. Defendant is the legal owner of the Mortgaged Property.

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

17. Defendant is in default under the terms of the Loan Documents by reason, among others, of its failure to make payments when due.

18. Payments due under the Loan Documents have not been made as provided for therein, and Plaintiff, as the holder thereof, elected to require immediate payment of the entire amounts due thereon and placed the Loan Documents in the hands of attorneys for collection.

19. The amount due and owing on the Loan Documents, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Loan Documents, as of May 31, 2012, are as follows:

(a) Principal Balance	\$ 8,728,500.00
(b) Accrued Interest	\$ 703,062.74
Total amount due on Note and Mortgage	\$ 9,431,562.74
(c) Filing, service, motion, and other fees	\$ 976.76
(d) Referral Fee	\$ <u>125.00</u>
Total Balance on Loan Documents	\$ 9,432,662.50
(e) Legal Fees	\$ <u>18,000.00</u>
Total debt secured by the Loan Documents including interest to date shown	\$ 9,450,662.50

Interest continues to accrue on the default rate of 15% *per annum* (which is currently \$3,587.05 *per diem*) from May 31, 2012, until judgment and at the judgment rate thereafter until paid.

20. Plaintiff is seeking foreclosure of its Mortgage.

21. Because this foreclosure action involves a mortgage on commercial property, the Home Affordable Modification Program is inapplicable. Additionally, the commercial property securing the Mortgage is not Mortgagor's principal residence.

CONCLUSIONS OF LAW

I, therefore, conclude that the subject Mortgage is not subject to modification under the Home Affordable Modification Program or subject to the Supreme Court's Administrative Order dated May 2, 2011, that the Plaintiff should have judgment of foreclosure of its Mortgage, and the Mortgaged Property should be ordered sold at public auction after due advertisement, and that a personal or deficiency judgment against Defendant with a credit against the judgment to be given for the net proceeds received by the Plaintiff for the sale, shall be entered upon the judgment rolls for Aiken County.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The subject foreclosure action involves a mortgage on commercial property and the Home Affordable Modification Program is inapplicable. This action involves the foreclosure of a commercial loan that is secured by a lien on commercial real estate that is not the principal residence of the Mortgagor.

2. The Mortgage constitutes a valid first lien on the subject property.

3. That there is due to the Plaintiff on its Loan Documents, as set forth in the Verified Complaint the sum \$9,450,662.50 as of May 18, 2012, and Plaintiff is entitled to a personal judgment against *Spring North Augusta, LLC (MAG)* ~~Low Country~~ for said amount.

4. The amount due in the preceding paragraph shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the default rate of 15% *per annum* (which is currently \$3,587.05 *per diem*) from May 31, 2012, until the date of the entry of judgment and at the judgment rate thereafter. Further, to the extent Plaintiff advances money for insurance or

other expenses to preserve the property after May 31, 2012, such advances may be added to the total judgment debt.

5. Defendant is liable for the aforesaid debt, and shall on or before the date of sale of the property hereinafter described, may pay to the Plaintiff's attorneys, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

6. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint and hereafter set forth, be sold by the Aiken County Master in Equity or his agent, at public auction, at the Aiken County Courthouse, Aiken, South Carolina, County and State aforesaid, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the day designated by the selling officer succeeding such holiday), on the following terms, that is to say:

The sale shall be for cash, and the highest bidder shall be required to make a cash deposit of five (5%) percent on the bid as earnest money and as evidence of good faith. If the Plaintiff is the successful bidder at the sale, the Plaintiff may, after paying the costs of the sale, apply the debt due upon its Mortgage against its bid in lieu of cash. Should the person making the highest bid at the sale fail to comply with the terms of his bid by depositing the said five (5%) percent in cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the selling officer may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of his bid within thirty (30) days of the final acceptance of his bid, then the selling officer shall re-advertise and resell the property on the same terms on a subsequent date at the risk of such bidder. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of their bids in cash as prescribed above. The Aiken Master in Equity or his designated representative, shall promptly return all deposits except the deposit securing the highest bid. The sale shall be subject to taxes, to existing easements and restrictions, and to homeowners association assessments accruing subsequent to the date of the deed/title issued to the purchaser. Purchaser shall pay all costs of recording the deed.

7. Plaintiff is seeking foreclosure of the Mortgage and does not waive the right to a personal or deficiency judgment against Defendant, with a credit against the judgment to be

given for the net proceeds received by Plaintiff for the sale. However, Plaintiff reserves the right to waive deficiency prior to the sale.

8. After advertisement according to law, give notice of the time and place of such sale, and the terms thereof, that the Alkon County Master in Equity or his agent convey to the purchaser, or purchasers, a deed to the premises sold; and that the Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers should fail to comply with the terms thereof, the Court may advertise the said premises of sale on the next, or some other subsequent Sales Day, at the risk of the former highest bidder, and so from time to time thereafter until a compliance shall be secured. The deed will be taken subject to payment by grantee of any taxes or special assessments constituting a lien against the property sold under this Report and hereinafter more fully described. Pursuant to S.C. Code §12-24-40(13), the successful bidder other than Plaintiff shall pay the cost of deed stamps on said deed.

9. The proceeds of the sale be applied as follows:

FIRST, to payment of the amount of the costs and expenses of this action, including the Master in Equity fee and the costs of advertising the Notice of Sale, and any taxable disbursements by the attorneys in the action;

SECOND, to the payment of the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, or so much thereof as the purchase money will pay on the same; and

THIRD, any surplus proceeds to be held subject to further order of this Court.

10. That upon the making of the sale of said mortgaged premises, as hereby ordered, and the execution and delivery to the purchaser of a deed to the premises, the said purchaser or purchasers be let into possession of the premises on production of the deed; and the Sheriff of Alkon County shall put the holder of the deed into possession of the premises. *All valid tenant rights shall be protected. (MAG)*

11. The defendants named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

12. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(e) SCRPC.

13. The property described on Exhibit A less and except the property described in Exhibit A-1 attached hereto is ordered to be sold.

14. If the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-referenced property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.


M. Anderson Griffith
Aiken County Master in Equity

August ~~May~~ 14, 2012
Aiken, South Carolina.

EXHIBIT A

PLAYBOOK 54 PAGE 915-783

TRACT 11: (TMS No. 022-17-01-001)

BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, CONTAINING 1,306.369 ACRES ACCORDING TO AN "ALTA/ACSM LAND TITLE SURVEY FOR SPRINGS NORTH AUGUSTA, LLC." DATED JUNE 26, 2005, LAST REVISED 10/22/09 BY SITE DESIGN, INC. WITH THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT A 5/8" REBAR IRON PIN SET LOCATED ON THE SOUTHERN RIGHT OF WAY OF ASCAUGA LAKE ROAD (S-2-33) AND THE EASTERN RIGHT OF WAY OF I-520 (PALMETTO PARKWAY), SAID IRON PIN ALSO BEING LOCATED 1412.6 FEET +/- FROM THE EASTERN RIGHT OF WAY OF U.S. HIGHWAY 25 THENCE RUNNING ALONG SAID RIGHT OF WAY OF ASCAUGA LAKE ROAD (S-2-33) AND RUNNING ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 4483.66 FEET AND A CHORD BEARING AND DISTANCE OF N 73-35-27 E, 135.67 FEET TO POINT AT THE JOINT CORNER OF HELEN EVANS, NOW OR FORMERLY, THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG SAID EVANS PROPERTY, S23-25-49E 191.43 FEET TO AN OLD 3" OPEN TOP IRON PIN AT THE JOINT CORNER OF ALEXANDER AND PATSY LARROBEE, NOW OR FORMERLY, THENCE ALONG SAID LARROBEE PROPERTY S28-09-02E, 249.47 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF LOT 7, BLOCK B, OF BARCLAY SUBDIVISION, THENCE ALONG SAID BARCLAY SUBDIVISION S58-19-45E 221.59 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 6, BLOCK B, BARCLAY SUBDIVISION, THENCE S58-32-08E, 279.90 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 5, BLOCK B, BARCLAY SUBDIVISION, THENCE S58-20-53E 790.25 FEET TO AN OLD 1/2" REBAR IRON PIN AT THE JOINT CORNER OF LOT 1, BLOCK B, BARCLAY SUBDIVISION, THENCE S58-43-42E 200.08 FEET TO AN OLD 3/4" OPEN TOP IRON PIN ON THE WESTERN RIGHT OF WAY OF BUCKHALL ROAD, THENCE ALONG THE END OF BUCKHALL ROAD AND LOT 7, BLOCK A, BARCLAY SUBDIVISION S58-33-54E, 261.42 FEET TO AN OLD 1/2" CRIMP TOP IRON PIN AT THE JOINT CORNER OF LOT 6, BLOCK A, BARCLAY SUBDIVISION, CROSSING OVER AN OLD 1" OPEN TOP IRON PIN AT 50.07, THENCE S58-18-20E, 208.63 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 5, BLOCK A, BARCLAY SUBDIVISION, THENCE S58-36-24E 210.09 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 4, BLOCK A, BARCLAY SUBDIVISION, THENCE S58-33-13E 299.97 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 3, BLOCK A, BARCLAY SUBDIVISION, THENCE ALONG SAID LOT 3 AND PROPERTY OF NORMA M. PATE, NOW OR FORMERLY, S 58-27-56 E 952.94 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N09-47-08 W 446.47 FEET TO A POINT IN TREE NEAR THE RIGHT OF WAY OF BLANCHARD ROAD, CROSSING OVER A REFERENCE 5/8" REBAR IRON PIN SET ON LINE AT 445.16 FEET, THENCE S53-45-32E 142.86 FEET TO AN OLD 2" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 1, RIPPLERIDGE SUBDIVISION, THENCE ALONG SAID LOT 1 S09-53-18E 423.07 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE ALONG LOT 1, LOT 2, LOT 3, LOT 4, LOT 5, LOT 6, LOT 7 AND PART OF LOT 8 OF RIPPLERIDGE SUBDIVISION THE

FOLLOWING METES AND BOUNDS: S61-23-01E 186.72 FEET TO A 5/8" STEEL ROD AT
 THE JOINT CORNER OF LOT 3, THENCE S61-23-12E 159.86 FEET TO AN OLD 5/8"
 REBAR AT THE JOINT CORNER OF LOT 4, THENCE S60-47-56E 158.24 FEET TO AN
 OLD 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 5, THENCE S61-58-19E 156.91
 FEET TO AN OLD 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 6, THENCE
 S61-24-03E 155.23 FEET TO AN OLD 1/2" STEEL ROD AT THE JOINT CORNER OF LOT
 7, THENCE S61-24-15E 153.93 FEET TO AN OLD 5/8" STEEL ROD AT THE JOINT
 CORNER OF LOT 8, THENCE S61-28-23E 102.98 FEET TO AN OLD 3" OPEN TOP IRON
 PIN AT THE JOINT CORNER OF EDWARD K. & JUNE B. CARTER, NOW OR
 FORMERLY, THENCE ALONG SAID CARTER PROPERTY S30-48-30W 523.66 FEET TO
 AN OLD 1" OPEN TOP IRON PIN, THENCE S56-37-45E 71.77 FEET TO AN OLD 3/4"
 OPEN TOP IRON PIN AT THE JOINT CORNER OF PHILLIP L. & ALISA T. SOLESBEE,
 NOW OR FORMERLY, THENCE ALONG SAID SOLESBEE PROPERTY S56-38-05E
 295.82 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF FAY
 ELLA BROCK BRYANT, NOW OR FORMERLY, THENCE ALONG SAID BRYANT
 PROPERTY AND PROPERTY OF EDWARD H. WOOD, NOW OR FORMERLY, AND
 PROPERTY OF AUSTIN R. TAYLOR, JR., NOW OR FORMERLY, S56-39-12E 433.14
 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF FAY ELLA
 BROCK BRYANT, THENCE S56-36-54E 144.85 FEET TO AN OLD 3/4" OPEN TOP IRON
 PIN AT THE JOINT CORNER OF PHILLIP C. MALCOM & SUSAN H. MALCOM, NOW
 OR FORMERLY, THENCE ALONG SAID MALCOM PROPERTY, S56-39-04E 59.88 FEET
 TO AN OLD 3" AXLE AT THE JOINT CORNER OF RONALD W. & BECKY B. ALLEN,
 THENCE ALONG SAID ALLEN PROPERTY S25-06-54E 891.44 FEET TO AN OLD 3"
 OPEN TOP IRON PIN, THENCE S70-07-10E 419.10 FEET TO AN OLD ANGLE IRON AT
 THE JOINT CORNER OF MAURICE SAMUAL, ETAL, NOW OR FORMERLY, THENCE
 ALONG SAID SAMUAL PROPERTY S69-53-40E, 842.45 FEET TO AN OLD 3" OPEN TOP
 IRON PIN AT THE JOINT CORNER OF ELBERT J. GRINER, NOW OR FORMERLY,
 THENCE ALONG SAID GRINER PROPERTY S69-24-03E 462.55 FEET TO AN OLD 1"
 OPEN TOP IRON PIN AT THE JOINT CORNER OF MARGARET B. BROWN, NOW OR
 FORMERLY, THENCE ALONG SAID BROWN PROPERTY S69-14-04E, 146.11 FEET TO
 AN OLD 2" OPEN TOP IRON PIN, THENCE S69-26-27E, 234.68 FEET TO AN OLD 1"
 OPEN TOP IRON PIN, THENCE S69-21-24E 387.32 FEET TO AN OLD 1" SQUARE ROD
 AT THE JOINT CORNER OF CALVIN D. & GEORGIA D. THOMASON, NOW OR
 FORMERLY, THENCE ALONG SAID THOMASON PROPERTY, S69-27-06E 243.56 FEET
 TO OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF ARTHUR & IRENE
 ABRAHAM, NOW OR FORMERLY, THENCE ALONG SAID ABRAHAM PROPERTY
 S21-05-40W, 473.68 FEET TO AN OLD AXLE, THENCE ALONG SAID ABRAHAM
 PROPERTY AND PROPERTY OF IRENE ABRAHAM MAYS, NOW OR FORMERLY,
 S69-11-10E 479.37 FEET TO AN OLD 1/2" REBAR IRON PIN AT THE JOINT CORNER OF
 HOLLOWAY PROPERTY S69-26-07E 104.76 FEET TO AN OLD 1/2" REBAR IRON PIN
 AT THE JOINT CORNER OF ARTHUR AND CARRIE ABRAHAM, NOW OR FORMERLY,
 THENCE ALONG SAID ABRAHAM PROPERTY S69-14-18E 103.81 FEET TO AN OLD 1"
 OPEN TOP IRON PIN AT THE JOINT CORNER OF JAMES ABRAHAM, NOW OR
 FORMERLY, THENCE ALONG SAID ABRAHAM PROPERTY S69-16-09E 233.10 FEET
 TO A POINT IN THE CENTER OF OLD SUDLOW LAKE ROAD (S-2-1760), CROSSING

OVER AN OLD 1" OPEN TOP IRON PIN AT 211.81 FEET, THENCE DOWN THE CENTER OF SAID OLD SUDLOW LAKE ROAD THE FOLLOWING METES AND BOUNDS TO WIT: S12-12-35W, 1347.60 FEET TO A POINT, THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 1914.63 FEET AND A CHORD OF S18-59-41W 496.18 FEET TO A POINT, THENCE S28-39-51W 626.68 FEET TO A POINT, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 1147.18 FEET AND A CHORD OF S18-21-21W 492.20 FEET TO A POINT, THENCE S03-29-39W 299.73 FEET TO A POINT IN THE CENTER OF THE BRIDGE OVER ELLEN HAWKINS BRANCH AT THE JOINT CORNER OF HENRY & ELIZABETH THOMPSON, NOW OR FORMERLY, THENCE ALONG SAID THOMPSON PROPERTY AND ALONG A TRAVERSE LINE OF ELLEN HAWKINS BRANCH WITH THE CREEK AS THE LINE, S73-12-28E 62.28 FEET TO A POINT, CROSSING OVER AN OLD 1/2" REBAR IRON PIN AT 34.12 FEET, THENCE N68-08-02E 91.23 FEET TO A POINT, THENCE S78-09-25E 129.79 FEET TO A POINT, THENCE S66-12-17E 99.09 FEET TO A POINT IN THE PROPERTY LINE OF PRINCE A. WARE, NOW OR FORMERLY, THENCE ALONG SAID WARE PROPERTY S17-40-41W 92.25 FEET TO AN OLD AXLE, THENCE CONTINUING ALONG SAID WARE PROPERTY AND PROPERTY OF PRINCE A. WARE & SARAH REEVES, NOW OR FORMERLY, S71-09-56E 441.83 FEET TO A POINT AT THE JOINT CORNER OF HERMAN JACKSON, ETAL, NOW OR FORMERLY, THENCE ALONG SAID JACKSON PROPERTY S73-38-36E 159.38 FEET TO AN OLD FENCE POST AT THE JOINT CORNER OF JAMES & MARY WARE, NOW OR FORMERLY, THENCE ALONG SAID WARE PROPERTY S71-31-21E 135.07 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF JUANITA HAZEL BUTLER, NOW OR FORMERLY, THENCE ALONG SAID BUTLER PROPERTY S70-27-29E 148.62 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF JAMES & MARY WARE, NOW OR FORMERLY, THENCE ALONG SAID WARE PROPERTY S73-10-02E 214.86 FEET TO A POINT IN ELLEN HAWKINS BRANCH AT THE JOINT CORNER OF JOHN & RUTH MORRIS, NOW OR FORMERLY, THENCE ALONG SAID MORRIS PROPERTY S26-18-56W 504.22 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF DON & JUDITH KING, NOW OR FORMERLY, CROSSING OVER OTHER OLD 1" OPEN TOP IRON PINS AT 196.44 FEET AND 314.50 FEET, THENCE S26-19-26W, 913.36 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER JOYCE & JACK GREGORY, NOW OR FORMERLY, THENCE ALONG SAID GREGORY PROPERTY S30-30-02W 1830.42 FEET TO AN OLD 1/2" STEEL ROD, THENCE S30-29-15W, 260.32 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF JAMES & OWENDOLYN MCKINNEY, THENCE ALONG SAID MCKINNEY PROPERTY AND THE WESTERN RIGHT OF WAY OF PATRICIA DRIVE S19-34-10W 1098.80 FEET TO AN OLD CONCRETE MONUMENT, THENCE CONTINUING ALONG THE SAID WESTERN RIGHT OF WAY S19-56-17W 379.71 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF LOT 4, BLOCK K, BELCLEAR HEIGHTS, THENCE ALONG SAID LOT 4 N 34-53-41 W 28.39 FEET TO THE JOINT CORNER OF MARK E. & DALE C. HETT PROPERTY, NOW OR FORMERLY, THENCE ALONG SAID HETT PROPERTY AND OTHER PROPERTY OF HETT, NOW OR FORMERLY, PROPERTIES OF SAM B. & REBECCA A. CHEELY, NOW OR FORMERLY, PROPERTY OF JOHN L. CRESO, NOW OR FORMERLY, PROPERTIES OF JAMES B. & VICKI REESE, NOW OR FORMERLY, PROPERTY OF NORA D. S. NORRIS, NOW OR FORMERLY, AND PROPERTY OF

MICHAEL & BEVERLY SEAY, NOW OR FORMERLY N38-46-20W, 2333.95 FEET TO AN OLD 1" OPEN TOP IRON PIN (BENT) AT THE JOINT CORNER OF SAID SEAY PROPERTY, CROSSING OVER AN OLD 5/8" REBAR IRON PIN AT 1757.56 FEET, THENCE CONTINUING ALONG SAID SEAY PROPERTY AND ALSO ALONG THE LINE OF PROPERTY OF JOHN E. CHRISTIAN, SR., NOW OR FORMERLY, AND PROPERTIES OF W. B. COOPER, NOW OR FORMERLY N 51-02-27 W 724.96 FEET TO A POINT ON THE LINE OF CLYDE OWENS PROPERTY, NOW OR FORMERLY; THENCE TURNING AND RUNNING ALONG THE LINE OF CLYDE OWENS PROPERTY AND ALSO ALONG THE LINE OF LOUIS OWENS PROPERTY, NOW OR FORMERLY, N 38-59-32 E 219.31 FEET TO AN OLD 1" OPEN TOP IRON PIN ON THE LINE OF DOUGLAS SWEARINGEN PROPERTY, NOW OR FORMERLY, THENCE TURNING AND RUNNING ALONG THE LINE OF THE SWEARINGEN PROPERTY S 33-08-42 E 137.75 FEET TO AN OLD CONC. MONUMENT BROKEN AT THE JOINT CORNER OF THE GEORGE G. BEASLEY PROPERTY NOW OR FORMERLY, THENCE TURNING AND RUNNING ALONG THE LINE OF THE BEASLEY PROPERTY THE FOLLOWING METES AND BOUNDS: S 57-07-49 W 96.80 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 55-19-41 E 598.23 FEET TO A POINT IN A POWER POLE, THENCE S 34-59-02 E 640.13 FEET TO AN OLD 1/2" REBAR IRON PIN, THENCE N57-03-22E 1200.28 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N40-15-00W 1200.90 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N33-02-28W 437.51 FEET TO A POINT IN THE CENTER OF OLD SUDLOW LAKE ROAD, CROSSING OVER AN OLD 5/8" REBAR IRON PIN AT 404.77 FEET, THENCE ALONG THE CENTER OF SAID ROAD N56-02-35E 108.96 FEET TO A POINT, THENCE LEAVING THE CENTER OF SAID ROAD AND RUNNING ALONG PROPERTY OF JERRY DUNCAN, NOW OR FORMERLY, N19-18-00W 427.28 FEET TO AN OLD 3/4" CRIMP TOP IRON PIN, CROSSING OVER AN OLD 3/4" OPEN TOP IRON PIN AT 33.69 FEET, THENCE S57-36-26W 204.77 FEET TO AN OLD 1.25" OPEN TOP IRON PIN, THENCE S18-48-20E 400.86 FEET TO A NEW 5/8" REBAR IRON PIN ON THE WESTERN RIGHT OF WAY OF OLD SUDLOW LAKE ROAD, THENCE ALONG SAID WESTERN RIGHT OF WAY S56-38-53W 40.34 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF BERT & SHERRIE HAWKINS, NOW OR FORMERLY, THENCE ALONG SAID HAWKINS PROPERTY N18-44-55W 401.53 FEET TO AN OLD 1.25" OPEN TOP IRON PIN, THENCE S57-33-28W 199.89 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF ROBERT AND DIANNE HARRELL, NOW OR FORMERLY, THENCE ALONG SAID HARRELL PROPERTY S57-34-44W 199.89 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF SHIRLEY A. SMITH, NOW OR FORMERLY, THENCE ALONG SAID SMITH PROPERTY S57-34-38W 200.02 FEET TO AN OLD 1/2" OPEN TOP AT AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF RICHARD & SANDRA STUART, NOW OR FORMERLY, THENCE ALONG SAID STUART PROPERTY S57-34-07W, 294.71 FEET TO AN OLD 1.5" OPEN TOP IRON PIN AT THE JOINT CORNER OF ROGER D. ADERHOLDT, NOW OR FORMERLY, THENCE ALONG SAID ADERHOLDT PROPERTY, S57-35-03W 169.70 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE S60-33-30W 254.99 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT THE JOINT CORNER OF TERESA N. CHASE, NOW OR FORMERLY, THENCE ALONG SAID CHASE PROPERTY S60-37-02W 234.30 FEET TO AN OLD 3/4" OPEN TOP IRON PIN ON THE NORTHERN RIGHT OF WAY OF RIDGEHILL ROAD,

THENCE CROSSING OVER RIDGELAND ROAD S60-25-43W 30.46 FEET TO AN OLD 3/4" CRIMP TOP IRON PIN AT THE JOINT CORNER OF JUDY B. HALL, NOW OR FORMERLY, THENCE ALONG SAID HALL PROPERTY AND THE SOUTHERN RIGHT OF WAY OF RIDGELAND ROAD, N17-08-49W 122.86 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE LEAVING SAID RIDGELAND ROAD AND CONTINUING ALONG SAID HALL PROPERTY S60-02-25W 367.65 FEET TO AN OLD 1.5" CRIMP TOP IRON PIN, THENCE S19-46-22E 121.79 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF T. WARREN GRIFFIN, NOW OR FORMERLY, THENCE ALONG SAID GRIFFIN PROPERTY AND PROPERTY OF MARCIA H. FOREMAN AND LARRY & TAMMY HENDRIX, NOW OR FORMERLY, S19-38-14E 443.32 FEET TO A POINT IN THE CENTER OF OLD SUDLOW LAKE ROAD, CROSSING OVER AN OLD 1/2" REBAR IRON PIN AT 409.77 FEET, THENCE ALONG SAID CENTERLINE AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 520.45 FEET AND A CHORD OF S86-40-21W 320.14 FEET TO A POINT, THENCE N74-08-32W 167.49 FEET TO A POINT, THENCE LEAVING SAID CENTERLINE AND RUNNING ALONG PROPERTY OF JAMES B. RAWL, SR, NOW OR FORMERLY, N41-26-23E 364.36 FEET TO AN OLD 5/8" REBAR IRON PIN, CROSSING OVER AN OLD 3/4" OPEN TOP IRON PIN AT 51.53 FEET, THENCE ALONG SAID RAWL PROPERTY AND PROPERTY OF DOUGLAS & ADA LOPEZ, NOW OR FORMERLY, N31-39-11W 515.86 FEET TO AN OLD 1" OPEN TOP IRON PIN, THENCE CONTINUING ALONG SAID LOPEZ PROPERTY, S46-29-01W 562.29 FEET TO A 5/8" REBAR IRON PIN SET ON THE NORTHERN RIGHT OF WAY OF CLEARWATER ROAD (S.C. HWY. 126) THENCE ALONG SAID NORTHERN RIGHT OF WAY N51-11-46W 181.08 FEET TO A 5/8" REBAR IRON PIN SET THE JOINT CORNER OF CECIL T. LASTER, NOW OR FORMERLY, THENCE ALONG SAID LASTER PROPERTY N38-57-26E 1029.95 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE N51-24-16W 208.78 FEET TO AN OLD 5/8" REBAR IRON PIN AT THE JOINT CORNER OF JAMES L. ROWLEY, NOW OR FORMERLY, THENCE ALONG SAID ROWLEY PROPERTY N49-52-12W 202.38 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF CAROLYN D. ROWLEY, NOW OR FORMERLY, THENCE ALONG SAID ROWLEY PROPERTY N52-59-14W 218.41 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF ANDREW & ANNE MARTIN, NOW OR FORMERLY, THENCE ALONG SAID MARTIN PROPERTY N51-02-01W 210.36 FEET TO AN OLD CONCRETE MONUMENT, THENCE N49-27-28W 220.65 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE S38-29-39W 855.33 FEET TO A 5/8" REBAR IRON PIN SET ON THE NORTHERN RIGHT OF WAY OF CLEARWATER ROAD (S.C. HWY. 126) AND THE NEW RIGHT OF WAY OF I-520 (PALMETTO PARKWAY) THENCE ALONG SAID NEW RIGHT OF WAY N46-17-55W 92.13 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF THE KELLOGG CORPORATION, NOW OR FORMERLY, THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG SAID KELLOGG PROPERTY N35-15-13E 1043.58 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N11-21-01W 874.34 FEET TO AN OLD 1" CRIMP TOP IRON PIN, THENCE N39-32-09W 896.27 FEET TO A NEW 5/8" REBAR IRON PIN LOCATED ON THE EASTERN RIGHT OF WAY OF I-520 (PALMETTO PARKWAY), THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY AND ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10390.01 FEET AND A CHORD BEARING AND DISTANCE OF N03-36-49W 589.86 FEET TO A 5/8" REBAR IRON PIN SET, THENCE STILL ALONG SAID RIGHT OF WAY

THE FOLLOWING COURSES AND DISTANCES N17-33-54W 681.96 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N19-04-01W 976.97 FEET TO A 5/8" REBAR IRON PIN SET, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10150.00 FEET AND A CHORD BEARING AND DISTANCE OF N16-27-36W 608.91 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N11-14-13W 314.81 FEET TO A 5/8" REBAR IRON PIN SET, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10225.00 FEET AND A CHORD BEARING AND DISTANCE OF N21-53-24W 302.08 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N19-48-00W 1404.59 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N27-13-48E 348.31 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N16-32-01E 99.56 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N73-27-59W 98.10 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N08-17-50E 407.78 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N06-11-29W 624.52 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N87-30-54W 311.57 FEET TO A 5/8" REBAR IRON PIN SET, THENCE S88-14-18W 142.43 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N03-19-13E 571.33 FEET TO A 5/8" REBAR IRON PIN SET, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10387.74 FEET AND A CHORD BEARING AND DISTANCE OF N03-30-33W 293.11 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N07-45-03W 693.80 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF C. T. HARRIS, INC. PROPERTY NOW OR FORMERLY, THENCE TURNING AND LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE LINE OF C. T. HARRIS, INC. PROPERTY N56-04-55E 156.60 FEET TO AN OLD 1/2" REBAR IRON PIN BENT, THENCE TURNING AND RUNNING N21-24-02W 351.33 FEET TO A 5/8" REBAR IRON PIN SET LOCATED ON THE EASTERN RIGHT OF WAY OF I-520 (PALMETTO PARKWAY), THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY AND ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 10320.36 FEET AND A CHORD BEARING AND DISTANCE OF N03-58-20E 169.79 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA AND DESCRIBED AS A UTILITY SITE, CONSISTING OF 5,576 SQ. FT. OR 0.13 ACRES, AS SHOWN ON A SURVEY PREPARED FOR THE CITY OF NORTH AUGUSTA BY B.F. BARBER & ASSOCIATES, INC., DATED NOVEMBER 30, 2001, REVISED MARCH 28, 2006, AS RECORDED IN THE OFFICE OF THE ROD FOR AIKEN COUNTY, SC IN PLAT BOOK 34 AT PAGE 435.

TRACT 2: (TMS No. 011-11-02-001)

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND SITUATE, LYING AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, CONTAINING 20.668 ACRES ACCORDING TO AN "ALTA/ACSM LAND TITLE SURVEY FOR SPRINGS NORTH AUGUSTA, LLC.", DATED JUNE 6, 2005, LAST REVISED 10/22/09 BY SITE DESIGN, INC. WITH THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT A 5/8" REBAR IRON PIN SET LOCATED ON THE WESTERN RIGHT OF WAY INTERSTATE I-520 (PALMETTO PARKWAY) AT THE JOINT CORNER OF JOHN L. & LARRY MURRAY, SAID IRON PIN BEING 711.1 FEET +/- SOUTH OF THE INTERSECTION OF THE SOUTHERN RIGHT OF WAY OF ASCAUGA LAKE ROAD; THENCE RUNNING ALONG SAID WESTERN RIGHT OF WAY AND ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10637.41 FEET, AN ARC LENGTH OF 1274.52 FEET AND A CHORD BEARING AND DISTANCE OF S 03-41-38 E 1273.76 FEET TO A 5/8" REBAR IRON PIN SET; THENCE TURNING AND RUNNING ALONG A NORTHERN RIGHT OF WAY FOR SAID INTERSTATE I-520 THE FOLLOWING COURSES AND DISTANCES: S 83-48-32 W 156.16 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 658.83 FEET, AN ARC LENGTH OF 127.61 FEET AND A CHORD BEARING AND DISTANCE OF S 89-21-28 W 127.41 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 66-29-10 W 94.73 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 708.83 FEET, AN ARC LENGTH OF 295.27 FEET AND A CHORD BEARING AND DISTANCE OF N 66-24-34 W 293.14 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 535-31-28 W 20.00 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 728.83 FEET, AN ARC LENGTH OF 73.51 FEET AND A CHORD BEARING AND DISTANCE OF N 51-55-10 W 73.48 FEET TO A 5/8" REBAR IRON PIN SET; THENCE N 48-41-48 W 310.79 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 41-18-12 W 50.00 FEET TO A 5/8" REBAR IRON PIN SET; THENCE N 48-41-48 W 249.64 FEET TO A 5/8" REBAR IRON PIN SET; THENCE TURNING AND RUNNING N 14-22-53 W 39.26 FEET TO A 5/8" REBAR IRON PIN SET ON THE EASTERN RIGHT OF WAY OF A FUTURE ROAD; THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY N 08-19-07 E 52.23 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 125.00 FEET AND A CHORD BEARING AND DISTANCE OF N 28-02-06 E 57.38 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF ADAMS BROS. PROPERTY, LLC, NOW OR FORMERLY; THENCE TURNING AND LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE LINE OF SAID ADAMS BROS. PROPERTY, LLC PROPERTY AND ALSO ALONG THE LINE OF JOHN L. MURRAY, JR. PROPERTY, NOW OR FORMERLY N 56-14-07 E 575.54 FEET TO AN OLD CONC. MONUMENT AT THE JOINT CORNER OF JOHN L. & LARRY MURRAY PROPERTY, NOW OR FORMERLY; THENCE TURNING AND RUNNING ALONG THE LINE OF SAID MURRAY PROPERTY N 55-49-56 E 615.83 FEET TO AN OLD 1" OPEN TOP IRON PIN; THENCE TURNING AND RUNNING N 55-48-56 E 77.99 FEET TO THE POINT OF BEGINNING.

TRACT 3: (TMS No. 011-10-07-006)

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, LYING, SITUATE, AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, CONTAINING 92.977 ACRES ACCORDING TO AN "ALTA/ACSM LAND TITLE SURVEY FOR SPRINGS NORTH AUGUSTA, LLC." DATED JUNE 6, 2005, LAST REVISED 10/22/09 BY SITE DESIGN, INC. WITH THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT AN OLD 2" OPEN TOP IRON PIN ON THE EASTERN RIGHT OF WAY OF U.S. HWY 25 AT THE JOINT CORNER OF RAYMOND D. TIMMERMAN, NOW OR FORMERLY, SAID OLD IRON PIN ALSO BEING S 04-09-10 W 139.98 FEET FROM THE CL-CL INTERSECTION OF US HWY. 25 AND PINECREST ROAD; THENCE ALONG SAID EASTERN RIGHT OF WAY AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 2242.40 FEET AND A CHORD OF N 27-18-37 E 729.67 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT THE JOINT CORNER OF HAROLD R. & BETTY J. HAMMETT, NOW OR FORMERLY, THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE JOINT PROPERTY LINE OF SAID HAMMETT PROPERTY, S67-22-37E, 171.64 FEET TO AN OLD 3/4" CRIMP TOP IRON PIN, THENCE N16-04-42E, 154.34 FEET TO AN OLD RAILROAD SPIKE IN THE CENTER OF AN OLD ROAD BED IN THE PROPERTY LINE OF REBECCA BENNETT, NOW OR FORMERLY, THENCE ALONG SAID BENNETT PROPERTY AND OTHER PROPERTY OF JOE O. EDWINS, NOW OR FORMERLY, N87-24-20E, 769.54 FEET TO AN OLD 5/8" REBAR IRON PIN AT THE JOINT CORNER OF JOE O. EDWINS, ETAL, NOW OR FORMERLY, THENCE ALONG SAID EDWINS PROPERTY N67-47-14E 604.21 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N14-23-00W 424.51 FEET TO A 5/8" REBAR IRON PIN SET ON THE SOUTHERN RIGHT OF WAY OF INTERSTATE I-520 (PALMETTO PARKWAY), THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES AND DISTANCES: S 39-47-08 E 386.70 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1013.83 FEET, AN ARC LENGTH OF 401.07 FEET AND A CHORD BEARING AND DISTANCE OF S 64-21-50 E 398.46 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 43-53-58 E 83.67 FEET TO A 5/8" REBAR IRON PIN SET ALONG THE WESTERN RIGHT OF WAY OF INTERSTATE I-520 (PALMETTO PARKWAY); THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES AND DISTANCES: S 11-17-10 E 559.05 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 903.94 FEET, AN ARC LENGTH OF 147.91 FEET AND A CHORD BEARING AND DISTANCE OF S 35-15-20 E 147.74 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 30-12-00 E 605.96 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 1142.39 FEET, AN ARC LENGTH OF 438.65 FEET AND A CHORD BEARING AND DISTANCE OF S 28-48-59 E 435.96 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 27-45-14 E 542.17 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF THE KELLOGG CORP. PROPERTY, NOW OR FORMERLY; THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE LINE OF SAID KELLOGG CORP. PROPERTY THE FOLLOWING COURSES AND DISTANCES: N 45-17-36 W 105.06 FEET TO AN OLD 1" CRIMP TOP IRON PIN; THENCE N49-46-06W 323.72 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N 69-43-14 W 394.95 FEET TO AN OLD 1" CRIMP TOP IRON PIN, THENCE N80-18-31W 280.13 FEET TO AN OLD 1" CRIMP TOP IRON PIN, THENCE S74-44-03W 804.31 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N73-34-29W 614.60 FEET TO AN OLD 1/2" STEEL ROD, THENCE N69-37-31W 302.01 FEET TO A POINT IN THE PROPERTY LINE OF LOT 1, BLOCK D, BONNIE GLEN SUBDIVISION, CROSSING OVER AN OLD 5/8" REBAR IRON PIN AT 299.20 FEET, THENCE ALONG SAID LOT 1, N17-32-47E 29.39 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE

JOINT CORNER OF LOT 2, BLOCK D, BONNIE GLEN SUBDIVISION, THENCE ALONG SAID LOT 2, N17-34-15E 93.25 FEET TO AN OLD 1" CRIMP TOP IRON PIN AT THE JOINT CORNER OF LOT 3, BLOCK D, BONNIE GLEN SUBDIVISION, THENCE ALONG SAID LOT 3, N17-43-51E 94.69 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LEWIS BLACK, NOW OR FORMERLY, THENCE ALONG SAID BLACK PROPERTY, N17-31-29E 188.40 FEET TO AN OLD 1.25" CRIMP TOP IRON PIN AT THE JOINT CORNER OF BRUCE GARDNER PROPERTY, NOW OR FORMERLY, THENCE ALONG SAID GARDNER PROPERTY AND PROPERTY OF RAYMOND D. TIMBERMAN, NOW OR FORMERLY, N18-00-18E 199.02 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N74-36-16W 222.22 FEET TO AN OLD 2" CRIMP TOP IRON PIN, THENCE N74-46-29W 294.15 FEET TO AN OLD 1.25" OPEN TOP IRON PIN, THENCE N74-48-47W 517.65 FEET TO THE POINT OF BEGINNING.

DERIVATION: THIS BEING THE IDENTICAL PROPERTY CONVEYED UNTO SPRINGS NORTH AUGUSTA, LLC BY DEED OF THE SPRINGS DEVELOPMENT COMPANY, LLC DATED NOVEMBER 10, 2009 AND RECORDED NOVEMBER 18, 2009 IN BOOK 4224 AT PAGE 1872, AIKEN COUNTY RECORDS.

EXHIBIT A-1

LESS AND EXCEPT:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, WITH THE IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, AND LOCATED IN THE ASCAUGA LAKE ROAD/ I-520 PALMETTO PARKWAY VICINITY. SAID PROPERTY CONSISTS OF 0.801 ACRES AND IS IDENTIFIED AS "NEW ELEVATION TANK SITE" ON A PLAT PREPARED FOR THE CITY OF NORTH AUGUSTA BY B. P. BARBER DATED MARCH 29, 2010. SAID PLAT IS RECORDED IN THE OFFICE OF THE RMC FOR AIKEN COUNTY, SOUTH CAROLINA IN PLAT BOOK 55 AT PAGE 447. ALSO INCLUDED ARE THOSE TEMPORARY AND PERMANENT EASEMENTS AS ARE DESCRIBED AS PARCEL 2 IN A DEED RECORDED IN RECORD BOOK 4295, PAGES 2400-2404.

SAID "LESS AND EXCEPT" IS SET FORTH IN THAT CERTAIN PARTIAL RELEASE OF MORTGAGE BY AND BETWEEN HARRY P. SAKELLARIS, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED JULY 15, 2001 AND THE CITY OF NORTH AUGUSTA DATED APRIL 19, 2012 AND RECORDED IN THE OFFICE OF THE REGISTER OF MESNE CONVEYANCE FOR AIKEN COUNTY ON MAY 1, 2012 IN BOOK RB 4403 AT PAGE 1864.

SAID PROPERTY BEING A PORTION OF THAT PROPERTY CONVEYED TO SPRINGS NORTH AUGUSTA, LLC BY DEED DATED NOVEMBER 16, 2009, AND RECORDED IN THE OFFICE OF THE RMC FOR AIKEN COUNTY, SOUTH CAROLINA IN RECORD BOOK 4284, PAGES 1872-1884.

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-02-0173

Harry P. Sakellaris, as Trustee of the George B.
Buchanan, Jr. Irrevocable Family Trust, et al.

Springs North Augusta, LLC and the City of
North Augusta

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:
Stanley H. McCullin
Haynsworth Sinker Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211
(803) 779-3080

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk: ☐ Master In Equity's Order and Judgment of Foreclosure and Sale

INFORMATION FOR THE PUBLIC INDEX

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

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001	Springs North Augusta, LLC	N/A

If applicable, describe the property, including tax map information and address, referenced in the order:
TMS Nos. 022-17-01-001; 011-11-02-001; and 011-10-02-006

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

Circuit Court Judge M. Anderson Griffith
Master-In-Equity

3076
Judge Code

8/14/12
Date

SCRPC Form 4C (10/2011)

Page 1 of 2

For Clerk of Court Office Use Only

This judgment was entered on the 14 day of August, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 14 day of August, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Stanley H. McGuffin
Haynsworth Stakler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211
(803) 779.3080

Spring North Augusta, LLC
c/o Michael W. Tighe, Registered Agent
1812 Lincoln Street, Ste 300
Columbia, SC 29201

Master

ATTORNEY(S) FOR THE PLAINTIFF(S).

ATTORNEY(S) FOR THE DEFENDANT(S)
As directed by Clerk
CLERK OF COURT

Court Reporter:

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-02-0173

Harry P. Sakellaris, as Trustee of the George B.
Buchanan, Jr. Irrevocable Family Trust, et al.

Springs North Augusta, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:
Stanley H. McCuffin
Haynsworth Sinkler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211
(803) 779.3080

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001	Springs North Augusta, LLC	\$2,484,163.95
If applicable, describe the property, including tax map information and address, referenced in the order: TMS Nos. 022-17-01-001; 011-11-02-001; and 011-10-07-006		

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

MA [Signature]
Master in Equity

Judge Code

Date

Oct. 26, 2012

SCRPC Form 4C (10/2011)

Page 1 of 2



GBTrust_0055

For Clerk of Court Office Use Only

This judgment was entered on the 24 day of October, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 24 day of October, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Stanley H. McGuffin
Haynsworth Sinkler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211
(803) 779.3080

Springs North Augusta, LLC
c/o Michael W. Tighe, Registered Agent
1812 Lincoln Street, Ste 200
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)

Master on equity

Court Reporter:

ATTORNEY(S) FOR THE DEFENDANT(S)

Ch. Richard W. Brannon Jr. DC
CLERK OF COURT

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2012-CP-02-0173

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr. Irrevocable
Family Trust, dated the 15th Day of July,
2001,

Plaintiff,

ORDER OF DEFICIENCY JUDGMENT

vs.

Springs North Augusta, LLC,

Defendant.

Pursuant to the Judgment of the Master in Equity given in the above case issued on August 14, 2012, and filed August 14, 2012, the Plaintiff is entitled to have a personal and deficiency judgment against defendant Springs North Augusta, LLC as follows:

Amount of judgment of foreclosure entered by Equity Court	\$9,450,662.50
PLUS: Interest from August 14, 2012, to date of deficiency sale, October 4, 2012 (51 days at \$3,587.05 per diem)	\$182,939.55
Commission	\$2,500.00
Advertising	\$8,061.90
	<u>\$10,561.90</u>
Total Judgment	\$9,644,163.95
Less Amount of Bid	<u>~~\$ 7,160,000.00~~</u>
	\$2,484,163.95

DEFICIENCY JUDGMENT ENTERED AGAINST SPRINGS NORTH AUGUSTA, LLC **\$2,484,163.95**

IT IS SO ORDERED.

I, Clerk of Common Pleas and General
Court for South Carolina do hereby certify
that the above is a true and correct copy of the
order as entered in my office this
Oct. 26 2012

MA B. Griffith
M. Anderson Griffith
Aiken County Master in Equity
Oran J. J. J.
Deputy Clerk

J6130.0001

GBTrust_0052

STATE OF SOUTH CAROLINA)

COUNTY OF AIKEN)

AIKEN COUNTY ASSESSOR

Tax Map:

022-17-01-001

011-10-07-006

041-11-02-001

Harry P. Sakellaris, as Trustee of the

George B. Buchanan, Jr. Irrevocable Family

Trust, dated the 15th Day of July, 2001

Plaintiff

COURT OF COMMON PLEAS

Vs. Springs North Augusta, LLC

Defendant(s)

Civil Action No.: 2012-CP-02-00173

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN
I, Judith V. Warner, Clerk of S.C.C. for
Aiken County, South Carolina, do hereby certify
that the foregoing constitutes a true and correct
copy of the original document which has been filed
in my office.
30 August 2012
J. Warner
Clerk
Aiken County, S.C.
Deputy Clerk

BY VIRTUE OF and pursuant to the terms of a Decree in the above entitled action, the undersigned as the Master for Aiken County executes and delivers this deed by direction of the Court.

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that I, M. ANDERSON GRIFFITH Master for Aiken County, in consideration of the sum of: SEVEN MILLION ONE HUNDRED SIXTY THOUSAND AND 00/100---DOLLARS (\$7,160,000.00) the receipt whereof is hereby acknowledged, have granted, bargained, sold and released, and by these presents, do grant, bargain, sell and release the following described premises unto: Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001, P. O. Box 8200, Danville, VA 24543-8200

See Attached Exhibit A

This property was sold subject to any past due or accruing property taxes, assessments, existing easements, restrictions of record and any other senior encumbrances.

TOGETHER with all and singular the Rights, Members, Hereditaments and Appurtenances to the said premises belonging, or in anywise incident or appertaining; and all the estate, right, title, claim and interest, whatsoever, of the parties of the cause aforesaid, and for each of them in and to the same; and of all other persons rightfully claiming, from, under, or by these or any of them.

TO HAVE AND TO HOLD, all and singular the premises before mentioned, unto the said Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001, its successors and assigns forever.

IN WITNESS WHEREOF, I, as the Master for Aiken County, have hereunto set my hand and seal this 26th day of October in the year of our Lord two thousand twelve and in the two hundred and thirty-seventh year of the Independence of the United States of America.

Signed, sealed and delivered in the presence of

Jamie P. Cole
Celeste H. Quinn

MA Griffith
Master for Aiken County, South Carolina

Book 4432 Page 1113



STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

PERSONALLY appeared Celeste M. Dixon who made oath that she saw the within named M. ANDERSON GRIFFITH as Master for Aiken County, sign, seal and as his act and deed, deliver the within Deed; and that she with Jeanie P. Cole witnessed the execution thereof.

SWORN to before me this 26th day of October, 2012

Jeanie P. Cole
NOTARY PUBLIC FOR SOUTH CAROLINA

MY COMMISSION EXPIRES:
March 22, 2020

Celeste M. Dixon

STATE OF SOUTH CAROLINA

COUNTY OF AIKEN

By M. Anderson Griffith, Master

TO

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr. Irrevocable Family
Trust, dated the 15th Day of July, 2001
P. O. Box 8200
Danville, VA 24543-8200

TITLE TO REAL ESTATE

2012028769
DEED
RECORDING FEES \$17.00
STATE TAX \$0.00
COUNTY TAX \$0.00
11-15-2012 09:56 AM
JUDITH WARNER
NOTARY PUBLIC
BY: JULEE STUTTS DEPUTY BAC
BK: RB 4432
PG: 1113 - 1123

Recorded this day
of , 20.....
in Book Page.....
Fee, D

Aiken County, S.C.

RECORDING OFFICER

Please show as grantors on your index the following pursuant to Section 30-9-31 of the South Carolina Code of Laws and the final order issued in the above referenced case:

Springs North Augusta, LLC and M.
Anderson Griffith, Master-In-Equity for
Aiken County

Book 4432 Page 1114

Exhibit A

TRACT 1: (TMS NO. 022-17-01-001)

BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, CONTAINING 1,306.369 ACRES ACCORDING TO AN "ALTA/ACSM LAND TITLE SURVEY FOR SPRINGS NORTH AUGUSTA, LLC." DATED JUNE 26, 2005, LAST REVISED 10/22/09 BY SITE DESIGN, INC. WITH THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT A 5/8" REBAR IRON PIN SET LOCATED ON THE SOUTHERN RIGHT OF WAY OF ASCAUGA LAKE ROAD (S-2-33) AND THE EASTERN RIGHT OF WAY OF I-520 (PALMETTO PARKWAY), SAID IRON PIN ALSO BEING LOCATED 1412.6 FEET +/- FROM THE EASTERN RIGHT OF WAY OF U.S. HIGHWAY 25 THENCE RUNNING ALONG SAID RIGHT OF WAY OF ASCAUGA LAKE ROAD (S-2-33) AND RUNNING ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 4483.66 FEET AND A CHORD BEARING AND DISTANCE OF N 73-35-27 E, 135.67 FEET TO POINT AT THE JOINT CORNER OF HELEN EVANS, NOW OR FORMERLY, THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG SAID EVANS PROPERTY, S23-25-49E 191.43 FEET TO AN OLD 3" OPEN TOP IRON PIN AT THE JOINT CORNER OF ALEXANDER AND PATSY LARROBEE, NOW OR FORMERLY, THENCE ALONG SAID LARROBEE PROPERTY S28-09-02E, 249.47 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF LOT 7, BLOCK B, OF BARCLAY SUBDIVISION, THENCE ALONG SAID BARCLAY SUBDIVISION S58-19-45E 221.59 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 6, BLOCK B, BARCLAY SUBDIVISION, THENCE S58-32-08E, 279.90 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 5, BLOCK B, BARCLAY SUBDIVISION, THENCE S58-20-53E 790.25 FEET TO AN OLD 1/2" REBAR IRON PIN AT THE JOINT CORNER OF LOT 1, BLOCK B, BARCLAY SUBDIVISION, THENCE S58-43-42E 200.08 FEET TO AN OLD 3/4" OPEN TOP IRON PIN ON THE WESTERN RIGHT OF WAY OF BUCKHALL ROAD, THENCE ALONG THE END OF BUCKHALL ROAD AND LOT 7, BLOCK A, BARCLAY SUBDIVISION S58-33-54E, 261.42 FEET TO AN OLD 1/2" CRIMP TOP IRON PIN AT THE JOINT CORNER OF LOT 6, BLOCK A, BARCLAY SUBDIVISION, CROSSING OVER AN OLD 1" OPEN TOP IRON PIN AT 50.07', THENCE S58-18-20E, 208.63 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 5, BLOCK A, BARCLAY SUBDIVISION, THENCE S58-36-24E, 210.09 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 4, BLOCK A, BARCLAY SUBDIVISION, THENCE S58-33-13E, 299.97 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 3, BLOCK A, BARCLAY SUBDIVISION, THENCE ALONG SAID LOT 3 AND PROPERTY OF NORMA M. PATE, NOW OR FORMERLY, S 58-27-56 E, 952.94 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N09-47-08 W 446.47 FEET TO A POINT IN TREE NEAR THE RIGHT OF WAY OF BLANCHARD ROAD, CROSSING OVER A REFERENCE 5/8" REBAR IRON PIN SET ON LINE AT 445.16 FEET, THENCE S53-45-32E, 142.86 FEET TO AN OLD 2" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 1, RIPPLERIDGE SUBDIVISION, THENCE ALONG SAID LOT 1 S09-55-18E 423.07 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE ALONG LOT 1, LOT 2, LOT 3, LOT 4, LOT 5, LOT 6, LOT 7 AND PART OF LOT 8 OF RIPPLERIDGE SUBDIVISION THE FOLLOWING METES AND BOUNDS: S61-23-01E, 186.72 FEET TO A 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 3, THENCE S61-23-12E 159.86 FEET TO AN OLD 5/8" REBAR AT THE JOINT CORNER OF LOT 4, THENCE S60-47-56E 158.24 FEET TO AN OLD 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 5, THENCE S61-58-19E 156.91 FEET TO AN OLD 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 6, THENCE S61-24-05E 155.23 FEET TO AN OLD 1/2" STEEL ROD AT THE JOINT CORNER OF LOT 7, THENCE S61-24-15E 153.93 FEET TO AN OLD 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 8, THENCE S61-28-23E 102.98 FEET TO AN OLD 3" OPEN TOP IRON PIN AT THE JOINT CORNER OF EDWARD K. & JUNE B. CARTER, NOW OR FORMERLY, THENCE ALONG SAID CARTER PROPERTY S30-48-30W 523.66 FEET TO AN OLD 1" OPEN TOP IRON PIN, THENCE S56-37-45E 71.77 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF PHILLIP L. & ALISA T. SOLESBEE, NOW OR FORMERLY, THENCE ALONG SAID SOLESBEE PROPERTY S56-38-05E 295.82 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF FAY ELLA BROCK BRYANT, NOW OR FORMERLY, THENCE ALONG SAID BRYANT PROPERTY AND PROPERTY OF EDWARD H. WOOD, NOW OR FORMERLY, AND PROPERTY OF AUSTIN R. TAYLOR, JR., NOW OR FORMERLY, S56-39-12E 433.14 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF FAY ELLA BROCK BRYANT, THENCE S56-36-54E 144.85 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF PHILLIP C. MALCOM & SUSAN H. MALCOM, NOW OR FORMERLY, THENCE ALONG SAID MALCOM PROPERTY, S56-39-04E 59.88 FEET TO AN OLD 3" AXLE AT THE JOINT CORNER OF RONALD W. &

1 of 7

Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001 vs. Springs North Augusta, LLC; Civil Action No. 2012-CP-02-00173

Book 4432 Page 1115

Exhibit A

BECKY B. ALLEN, THENCE ALONG SAID ALLEN PROPERTY S25-06-54E 891.44 FEET TO AN OLD 3" OPEN TOP IRON PIN, THENCE S70-07-10E 419.10 FEET TO AN OLD ANGLE IRON AT THE JOINT CORNER OF MAURICE SAMUAL, ETAL, NOW OR FORMERLY, THENCE ALONG SAID SAMUAL PROPERTY S69-53-40E, 842.45 FEET TO AN OLD 3" OPEN TOP IRON PIN AT THE JOINT CORNER OF ELBERT J. GRINER, NOW OR FORMERLY, THENCE ALONG SAID GRINER PROPERTY S69-24-03E 462.55 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF MARGARET B. BROWN, NOW OR FORMERLY, THENCE ALONG SAID BROWN PROPERTY S69-14-04E, 146.11 FEET TO AN OLD 2" OPEN TOP IRON PIN, THENCE S69-26-27E, 254.68 FEET TO AN OLD 1" OPEN TOP IRON PIN, THENCE S69-21-24E 387.32 FEET TO AN OLD 1" SQUARE ROD AT THE JOINT CORNER OF CALVIN D. & GEORGIA D. THOMASON, NOW OR FORMERLY, THENCE ALONG SAID THOMASON PROPERTY, S69-27-06E 243.56 FEET TO OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF ARTHUR & IRENE ABRAHAM, NOW OR FORMERLY, THENCE ALONG SAID ABRAHAM PROPERTY S21-05-40W, 473.68 FEET TO AN OLD AXLE, THENCE ALONG SAID ABRAHAM PROPERTY AND PROPERTY OF IRENE ABRAHAM MAYS, NOW OR FORMERLY, S69-11-10E 479.37 FEET TO AN OLD 1/2" REBAR IRON PIN AT THE JOINT CORNER OF ERIC & DEMETRIA HOLLOWAY, NOW OR FORMERLY, THENCE ALONG SAID HOLLOWAY PROPERTY S69-26-07E 104.76 FEET TO AN OLD 1/2" REBAR IRON PIN AT THE JOINT CORNER OF ARTHUR AND CARRIE ABRAHAM, NOW OR FORMERLY, THENCE ALONG SAID ABRAHAM PROPERTY S69-14-18E 103.81 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF JAMES ABRAHAM, NOW OR FORMERLY, THENCE ALONG SAID ABRAHAM PROPERTY S69-16-09E 233.10 FEET TO A POINT IN THE CENTER OF OLD SUDLOW LAKE ROAD (S-2-1760), CROSSING OVER AN OLD 1" OPEN TOP IRON PIN AT 211.81 FEET, THENCE DOWN THE CENTER OF SAID OLD SUDLOW LAKE ROAD THE FOLLOWING METES AND BOUNDS TO WIT: S12-12-35W, 1347.60 FEET TO A POINT, THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 1914.63 FEET AND A CHORD OF S18-59-41W 496.18 FEET TO A POINT, THENCE S28-39-51W 626.68 FEET TO A POINT, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 1147.18 FEET AND A CHORD OF S18-21-21W 492.20 FEET TO A POINT, THENCE S03-29-39W 299.73 FEET TO A POINT IN THE CENTER OF THE BRIDGE OVER ELLEN HAWKINS BRANCH AT THE JOINT CORNER OF HENRY & ELIZABETH THOMPSON, NOW OR FORMERLY, THENCE ALONG SAID THOMPSON PROPERTY AND ALONG A TRAVERSE LINE OF ELLEN HAWKINS BRANCH WITH THE CREEK AS THE LINE, S73-12-28E 62.28 FEET TO A POINT, CROSSING OVER AN OLD 1/2" REBAR IRON PIN AT 34.12 FEET, THENCE N68-08-02E 91.23 FEET TO A POINT, THENCE S78-09-25E 129.79 FEET TO A POINT, THENCE S66-12-17E 99.09 FEET TO A POINT IN THE PROPERTY LINE OF PRINCE A. WARE, NOW OR FORMERLY, THENCE ALONG SAID WARE PROPERTY S17-40-41W 92.25 FEET TO AN OLD AXLE, THENCE CONTINUING ALONG SAID WARE PROPERTY AND PROPERTY OF PRINCE A. WARE & SARAH REEVES, NOW OR FORMERLY, S71-09-56E 441.83 FEET TO A POINT AT THE JOINT CORNER OF HERMAN JACKSON, ETAL, NOW OR FORMERLY, THENCE ALONG SAID JACKSON PROPERTY S73-38-36E 159.38 FEET TO AN OLD FENCE POST AT THE JOINT CORNER OF JAMES & MARY WARE, NOW OR FORMERLY, THENCE ALONG SAID WARE PROPERTY S71-31-21E 135.07 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF JUANITA HAZEL BUTLER, NOW OR FORMERLY, THENCE ALONG SAID BUTLER PROPERTY S70-27-29E 148.62 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF JAMES & MARY WARE, NOW OR FORMERLY, THENCE ALONG SAID WARE PROPERTY S73-10-02E 214.86 FEET TO A POINT IN ELLEN HAWKINS BRANCH AT THE JOINT CORNER OF JOHN & RUTH MORRIS, NOW OR FORMERLY, THENCE ALONG SAID MORRIS PROPERTY S26-18-56W 504.22 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF DON & JUDITH KING, NOW OR FORMERLY, CROSSING OVER OTHER OLD 1" OPEN TOP IRON PINS AT 196.44 FEET AND 314.50 FEET, THENCE S26-19-26W, 913.36 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER JOYCE & JACK GREGORY, NOW OR FORMERLY, THENCE ALONG SAID GREGORY PROPERTY S30-30-02W 1830.42 FEET TO AN OLD 1/2" STEEL ROD, THENCE S30-29-15W, 260.32 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF JAMES & GWENDOLYN MCKINNEY, THENCE ALONG SAID MCKINNEY PROPERTY AND THE WESTERN RIGHT OF WAY OF PATRICIA DRIVE S19-54-10W 1098.80 FEET TO AN OLD CONCRETE MONUMENT, THENCE CONTINUING ALONG THE SAID WESTERN RIGHT OF WAY S19-56-17W 379.71 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF LOT 4, BLOCK K, BELCLEAR HEIGHTS, THENCE ALONG SAID LOT 4 N 34-53-41 W 28.39 FEET TO THE JOINT CORNER OF MARK E. & DALE C. HETT PROPERTY, NOW OR FORMERLY, THENCE ALONG SAID HETT PROPERTY AND OTHER PROPERTY OF HETT, NOW OR FORMERLY, PROPERTIES OF SAM B. & REBECCA A. CHEELY, NOW OR FORMERLY, PROPERTY OF JOHN L.

2 of 7

Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001 vs. Springs North Augusta, LLC; Civil Action No. 2012-CP-02-00173

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Exhibit A

CRESO, NOW OR FORMERLY, PROPERTIES OF JAMES B. & VICKI REESE, NOW OR FORMERLY, PROPERTY OF NORA D. S. NORRIS, NOW OR FORMERLY, AND PROPERTY OF MICHAEL & BEVERLY SEAY, NOW OR FORMERLY N38-46-20W, 2333.95 FEET TO AN OLD 1" OPEN TOP IRON PIN (BENT) AT THE JOINT CORNER OF SAID SEAY PROPERTY, CROSSING OVER AN OLD 5/8" REBAR IRON PIN AT 1757.56 FEET, THENCE CONTINUING ALONG SAID SEAY PROPERTY AND ALSO ALONG THE LINE OF PROPERTY OF JOHN B. CHRISTIAN, SR., NOW OR FORMERLY, AND PROPERTIES OF W. B. COOPER, NOW OR FORMERLY N 51-02-27 W 724.96 FEET TO A POINT ON THE LINE OF CLYDE OWENS PROPERTY, NOW OR FORMERLY; THENCE TURNING AND RUNNING ALONG THE LINE OF CLYDE OWENS PROPERTY AND ALSO ALONG THE LINE OF LOUIS OWENS PROPERTY, NOW OR FORMERLY, N 38-59-32 E 219.31 FEET TO AN OLD 1" OPEN TOP IRON PIN ON THE LINE OF DOUGLAS SWEARINGEN PROPERTY, NOW OR FORMERLY; THENCE TURNING AND RUNNING ALONG THE LINE OF THE SWEARINGEN PROPERTY S 33-08-42 E 137.75 FEET TO AN OLD CONC. MONUMENT BROKEN AT THE JOINT CORNER OF THE GEORGE G. BEASLEY PROPERTY NOW OR FORMERLY, THENCE TURNING AND RUNNING ALONG THE LINE OF THE BEASLEY PROPERTY THE FOLLOWING METES AND BOUNDS: S 57-07-49 W 96.80 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 55-19-41 E 598.23 FEET TO A POINT IN A POWER POLE, THENCE S 34-59-02 E 640.13 FEET TO AN OLD 1/2" REBAR IRON PIN, THENCE N57-03-22E 1200.28 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N40-15-00W 1200.90 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N33-02-28W 437.51 FEET TO A POINT IN THE CENTER OF OLD SUDLOW LAKE ROAD, CROSSING OVER AN OLD 5/8" REBAR IRON PIN AT 404.77 FEET, THENCE ALONG THE CENTER OF SAID ROAD N56-02-55E 108.96 FEET TO A POINT, THENCE LEAVING THE CENTER OF SAID ROAD AND RUNNING ALONG PROPERTY OF JERRY DUNCAN, NOW OR FORMERLY, N19-18-00W 427.28 FEET TO AN OLD 3/4" CRIMP TOP IRON PIN, CROSSING OVER AN OLD 3/4" OPEN TOP IRON PIN AT 33.69 FEET, THENCE S57-36-26W 204.77 FEET TO AN OLD 1.25" OPEN TOP IRON PIN, THENCE S18-48-20E 400.86 FEET TO A NEW 5/8" REBAR IRON PIN ON THE WESTERN RIGHT OF WAY OF OLD SUDLOW LAKE ROAD, THENCE ALONG SAID WESTERN RIGHT OF WAY S56-38-53W 40.34 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF BERT & SHERRIE HAWKINS, NOW OR FORMERLY, THENCE ALONG SAID HAWKINS PROPERTY N18-44-55W 401.53 FEET TO AN OLD 1.25" OPEN TOP IRON PIN, THENCE S57-33-28W 199.89 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF ROBERT AND DIANNE HARRELL, NOW OR FORMERLY, THENCE ALONG SAID HARRELL PROPERTY S57-34-44W 199.89 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF SHIRLEY A. SMITH, NOW OR FORMERLY, THENCE ALONG SAID SMITH PROPERTY S57-34-38W 200.02 FEET TO AN OLD 1/2" OPEN TOP AT AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF RICHARD & SANDRA STUART, NOW OR FORMERLY, THENCE ALONG SAID STUART PROPERTY S57-34-07W, 294.71 FEET TO AN OLD 1.5" OPEN TOP IRON PIN AT THE JOINT CORNER OF ROGER D. ADERHOLDT, NOW OR FORMERLY, THENCE ALONG SAID ADERHOLDT PROPERTY, S57-35-03W 169.70 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE S60-33-30W 254.99 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT THE JOINT CORNER OF TERESA N. CHASE, NOW OR FORMERLY, THENCE ALONG SAID CHASE PROPERTY S60-37-02W 234.30 FEET TO AN OLD 3/4" OPEN TOP IRON PIN ON THE NORTHERN RIGHT OF WAY OF RIDGELAND ROAD, THENCE CROSSING OVER RIDGELAND ROAD S60-25-43W 30.46 FEET TO AN OLD 3/4" CRIMP TOP IRON PIN AT THE JOINT CORNER OF JUDY B. HALL, NOW OR FORMERLY, THENCE ALONG SAID HALL PROPERTY AND THE SOUTHERN RIGHT OF WAY OF RIDGELAND ROAD, N17-08-49W 122.86 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE LEAVING SAID RIDGELAND ROAD AND CONTINUING ALONG SAID HALL PROPERTY S60-02-25W 367.65 FEET TO AN OLD 1.5" CRIMP TOP IRON PIN, THENCE S19-46-22E 121.79 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF T. WARREN GRIFFIN, NOW OR FORMERLY, THENCE ALONG SAID GRIFFIN PROPERTY AND PROPERTY OF MARCIA H. FOREMAN AND LARRY & TAMMY HENDRIX, NOW OR FORMERLY, S19-38-14E 443.32 FEET TO A POINT IN THE CENTER OF OLD SUDLOW LAKE ROAD, CROSSING OVER AN OLD 1/2" REBAR IRON PIN AT 409.77 FEET, THENCE ALONG SAID CENTERLINE AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 520.45 FEET AND A CHORD OF S86-40-21W 320.14 FEET TO A POINT, THENCE N74-08-52W 167.49 FEET TO A POINT, THENCE LEAVING SAID CENTERLINE AND RUNNING ALONG PROPERTY OF JAMES E. RAWL, SR., NOW OR FORMERLY, N41-26-23E 364.36 FEET TO AN OLD 5/8" REBAR IRON PIN, CROSSING OVER AN OLD 3/4" OPEN TOP IRON PIN AT 51.53 FEET, THENCE ALONG SAID RAWL PROPERTY AND PROPERTY OF DOUGLAS & ADA LOPER, NOW OR FORMERLY, N51-39-11W 515.86 FEET TO AN OLD 1" OPEN TOP IRON PIN, THENCE CONTINUING ALONG SAID LOPER PROPERTY,

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Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001 vs. Springs North Augusta, LLC; Civil Action No. 2012-CP-02-00173

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Exhibit A

S46-29-01W 562.29 FEET TO A 5/8" REBAR IRON PIN SET ON THE NORTHERN RIGHT OF WAY OF CLEARWATER ROAD (S.C. HWY. 126) THENCE ALONG SAID NORTHERN RIGHT OF WAY N51-11-46W 181.08 FEET TO A 5/8" REBAR IRON PIN SET THE JOINT CORNER OF CECIL T. LASTER, NOW OR FORMERLY, THENCE ALONG SAID LASTER PROPERTY N38-57-26E 1029.95 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE N51-24-16W 208.78 FEET TO AN OLD 5/8" REBAR IRON PIN AT THE JOINT CORNER OF JAMES L. ROWLEY, NOW OR FORMERLY, THENCE ALONG SAID ROWLEY PROPERTY N49-52-12W 202.58 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF CAROLYN D. ROWLEY, NOW OR FORMERLY, THENCE ALONG SAID ROWLEY PROPERTY N52-59-14W 218.41 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF ANDREW & ANNE MARTIN, NOW OR FORMERLY, THENCE ALONG SAID MARTIN PROPERTY N51-02-01W 210.36 FEET TO AN OLD CONCRETE MONUMENT, THENCE N49-27-28W 220.65 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE S38-29-39W 855.33 FEET TO A 5/8" REBAR IRON PIN SET ON THE NORTHERN RIGHT OF WAY OF CLEARWATER ROAD (S.C. HWY. 126) AND THE NEW RIGHT OF WAY OF I-520 (PALMETTO PARKWAY) THENCE ALONG SAID NEW RIGHT OF WAY N46-17-55W 92.13 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF THE KELLOGG CORPORATION, NOW OR FORMERLY, THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG SAID KELLOGG PROPERTY N35-15-13E 1043.58 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N11-21-01W 874.34 FEET TO AN OLD 1" CRIMP TOP IRON PIN, THENCE N39-32-09W 896.27 FEET TO A NEW 5/8" REBAR IRON PIN LOCATED ON THE EASTERN RIGHT OF WAY OF I-520 (PALMETTO PARKWAY), THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY AND ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10390.01 FEET AND A CHORD BEARING AND DISTANCE OF N03-56-49W 589.86 FEET TO A 5/8" REBAR IRON PIN SET, THENCE STILL ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES AND DISTANCES N17-33-54W 681.96 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N19-04-01W 976.97 FEET TO A 5/8" REBAR IRON PIN SET, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10150.00 FEET AND A CHORD BEARING AND DISTANCE OF N16-27-36W 608.91 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N11-14-13W 514.81 FEET TO A 5/8" REBAR IRON PIN SET, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10225.00 FEET AND A CHORD BEARING AND DISTANCE OF N21-53-24W 302.08 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N19-48-00W 1404.69 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N27-13-48E 348.31 FEET TO A 5/8" REBAR IRON PIN SET, THENCE S73-33-10E 111.00 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N16-32-01E 99.56 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N73-27-59W 98.10 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N08-17-50E 407.78 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N06-11-29W 624.52 FEET TO A 5/8" REBAR IRON PIN SET, THENCE S83-48-31W 95.51 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N87-30-54W 311.57 FEET TO A 5/8" REBAR IRON PIN SET, THENCE S88-14-18W 142.43 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N03-19-13E 571.33 FEET TO A 5/8" REBAR IRON PIN SET, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10387.74 FEET AND A CHORD BEARING AND DISTANCE OF N03-30-33W 293.11 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N07-45-03W 695.80 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF C. T. HARRIS, INC. PROPERTY NOW OR FORMERLY, THENCE TURNING AND LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE LINE OF C. T. HARRIS, INC. PROPERTY N56-04-55E 156.60 FEET TO AN OLD 1/2" REBAR IRON PIN BENT, THENCE TURNING AND RUNNING N21-24-02W 351.33 FEET TO A 5/8" REBAR IRON PIN SET LOCATED ON THE EASTERN RIGHT OF WAY OF I-520 (PALMETTO PARKWAY), THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY AND ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 10320.36 FEET AND A CHORD BEARING AND DISTANCE OF N03-58-20E 169.79 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA AND DESCRIBED AS A UTILITY SITE, CONSISTING OF 5,576 SQ.FT. OR 0.13 ACRES, AS SHOWN ON A SURVEY PREPARED FOR THE CITY OF NORTH AUGUSTA BY B.P. BARBER & ASSOCIATES, INC., DATED NOVEMBER 30, 2001, REVISED MARCH 28, 2006, AS RECORDED IN THE OFFICE OF THE ROD FOR AIKEN COUNTY, SC IN PLAT BOOK 54 AT PAGE 435.

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Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001 vs. Springs North Augusta, LLC; Civil Action No. 2012-CP-02-00173

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Exhibit A

TRACT 2: (TMS NO. 011-11-02-001)

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND SITUATE, LYING AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, CONTAINING 20.668 ACRES ACCORDING TO AN "ALTA/ACSM LAND TITLE SURVEY FOR SPRINGS NORTH AUGUSTA, LLC.", DATED JUNE 6, 2005, LAST REVISED 10/22/09 BY SITE DESIGN, INC. WITH THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT A 5/8" REBAR IRON PIN SET LOCATED ON THE WESTERN RIGHT OF WAY INTERSTATE I-520 (PALMETTO PARKWAY) AT THE JOINT CORNER OF JOHN L. & LARRY MURRAY, SAID IRON PIN BEING 711.1 FEET +/- SOUTH OF THE INTERSECTION OF THE SOUTHERN RIGHT OF WAY OF ASCAUGA LAKE ROAD; THENCE RUNNING ALONG SAID WESTERN RIGHT OF WAY AND ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10637.41 FEET, AN ARC LENGTH OF 1274.52 FEET AND A CHORD BEARING AND DISTANCE OF S 03-41-38 E 1273.76 FEET TO A 5/8" REBAR IRON PIN SET; THENCE TURNING AND RUNNING ALONG A NORTHERN RIGHT OF WAY FOR SAID INTERSTATE I-520 THE FOLLOWING COURSES AND DISTANCES: S 83-48-32 W 156.16 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 658.83 FEET, AN ARC LENGTH OF 127.61 FEET AND A CHORD BEARING AND DISTANCE OF S 89-21-28 W 127.41 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 66-29-10 W 94.73 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 708.83 FEET, AN ARC LENGTH OF 295.27 FEET AND A CHORD BEARING AND DISTANCE OF N 66-24-34 W 293.14 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 535-31-28 W 20.00 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 728.83 FEET, AN ARC LENGTH OF 73.51 FEET AND A CHORD BEARING AND DISTANCE OF N 51-35-10 W 73.48 FEET TO A 5/8" REBAR IRON PIN SET; THENCE N 48-41-48 W 310.79 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 41-18-12 W 50.00 FEET TO A 5/8" REBAR IRON PIN SET; THENCE N 48-41-48 W 249.64 FEET TO A 5/8" REBAR IRON PIN SET; THENCE TURNING AND RUNNING N 14-22-53 W 39.26 FEET TO A 5/8" REBAR IRON PIN SET ON THE EASTERN RIGHT OF WAY OF A FUTURE ROAD; THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY N 08-19-07 E 52.23 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 125.00 FEET AND A CHORD BEARING AND DISTANCE OF N 28-02-06 E 57.38 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF ADAMS BROS. PROPERTY, LLC, NOW OR FORMERLY; THENCE TURNING AND LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE LINE OF SAID ADAMS BROS. PROPERTY, LLC PROPERTY AND ALSO ALONG THE LINE OF JOHN L. MURRAY, JR. PROPERTY, NOW OR FORMERLY N 56-14-07 E 575.54 FEET TO AN OLD CONC. MONUMENT AT THE JOINT CORNER OF JOHN L. & LARRY MURRAY PROPERTY, NOW OR FORMERLY; THENCE TURNING AND RUNNING ALONG THE LINE OF SAID MURRAY PROPERTY N 55-49-56 E 615.83 FEET TO AN OLD 1" OPEN TOP IRON PIN; THENCE TURNING AND RUNNING N 55-48-56 E 77.99 FEET TO THE POINT OF BEGINNING.

TRACT 3: (TMS NO. 011-10-07-006)

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, LYING, SITUATE, AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, CONTAINING 92.977 ACRES ACCORDING TO AN "ALTA/ACSM LAND TITLE SURVEY FOR SPRINGS NORTH AUGUSTA, LLC." DATED JUNE 6, 2005, LAST REVISED 10/22/09 BY SITE DESIGN, INC. WITH THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT AN OLD 2" OPEN TOP IRON PIN ON THE EASTERN RIGHT OF WAY OF U.S. HWY 25 AT THE JOINT CORNER OF RAYMOND D. TIMMERMAN, NOW OR FORMERLY, SAID OLD IRON PIN ALSO BEING S 04-09-10 W 139.98 FEET FROM THE CL-CL INTERSECTION OF US HWY. 25 AND PINECREST ROAD; THENCE ALONG SAID EASTERN RIGHT OF WAY AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 2242.40 FEET AND A CHORD OF N 27-18-37 E 729.67 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT THE JOINT CORNER OF HAROLD R. & BETTY J. HAMMETT, NOW OR FORMERLY, THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE JOINT PROPERTY LINE OF SAID HAMMETT PROPERTY, S67-22-37E, 171.64 FEET TO AN OLD 3/4" CRIMP TOP IRON PIN, THENCE N16-04-42E, 154.34 FEET TO AN OLD RAILROAD SPIKE IN THE CENTER OF AN OLD ROAD BED IN THE PROPERTY LINE OF REBECCA BENNETT, NOW OR FORMERLY, THENCE ALONG SAID BENNETT PROPERTY AND OTHER PROPERTY OF JOE O. EDWINS, NOW OR FORMERLY, N87-24-20E,

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Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001 vs. Springs North Augusta, LLC; Civil Action No. 2012-CP-02-00173

Exhibit A

769.54 FEET TO AN OLD 5/8" REBAR IRON PIN AT THE JOINT CORNER OF JOE O. EDWINS, ETAL, NOW OR FORMERLY, THENCE ALONG SAID EDWINS PROPERTY N87-47-14E 604.21 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N14-23-00W 424.51 FEET TO A 5/8" REBAR IRON PIN SET ON THE SOUTHERN RIGHT OF WAY OF INTERSTATE I-520 (PALMETTO PARKWAY), THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES AND DISTANCES: S 39-47-08 E 386.70 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1013.83 FEET, AN ARC LENGTH OF 401.07 FEET AND A CHORD BEARING AND DISTANCE OF S 64-21-50 E 398.46 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 43-53-58 E 83.67 FEET TO A 5/8" REBAR IRON PIN SET ALONG THE WESTERN RIGHT OF WAY OF INTERSTATE I-520 (PALMETTO PARKWAY); THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES AND DISTANCES: S 11-17-10 E 559.05 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 903.94 FEET, AN ARC LENGTH OF 147.91 FEET AND A CHORD BEARING AND DISTANCE OF S 35-15-20 E 147.74 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 30-12-00 E 605.96 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING RADIUS OF 1142.39 FEET, AN ARC LENGTH OF 438.65 FEET AND A CHORD BEARING AND DISTANCE OF S 28-48-59 E 435.96 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 27-45-14 E 542.17 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF THE KELLOGG CORP. PROPERTY, NOW OR FORMERLY; THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE LINE OF SAID KELLOGG CORP. PROPERTY THE FOLLOWING COURSES AND DISTANCES: N 45-17-36 W 105.06 FEET TO AN OLD 1" CRIMP TOP IRON PIN; THENCE N49-46-06W 323.72 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N 69-45-14 W 394.95 FEET TO AN OLD 1" CRIMP TOP IRON PIN, THENCE N80-18-31W 280.13 FEET TO AN OLD 1" CRIMP TOP IRON PIN, THENCE S74-44-03W 804.31 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N73-34-29W 614.60 FEET TO AN OLD 1/2" STEEL ROD, THENCE N69-37-51W 302.01 FEET TO A POINT IN THE PROPERTY LINE OF LOT 1, BLOCK D, BONNIE GLEN SUBDIVISION, CROSSING OVER AN OLD 5/8" REBAR IRON PIN AT 299.20 FEET, THENCE ALONG SAID LOT 1, N17-32-47E 29.89 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 2, BLOCK D, BONNIE GLEN SUBDIVISION, THENCE ALONG SAID LOT 2, N17-34-15E 95.25 FEET TO AN OLD 1" CRIMP TOP IRON PIN AT THE JOINT CORNER OF LOT 3, BLOCK D, BONNIE GLEN SUBDIVISION, THENCE ALONG SAID LOT 3, N17-43-51E 94.69 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LEWIS BLACK, NOW OR FORMERLY, THENCE ALONG SAID BLACK PROPERTY, N17-31-29E 188.40 FEET TO AN OLD 1.25" CRIMP TOP IRON PIN AT THE JOINT CORNER OF BRUCE GARDNER PROPERTY, NOW OR FORMERLY, THENCE ALONG SAID GARDNER PROPERTY AND PROPERTY OF RAYMOND D. TIMMERMAN, NOW OR FORMERLY, N18-00-18E 199.02 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N74-36-16W 222.22 FEET TO AN OLD 2" CRIMP TOP IRON PIN, THENCE N74-46-29W 294.15 FEET TO AN OLD 1.25" OPEN TOP IRON PIN, THENCE N74-48-47W 517.65 FEET TO THE POINT OF BEGINNING.

DERIVATION: THIS BEING THE IDENTICAL PROPERTY CONVEYED UNTO SPRINGS NORTH AUGUSTA, LLC BY DEED OF THE SPRINGS DEVELOPMENT COMPANY, LLC DATED NOVEMBER 18, 2009 AND RECORDED NOVEMBER 18, 2009 IN BOOK 4284 AT PAGE 1872 AIKEN COUNTY RECORDS.

LESS AND EXCEPT:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, WITH THE IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, AND LOCATED IN THE ASCAUGA LAKE ROAD/ I-520 PALMETTO PARKWAY VICINITY. SAID PROPERTY CONSISTS OF 0.801 ACRES AND IS IDENTIFIED AS "NEW ELEVATION TANK SITE" ON A PLAT PREPARED FOR THE CITY OF NORTH AUGUSTA BY B. P. BARBER DATED MARCH 29, 2010. SAID PLAT IS RECORDED IN THE OFFICE OF THE RMC FOR AIKEN COUNTY, SOUTH CAROLINA IN PLAT BOOK 55 AT PAGE 447. ALSO INCLUDED ARE THOSE TEMPORARY AND PERMANENT EASEMENTS AS ARE DESCRIBED AS PARCEL 2 IN A DEED RECORDED IN RECORD BOOK 4295, PAGES 2400-2404.

SAID "LESS AND EXCEPT" IS SET FORTH IN THAT CERTAIN PARTIAL RELEASE OF MORTGAGE BY AND BETWEEN HARRY P. SAKELLARIS, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED JULY 15, 2001 AND THE CITY OF NORTH AUGUSTA DATED

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Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001 vs. Springs North Augusta, LLC; Civil Action No. 2012-CP-02-00173

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Exhibit A

APRIL 19, 2012 AND RECORDED IN THE OFFICE OF THE REGISTER OF MESNE CONVEYANCE FOR AIKEN COUNTY ON MAY 1, 2012 IN BOOK RB 4403 AT PAGE 1864.

SAID PROPERTY BEING A PORTION OF THAT PROPERTY CONVEYED TO SPRINGS NORTH AUGUSTA, LLC BY DEED DATED NOVEMBER 16, 2009, AND RECORDED IN THE OFFICE OF THE RMC FOR AIKEN COUNTY, SOUTH CAROLINA IN RECORD BOOK 4284, PAGES 1872-1884.

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Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001 vs. Springs North Augusta, LLC; Civil Action No. 2012-CP-02-00173

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STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

AFFIDAVIT

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

1. I have read the information on this affidavit and I understand such information.
2. The property being transferred is located in Aiken County, bearing Aiken County TMS Nos. 022-17-01-001, 011-11-02-001, and 011-10-07-006, as more fully described in Exhibit A, was transferred by Master's Deed to Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001, on October 26, 2012.
3. Check one of the following: The deed is

- (a) _____ subject to the deed recording fee as a transfer for consideration paid or to be paid in money or moneys worth.
- (b) _____ subject to the deed recording fee as a transfer between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, or is a transfer to a trust or as a distribution to a trust beneficiary.
- (c) X exempt from the deed recording fee because (See Information section of affidavit): #13 transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings

(If exempt, please skip items 4-7, and go to item 8 of this affidavit.)

If exempt under exemption #14 as described in the Information section of this affidavit, did the agent and principal relationship exist at the time of the original sale and was the purpose of this relationship to purchase the realty? Check Yes _____ or No _____

4. Check one of the following if either item 3(a) or item 3(b) above has been checked (See Information section of this affidavit.):

- (a) _____ The fee is computed on the consideration paid or to be paid in money or money's worth in the amount of: \$ _____
- (b) _____ The fee is computed on the fair market value of the realty which is: _____
- (c) _____ The fee is computed on the fair market value of the realty as established for property tax purposes which is: _____

5. Check Yes _____ or No _____ to the following: A lien or encumbrance existed on the land, tenement, or realty before the transfer and remained on the land, tenement, or realty after the transfer. If Yes, the amount of the outstanding balance of this lien or encumbrance is: _____

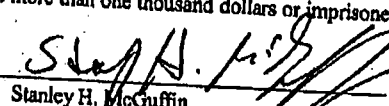
6. The deed recording fee is computed as follows:

- (a) Place the amount listed in item 4 above here: \$ _____
- (b) Place the amount listed in item 5 above here: \$ _____
(If no amount is listed, place zero here.)
- (c) Subtract Line 6(b) from Line 6(a) and place result here: \$ _____

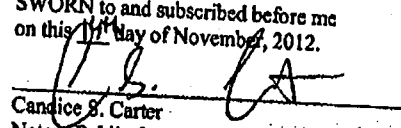
7. The deed recording fee due is based on the amount listed on Line 6(c) above and the deed recording fee due is: \$ _____

8. As required by Code Section 12-24-70, I state that I am a responsible person who was connected with the transaction as counsel for the purchaser, Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001.

9. I understand that a person required to furnish this affidavit who willfully furnishes a false or fraudulent affidavit is guilty of a misdemeanor and, upon conviction, must be fined not more than one thousand dollars or imprisoned not more than one year, or both.


Stanley H. McGuffin
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, SC 29211-1889

SWORN to and subscribed before me
on this 17 day of November, 2012.


Candice S. Carter
Notary Public for South Carolina
My commission expires: September 19, 2021

Book 4432 Page 1122

INFORMATION

Except as provided in this paragraph, the term "value" means the consideration paid or to be paid in money or money's worth for the realty. Consideration paid or to be paid in money's worth includes, but is not limited to, other realty, personal property, stocks, bonds, partnership interest and other intangible property, the forgiveness or cancellation of a debt, the assumption of a debt, and the surrendering of any right. The fair market value of the consideration must be used in calculating the consideration paid in money's worth. Taxpayers may elect to use the fair market value of the realty being transferred in determining fair market value of the consideration. In the case of realty transferred between a corporation, a partnership, or other entity and a stockholder, partner, or owner of the entity, and in the case of realty transferred to a trust or as a distribution to a trust beneficiary, value means the realty's fair market value. A deduction from value is allowed for the amount of any lien or encumbrance existing on the land, tenement, or realty before the transfer and remaining on the land, tenement, or realty after the transfer. Taxpayers may elect to use the fair market value for property tax purposes in determining fair market value under the provisions of the law.

Exempted from the fee are deeds:

- (1) transferring realty in which the value of the realty, as defined in Code Section 12-24-30, is equal to or less than one hundred dollars;
- (2) transferring realty to the federal government or to a state, its agencies and departments, and its political subdivisions, including school districts;
- (3) that are otherwise exempted under the laws and Constitution of this State or of the United States;
- (4) transferring realty in which no gain or loss is recognized by reason of Section 1041 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (5) transferring realty in order to partition realty as long as no consideration is paid for the transfer other than the interests in the realty that are being exchanged in order to partition the realty;
- (6) transferring an individual grave space at a cemetery owned by a cemetery company licensed under Chapter 55 of Title 39;
- (7) that constitute a contract for the sale of timber to be cut;
- (8) transferring realty to a corporation, a partnership, or a trust in order to become, or as, a stockholder, partner, or trust beneficiary of the entity provided no consideration is paid for the transfer other than stock in the corporation, interest in the partnership, beneficiary interest in the trust, or the increase in value in such stock or interest held by the grantor. However, the transfer of realty from a corporation, a partnership, or a trust to a stockholder, partner, or trust beneficiary of the entity is subject to the fee even if the realty is transferred to another corporation, a partnership, or trust;
- (9) transferring realty from a family partnership to a partner or from a family trust to a beneficiary, provided no consideration is paid for the transfer other than a reduction in the grantee's interest in the partnership or trust. Family partnership is a partnership whose partners are all members of the same family. A family trust is a trust, in which the beneficiaries are all members of the same family. The beneficiaries of a family trust may also include charitable entities. Family means the grantor and the grantor's spouse, parents, grandparents, sisters, brothers, children, stepchildren, grandchildren, and the spouses and lineal descendants of any the above. A charitable entity means an entity which may receive deductible contributions under Section 170 of the Internal Revenue Code as defined in Section 12-6-40(A);
- (10) transferring realty in a statutory merger or consolidation from a constituent corporation to the continuing or new corporation;
- (11) transferring realty in a merger or consolidation from a constituent partnership to the continuing or new partnership; and,
- (12) that constitute a corrective deed or a quitclaim deed used to confirm title already vested in the grantee, provided that no consideration of any kind is paid or is to be paid under the corrective or quitclaim deed.
- (13) transferring realty subject to a mortgage to the mortgagee whether by a deed in lieu of foreclosure executed by the mortgagee or deed pursuant to foreclosure proceedings.
- (14) transferring realty from an agent to the agent's principal in which the realty was purchased with funds of the principal, provided that a notarized document is also filed with the deed that establishes the fact that the agent and principal relationship existed at the time of the original purchase as well as for the purpose of purchasing the realty.
- (15) transferring title to facilities for transmitting electricity that is transferred, sold, or exchanged by electrical utilities, municipalities, electric cooperatives, or political subdivisions to a limited liability company which is subject to regulation under the Federal Power Act (16 U.S.C. Section 791(a)) and which is formed to operate or to take functional control of electric transmission assets as defined in the Federal Power Act.

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2012-CP-02-0173

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr. Irrevocable
Family Trust, dated the 15th Day of July,
2001,

Plaintiff,

vs.

Springs North Augusta, LLC,

Defendant.

**ORDER AMENDING
MASTER IN EQUITY'S ORDER AND
JUDGMENT OF FORECLOSURE AND
ORDER OF DEFICIENCY JUDGMENT**

This matter is before the Court on the Motion of Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001 ("Plaintiff") to amend the (1) the Master In Equity's Order and Judgment of Foreclosure and Sale entered August 14, 2012 ("Foreclosure Decree") and (2) the Order of Deficiency Judgment entered on October 26, 2012 ("Deficiency Order").

The subject Foreclosure Decree sets forth the that the indebtedness represented by the Note accrues interest at the rate of 15% per annum (which equaled \$3,587.05 per day on the subject Note), but erroneously states the interest rate would accrue through the entry of judgment and then at the judgment rate. The subject Note provides that the 15% *per annum* rate will apply before and after entry of any judgment. Accordingly, the Foreclosure Decree is hereby amended to provide that the interest rate of 15% *per annum* will apply before and after entry of the judgment, until the balance is paid. In all other respects the Foreclosure Decree is confirmed and remains in full force and effect.

The subject Deficiency Order erroneously calculated interest on the Note from August 14, 2012 through the deficiency sale date of October 4, 2012. The interest should be calculated

that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

10 day of January 2013

C.C.P. & C. S., Aiken County, S.C.

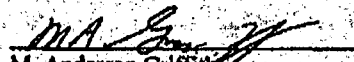
Deputy Clerk



GBTrust_0086

from the balance due on the Note as of May 31, 2012 (which was the balance date set forth in the Foreclosure Decree) through October 4, 2012 (the deficiency sale date), for a total of 126 days. The third party bidder paid interest on its bid at the rate of \$3,587.05 per day through the compliance date. Accordingly, the Deficiency Order is hereby amended to show that interest accrued from May 31, 2012 to October 4, 2012 (126 days) at \$3,587.05 *per diem*, for a total of \$451,968.30. As such, the total deficiency judgment entered against Springs North Augusta, LLC is \$2,753,192.70, which reflects the corrected interest. In all other respects the Deficiency Order is confirmed and remains in full force and effect.

AND IT IS SO ORDERED.


M. Anderson Griffith
Aiken County Master in Equity

Feb. 13, 2013, 2012 (MAA)

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON
PLEAS

Second Judicial Circuit

Harry P. Sakellaris, as Trustee of the George B.
Buchanan, Jr. Irrevocable Family Trust, dated the
15th Day of July, 2001

Case Number: 2012CP0200173

Plaintiff/s,

MASTER'S REPORT ON SALE

-vs-

Springs North Augusta, LLC

Defendant/s

1. Pursuant to Order of Court and after due notice and advertisement, the undersigned
Master in Equity sold the property described therein to:

(X) The highest bidder on Sales Day, October 4, 2012, for the sum of \$7,160,000.00. The
bidder thereafter complied with the bid, as provided in said Order and assigned the
bid to: Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr.
Irrevocable Family Trust, dated the 15th Day of July, 2001.

2. That I have executed and delivered to said grantee a good and sufficient deed of
conveyance of said property.

3. I have received and disbursed the costs.

FILED 20 March 20 13
Liz Hardard
C.C.P. & G.S.
9:45 Angel Niles am
am Deputy Clerk

March 20, 2013
Aiken, SC

M.A. Griffith
M. Anderson Griffith
Master-in-Equity, Aiken County

ME02118



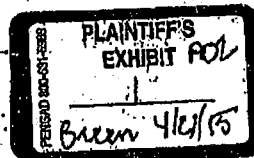
PROMISSORY NOTE

\$7,590,000.00

Alken County, South Carolina
November 18, 2009

FOR VALUE RECEIVED, SPRINGS NORTH AUGUSTA, LLC, a South Carolina limited liability company (hereinafter referred to as "Borrower"), whose address is 133 Joe Bernat Drive, Greenwood, South Carolina 29649, hereby promises to pay to the order of D. RICHARD CRUMPLER, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED THE 15TH DAY OF JULY, 2001 (hereinafter referred to as "Lender"), whose address is 4728 Jenn Drive, Myrtle Beach, SC 29577 (hereinafter referred to as "Lender"), or such other place or places that may be hereafter designated by Lender, the principal sum of SEVEN MILLION FIVE HUNDRED NINETY THOUSAND AND NO/100 (\$7,590,000.00) DOLLARS, together with interest on the unpaid principal balance which is outstanding from time to time at the fixed rate of fifteen and No/100 percent (15.0%) per annum, computed and charged as set forth herein below. The original principal amount of this Note includes an initial loan from Lender to Borrower of Six Million Six Hundred Thousand and No/100 (\$6,600,000.00) Dollars, plus Nine Hundred Ninety Thousand and No/100 Dollars of capitalized interest, constituting one year's interest on the initial loan at the rate of fifteen and No/100 percent (15.0%) per annum. As of the date of this Note, all of such capitalized interest is fully earned and nonrefundable notwithstanding any prepayment of this Note, in whole or in part.

1. Repayment Terms. THE ENTIRE UNPAID PRINCIPAL BALANCE OF THIS NOTE, TOGETHER WITH ALL ACCRUED AND UNPAID INTEREST SHALL



BE DUE AND PAYABLE IN FULL ON NOVEMBER 16, 2010 (hereinafter referred to as the "Initial Maturity Date"). Notwithstanding the foregoing, the Borrower, in the Borrower's discretion, shall have the right to extend the term of this Note by an additional twelve (12) month period by delivering written notice of Borrower's intent to exercise such extension to Lender prior to the Initial Maturity Date. In the event that Borrower elects to exercise such extension, this Note and the Loan Documents shall be modified to: (a) increase the principal balance due by an amount equal to fifteen and No/100 percent (15.0%) of the then outstanding balance due to Lender hereunder; and (b) extend the Initial Maturity Date to November 16, 2011 (hereinafter referred to as the "Final Maturity Date"). Such additional principal added to the balance of this Note shall constitute capitalized interest for the second year of the term of this Note. Such additional capitalized interest shall be fully earned and nonrefundable as of November 17, 2010, notwithstanding any prepayment of this Note, in whole or in part.

2. Application of Payment. All payments on this Note shall be applied, first to accrued interest, then to fees, then to principal due and then to late charges. Any remaining funds shall be applied to the further reduction of principal. Notwithstanding the foregoing, upon the occurrence of an Event of Default hereunder, payments shall be applied as determined by Lender in its sole discretion.

3. Prepayment. Borrowers may prepay all or any portion of this Note at any time without prepayment compensation; provided, however, that no portion of the capitalized interest constituting a part of the principal balance of this Note shall be reduced, refunded or

otherwise discounted. Any prepayment shall be applied in the manner provided in the foregoing section.

4. Interest After Default. Any past due payments, whether of principal or interest, shall bear interest at the rate or rates herein set out until paid, except that after this Note shall become due, whether by acceleration, maturity or otherwise, this Note shall bear interest at the rate of fifteen and No/100 percent (15.0%) per annum (hereinafter referred to as the "Default Rate"). The Default Rate shall apply whether before or after any judgment hereon.

5. Loan Agreement and Collateral. This Note is made pursuant to the Loan Agreement of even date herewith (said Loan Agreement, together with all amendments, supplements, modifications and replacements thereof hereinafter referred to as the "Loan Agreement"), between Lender, Borrower, and Herbert Anderson, Jr., Herbert Keith Anderson, A. Bruce Green, William Otha Bodle L. Cliff Redd, Redd Green Investments, LLC and Anderson North Augusta, LLC hereinafter collectively referred to as the "Guarantors" and is secured, inter alia, by the loan documents set forth in the Loan Agreement (said Loan Documents, together with all amendments, supplements, modifications and replacements thereof hereinafter referred to collectively as the "Loan Documents"). The terms and conditions of the Loan Documents, together with the terms and conditions contained in the Loan Agreement, shall be considered a part hereof to the same extent as if written herein.

6. Events of Default: Acceleration. The following shall constitute defaults or events of default hereunder (hereinafter referred to collectively as "Events of Default" and each an "Event of Default"): (a) Failure by Borrower to pay any payment of principal or

interest required to be paid by this Note when due; or (b) Failure by Borrower, or any other party to keep, perform or observe any other agreement, covenant, or condition contained herein or in the Loan Documents or in the Loan Agreement. The remaining unpaid principal of this Note and all accrued and unpaid interest thereon shall immediately become due and payable, at the option of the holder hereof, upon the occurrence of an Event of Default. Lender shall be entitled to recover all expenses, including reasonable attorneys' fees and expenses of legal counsel, incurred by Lender in any way arising from or relating to the enforcement or attempted enforcement of this Note, the Loan Documents, and any collateral document or other document and the collection or attempted collection, whether by litigation or otherwise, of this Note.

7. Governing Law; Changes. This Note may not be changed orally and shall be governed by and construed in accordance with the laws of the State of South Carolina without regard to principles of conflict of laws.

8. Jurisdiction; Venue. Borrower (a) submits to personal jurisdiction in the State of South Carolina, the courts thereof and the United States District Courts sitting therein, for the enforcement of this Note, (b) waives any and all personal rights under the law of any jurisdiction to object on any basis (including, without limitation, inconvenience of forum) to jurisdiction or venue within the State of South Carolina for the purpose of litigation to enforce this Note, and (c) agrees that service of process may be made upon Borrower in any manner prescribed by applicable federal rules of civil procedure or by applicable local rules or laws of civil procedure for the giving of notice to Borrower. Nothing herein contained, however, shall prevent Lender from bringing any action or exercising any rights against any security and

against Borrower directly, and against any assets of Borrower, within any other state or jurisdiction.

9. Payments Not to Violate Law. Nothing herein contained nor any transaction related thereto shall be construed or so operate as to require Borrower to pay interest at a rate greater than it is now lawful in such case to contract for under applicable law, or to make any payment or to do any act contrary to applicable law, and Lender shall reimburse Borrower for any interest paid in excess of the highest rate allowed by applicable law or any other payment which may inadvertently be required by Lender to be paid contrary to applicable law; and if any clauses or provisions herein contained operate or would prospectively operate to invalidate this Note or the Loan Documents in whole or in part, then such clauses and provisions only shall be held for naught, as though not herein contained, and the remainder of this Note and the Loan Documents shall remain operative and in full force and effect.

10. Controlling Document. To the extent that this Note conflicts with or is in any way incompatible with any other document related specifically to the loan evidenced by this Note, this Note shall control over any other such document, and if this Note does not address an issue, then each other such document shall control to the extent that it deals most specifically with an issue.

11. Miscellaneous. Borrower and all endorsers and sureties, if any, hereby waive presentment for payment, demand, protest, notice of nonpayment or dishonor and of protest, any and all other notices and demands whatsoever, and agree to remain bound under this Note until the principal and interest are paid in full, notwithstanding any extensions of time for payment which may be granted even though the period or periods of extension be indefinite

and notwithstanding any inaction by, or failure to assert any legal rights available to the holder of this Note. Borrower acknowledges that Lender may reproduce (by electronic means or otherwise) any of the documents evidencing and/or securing this Note and thereafter may destroy the original documents. Borrower does hereby agree that any document so reproduced shall be the binding obligation of Borrower enforceable and admissible in evidence against it to the same extent as if the original documents had not been destroyed.

12. Assignment. This Note, or any portions thereof, may be assigned by Lender, with or without recourse.

13. Binding Effect. This Note shall be binding upon and inure to the benefit of Borrower, Lender and their respective successors, assigns, heirs and personal representatives, provided, however, that no obligations of Borrower hereunder can be assigned without prior written consent of Lender.

[REMAINDER OF THIS PAGE INTENTIONALLY LEFT BLANK]

PK

IN WITNESS WHEREOF, this Note has been executed under seal the day and year
first above written.

BORROWER:

SPRINGS NORTH AUGUSTA, LLC,
a South Carolina limited liability company

By: *[Signature]*

Name: LEON ANDERSON

Its: MANAGED

[SEAL]

STATE OF SOUTH CAROLINA }
COUNTY OF AIKEN }

NOVEMBER 16, 2010 MODIFICATION
TO PROMISSORY NOTE

THIS NOVEMBER 16, 2010 MODIFICATION TO PROMISSORY NOTE ("Modification") made and entered into by and between SPRINGS NORTH AUGUSTA, LLC, a South Carolina limited liability company (hereinafter referred to as "Borrower") and HARRY P. SAKELLARIS, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED THE 15TH DAY OF JULY, 2001 (hereinafter referred to as "Lender")

WITNESSETH THAT:

WHEREAS, by Promissory Note ("Note") in writing dated November 18, 2009, the Borrower did promise to pay to the order of the Lender the sum of Seven Million Five Hundred Ninety Thousand and 00/100 (\$7,590,000.00) Dollars, which sum included \$990,000.00 representing one year's interest on the original principal sum of Six Million Six Hundred Thousand and 00/100 (\$6,600,000.00) Dollars, said interest being capitalized and due on November 16, 2010 (the "Initial Maturity Date"), and

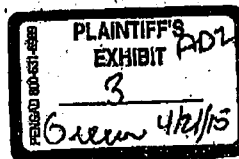
WHEREAS, the Note contained the following provision:

Notwithstanding the foregoing, the Borrower, in the Borrower's discretion, shall have the right to extend the term of this Note by an additional twelve (12) month period by delivering written notice of Borrower's intent to exercise such extension to Lender prior to the Initial Maturity Date. In the event that Borrower elects to exercise such extension, this Note and the Loan Documents shall be modified to: (a) increase the principal balance due by an amount equal to fifteen and No/100 percent (15.0%) of the then outstanding balance due to Lender hereunder; and (b) extend the Initial Maturity Date to November 16, 2011 (hereinafter referred to as the "Final Maturity Date"). Such additional principal added to the balance of this Note shall constitute capitalized interest for the second year of the term of this Note. Such additional capitalized interest shall be fully earned and nonrefundable as of November 17, 2010, notwithstanding any prepayment of this Note, in whole or in part ... and

WHEREAS, Borrower has given the notice permitted by the Note to extend the term of the Note as provided in the language quoted above, and

WHEREAS, the parties hereto do wish to reduce their agreements regarding the extension to writing,

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS that, for an in consideration of the mutual covenants and conditions hereinafter carefully set forth, and in further consideration of transfer by some of the members of Borrower of additional membership interests in Borrower to Lender, the parties hereto have agreed as follows:



1. The principal balance now due under the Note is Eight Million Seven Hundred Twenty-Eight Thousand Five Hundred and 00/100 (\$8,728,500.00) Dollars (the "Final Principal Balance"), which sum includes the initial principal balance of \$7,590,000.00, plus \$1,138,500.00 in interest, which interest has been capitalized and added to the initial principal balance effective the date hereof. The interest capitalized effective the date hereof constitutes the interest due under the Note from November 17, 2010 through November 16, 2011. The Final Principal Balance of the Note shall be due and payable in full on November 16, 2011, which is the "Final Maturity Date" as that term is used in the Note. All capitalized interest is deemed fully earned and non-refundable as of November 17, 2010, notwithstanding any prepayment of this Note, as modified, in whole or in part. If Final Principal Balance is not paid in full on or before November 16, 2011, then, from that date forward, this Note shall be in Default, the holder hereof shall be entitled all remedies available to the holder, and the Final Principal Balance shall bear interest at the Default Rate from the Final Maturity Date until the Final Principal Balance has been paid in full.

2. All references to "Lender" as "D. Richard Crumpler, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th day of July, 2001" are changed to "Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th day of July, 2001." The address of the "Lender" is changed from 4728 Jenn Drive, Myrtle Beach, SC to C/O Clement & Wheatley, Post Office Box 8200, Danville, VA 24543-8200.

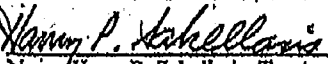
3. Except as herein provided, the terms, conditions and provisions of the Note shall remain unchanged.

IN WITNESS WHEREOF this NOVEMBER 16, 2010 MODIFICATION TO PROMISSORY NOTE has been executed under seal on the day and year first above written.

WITNESSES:

LENDER:

HARRY P. SAKELLARIS, AS TRUSTEE
OF THE GEORGE B. BUCHANAN, JR.,
IRREVOCABLE FAMILY TRUST, DATED
THE 15TH DAY OF JULY, 2001

 (SEAL)
Name: Harry P. Sakellaris, Trustee



Betty C. Keese

Stephen D. Dwyer
Phil Lutz

BORROWER:

SPRINGS NORTH AUGUSTA, LLC, a
South Carolina limited liability company

H. Keith Anderson (SEAL)
By: H. Keith Anderson
Its: Manager

5483.003 Modification to Promissory Note (final)

Redd Green Investments, LLC
Anderson North Augusta, LLC

GUARANTY AGREEMENT

November 18, 2009

Dear Sirs:

As an inducement to D. RICHARD CRUMPLER, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED THE 15TH DAY OF JULY, 2001 (hereinafter referred to as "Lender") to extend credit to and to otherwise deal with SPRINGS NORTH AUGUSTA, LLC, a South Carolina limited liability company (hereinafter referred to as "Borrower") and in consideration thereof, the undersigned (and each of the undersigned jointly and severally if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise), of Borrower at any time, now or hereafter, incurred with or held by Lender, together with interest, as and when the same become due and payable, whether by acceleration or otherwise, in accordance with the terms of any such notes, drafts, debts, obligations or liabilities or agreements evidencing any such indebtedness, obligation or liability including all renewals, extensions and modifications thereof. The obligation of the undersigned is a guarantee of payment and not of collection.

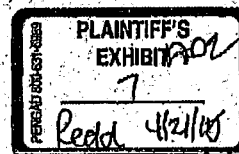
It is understood that any such notes, drafts, debts, obligations and liabilities may be accepted or created by or with Lender at any time and from time to time without notice to the undersigned, and the undersigned hereby expressly waives presentment, demand, protest, and notice of dishonor of any such notes, drafts, debts, obligations and liabilities or other evidences of any such indebtedness, obligation or liability.

Lender may receive and accept from time to time any securities or other property as a collateral to any such notes, drafts, debts, obligations and liabilities, and may surrender, compromise, exchange and release absolutely the same or any part thereof at any time with reasonable notice to the undersigned and without in any manner affecting the obligation and liability of the undersigned hereby created. The undersigned agrees that Lender shall have no obligation to protect, perfect, secure or insure any security interests, liens or encumbrances now or hereafter held for the indebtedness, obligations and liabilities for which this Guaranty is made.

This obligation and liability on the part of the undersigned shall be a primary, and not a secondary, obligation and liability, payable immediately upon demand without recourse first having been had by Lender against the Borrower or any other guarantor, person, firm or corporation, and without first resorting to any property held by Lender as collateral security, and the undersigned hereby waives the benefits of all provisions of law, for stay or delay of execution or sale of property or other satisfaction of judgment against the undersigned on account of obligation and liability hereunder until judgment be obtained therefor against the Borrower and execution thereon returned unsatisfied, or until it is shown that the Borrower has



1



no property available for the satisfaction of the indebtedness, obligation or liability guaranteed hereby, or until any other proceedings can be had; and the undersigned further agrees that the undersigned is responsible for any obligation or debt, or portion thereof, of the Borrower to the Lender which has been paid by the Borrower to the Lender and which the Lender is subsequently required to return to the Borrower or a trustee for the Borrower in any bankruptcy or insolvency proceeding; and the undersigned further agrees that none of the undersigned shall have any right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of the Borrower to Lender unless and until all of the debts and obligations of the Borrower to Lender have been paid in full.

In the event that the undersigned shall advance or become obligated to pay any sums under this Guaranty or in the event that for any reason whatsoever Borrower or any subsequent owner of the Property or any part thereof is now, or shall hereafter become, indebted to the undersigned, the undersigned agree that (i) the amount of such sums and of such indebtedness and all interest thereon shall at all times be subordinate as to lien, the time of payment and in all other respects to all other sums, including principal and interest and other amounts; at any time owed to Lender under the Loan Documents, and (ii) the undersigned shall not be entitled to enforce or receive payment thereof until the debt owed to Lender has been indefeasibly paid in full. Nothing herein contained is intended or shall be construed to give the undersigned any right of subrogation in or under the Loan Documents or any right to participate in any way therein, or in the right, title or interest of Lender in or to any collateral for the Loan, notwithstanding any payments made by a Guarantor under this Guaranty, until the actual and irrevocable receipt by Lender of payment in full of all of the debt owed to it under or in connection with the Loan Documents. If any amount shall be paid to a Guarantor on account of such subrogation rights at any time when any such sums due and owing to Lender shall not have been fully paid, such amount shall be paid by the Guarantor to Lender for credit and application against such sums due and owing to Lender.

This Guaranty is unlimited and applies to all indebtedness of Borrower, whether now existing or hereafter arising.

This agreement shall inure to the benefit of Lender, its successors and assigns, and the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, and shall remain in force until a written notice revoking it has been received by Lender; but such revocation shall not release the undersigned from liability to Lender, its successors and assigns, or the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, for any indebtedness, obligation or liability of the Borrower which is hereby guaranteed and then in existence or from any renewals, extensions or modifications thereof in whole or in part, whether such renewals, extensions or modifications are made before or after such revocation, with or without notice to the undersigned. The undersigned waives presentment, demand, protest and notices of every kind and assents to any one or more extensions, modifications, renewals or postponements of the time or amount of payment or any other indulgences given to Borrower. The undersigned shall be responsible for and shall reimburse the Lender for all costs and expenses incurred by the Lender in connection with the enforcement of this Guaranty or the protection or preservation of any right or claim of the Lender in connection herewith, including without limitation costs and expenses incurred by the Lender in connection with its attempts to collect the indebtedness, obligations, and liabilities

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, GUARANTOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

Witness the signature and seal of each of the undersigned.

WITNESSES:

Stephani J. Books
Witness #1
[Signature]
Witness #2

Stephani J. Books
Witness #1
[Signature]
Witness #2

GUARANTORS:

REDD GREEN INVESTMENTS, LLC

[Signature] [L.S.]
By: E. Cliff Redd, its Member

ANDERSON NORTH AUGUSTA, LLC

[Signature] [L.S.]
By: Keith Anderson, its Member

GUARANTY AGREEMENT

Dear Sirs:

November 18, 2009

As an inducement to D. RICHARD CRUMPLER, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED THE 15TH DAY OF JULY, 2001 (hereinafter referred to as "Lender") to extend credit to and to otherwise deal with SPRINGS NORTH AUGUSTA, LLC, a South Carolina limited liability company (hereinafter referred to as "Borrower") and in consideration thereof, the undersigned (and each of the undersigned jointly and severally if more than one) hereby absolutely and unconditionally guarantees to Lender and its successors and assigns the due and punctual payment of any and all notes, drafts, debts, obligations and liabilities, primary or secondary (whether by way of endorsement or otherwise), of Borrower at any time, now or hereafter, incurred with or held by Lender, together with interest, as and when the same become due and payable, whether by acceleration or otherwise, in accordance with the terms of any such notes, drafts, debts, obligations or liabilities or agreements evidencing any such indebtedness; obligation or liability including all renewals, extensions and modifications thereof. The obligation of the undersigned is a guarantee of payment and not of collection.

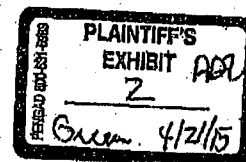
It is understood that any such notes, drafts, debts, obligations and liabilities may be accepted or created by or with Lender at any time and from time to time without notice to the undersigned, and the undersigned hereby expressly waives presentment, demand, protest, and notice of dishonor of any such notes, drafts, debts, obligations and liabilities or other evidences of any such indebtedness, obligation or liability.

Lender may receive and accept from time to time any securities or other property as a collateral to any such notes, drafts, debts, obligations and liabilities, and may surrender, compromise, exchange and release absolutely the same or any part thereof at any time with reasonable notice to the undersigned and without in any manner affecting the obligation and liability of the undersigned hereby created. The undersigned agrees that Lender shall have no obligation to protect, perfect, secure or insure any security interests, liens or encumbrances now or hereafter held for the indebtedness, obligations and liabilities for which this Guaranty is made.

This obligation and liability on the part of the undersigned shall be a primary, and not a secondary, obligation and liability, payable immediately upon demand without recourse first having been had by Lender against the Borrower or any other guarantor, person, firm or corporation, and without first resorting to any property held by Lender as collateral security; and the undersigned hereby waives the benefits of all provisions of law, for stay or delay of execution or sale of property or other satisfaction of judgment against the undersigned on account of obligation and liability hereunder until judgment be obtained therefor against the Borrower and execution thereon returned unsatisfied, or until it is shown that the Borrower has no property available for the satisfaction of the indebtedness, obligation or liability guaranteed



1



hereby, or until any other proceedings can be had; and the undersigned further agrees that the undersigned is responsible for any obligation or debt, or portion thereof, of the Borrower to the Lender which has been paid by the Borrower to the Lender and which the Lender is subsequently required to return to the Borrower or a trustee for the Borrower in any bankruptcy or insolvency proceeding; and the undersigned further agrees that none of the undersigned shall have any right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of the Borrower to Lender unless and until all of the debts and obligations of the Borrower to Lender have been paid in full.

In the event that the undersigned shall advance or become obligated to pay any sums under this Guaranty or in the event that for any reason whatsoever Borrower or any subsequent owner of the Property or any part thereof is now, or shall hereafter become, indebted to the undersigned, the undersigned agree that (i) the amount of such sums and of such indebtedness and all interest thereon shall at all times be subordinate as to lien, the time of payment and in all other respects to all other sums, including principal and interest and other amounts, at any time owed to Lender under the Loan Documents, and (ii) the undersigned shall not be entitled to enforce or receive payment thereof until the debt owed to Lender has been indefeasibly paid in full. Nothing herein contained is intended or shall be construed to give the undersigned any right of subrogation in or under the Loan Documents or any right to participate in any way therein, or in the right, title or interest of Lender in or to any collateral for the Loan, notwithstanding any payments made by a Guarantor under this Guaranty, until the actual and irrevocable receipt by Lender of payment in full of all of the debt owed to it under or in connection with the Loan Documents. If any amount shall be paid to a Guarantor on account of such subrogation rights at any time when any such sums due and owing to Lender shall not have been fully paid, such amount shall be paid by the Guarantor to Lender for credit and application against such sums due and owing to Lender.

This Guaranty is unlimited and applies to all indebtedness of Borrower, whether now existing or hereafter arising.

This agreement shall inure to the benefit of Lender, its successors and assigns, and the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, and shall remain in force until a written notice revoking it has been received by Lender; but such revocation shall not release the undersigned from liability to Lender, its successors and assigns, or the owners and holders of any of the indebtedness, obligations and liabilities hereby guaranteed, for any indebtedness, obligation or liability of the Borrower which is hereby guaranteed and then in existence or from any renewals, extensions or modifications thereof in whole or in part, whether such renewals, extensions or modifications are made before or after such revocation, with or without notice to the undersigned. The undersigned waives presentment, demand, protest and notices of every kind and assents to any one or more extensions, modifications, renewals or postponements of the time or amount of payment or any other indulgences given to Borrower. The undersigned shall be responsible for and shall reimburse the Lender for all costs and expenses incurred by the Lender in connection with the enforcement of this Guaranty or the protection or preservation of any right or claim of the Lender in connection herewith, including without limitation costs and expenses incurred by the Lender in connection with its attempts to collect the indebtedness, obligations, and liabilities guaranteed hereby. Cost and expenses shall include reasonable attorneys' fees.

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, GUARANTOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

Witness the signature and seal of each of the undersigned.

WITNESSES:

Stephanie S. Hooks
Witness #1

[Signature]
Witness #2

Stephanie S. Hooks
Witness #1

[Signature]
Witness #2

Stephanie S. Hooks
Witness #1

[Signature]
Witness #2

Stephanie S. Hooks
Witness #1

[Signature]
Witness #2

Stephanie S. Hooks
Witness #1

[Signature]
Witness #2

GUARANTORS:

[Signature] [L.S.]
Herbert Anderson, Jr.

[Signature] [L.S.]
Herbert Keith Anderson

[Signature] [L.S.]
A. Bruce Green

[Signature] [L.S.]
William Otha Bodie

[Signature] [L.S.]
L. Cliff Redd

JUDGMENT ACCOUNTING

As of October 4, 2012

\$2,753,192.70 @ 15%

\$2,753,192.70

Amount of Judgment as of October 4, 2012 (per diem of \$1,131.45)

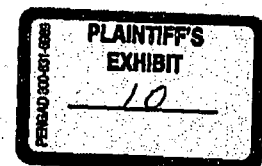
+2,028,689.85

Accrued Interest from October 4, 2012 to September 1, 2017 (\$1,131.45 per diem x 1793 days)

\$4,781,882.55

Total due thru September 1, 2017 (next per diem of \$1,965.16)

Balance owing x ____ % + 365 days = per diem x number of days since beginning date



CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Aug 25 2017

REFERENCE ID: 1708241747361

Mark Hammond
Secretary of State

STATE OF SOUTH CAROLINA
SECRETARY OF STATE
ARTICLES OF ORGANIZATION
Limited Liability Company -- Domestic
Filing Fee - \$110.00

The undersigned delivers the following articles of organization to form a South Carolina limited liability company pursuant to S.C. Code of Laws §33-44-202 and §33-44-203.

1. The name of the limited liability company is 2nd Avenue Holdings, LLC
2. The address of the initial designated office of the limited liability company in South Carolina is

1314 Professional Drive

Street Address

Myrtle Beach

City

29577

Zip Code

3. The initial agent for service of process is

Clay D. Brittain, III

Name

Clay D. Brittain, III
Signature of Agent

and the street address in South Carolina for this initial agent for service of process is

1314 Professional Drive

Myrtle Beach

City

29577

Zip Code

4. List the name and address of each organizer. Only one organizer is required, but you may have more than one.

(a) Clay D. Brittain, III

Name

1314 Professional Drive

Street Address

Myrtle Beach

City

SC

State

29577

Zip Code

(b)

Name

Street Address

City

State

Zip Code

120910-0111

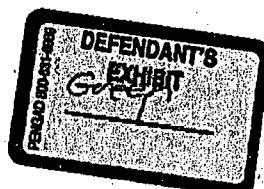
2ND AVENUE HOLDINGS, LLC

FILED: 08/10/2012

Filing Fee: \$110.00 ORIG

Mark Hammond

South Carolina Secretary of State



CERTIFIED TO BE A TRUE AND CORRECT COPY
AS TAKEN FROM AND COMPARED WITH THE
ORIGINAL ON FILE IN THIS OFFICE

Aug 28 2017

REFERENCE ID: 1708241747361

Mark H. ...
Notary Public for the State of South Carolina

Name of Limited Liability Company 2nd Avenue Holdings, LLC

5. ☐ Check this box only if the company is to be a term company. If the company is a term company, provide the term specified, _____
6. ☒ Check this box only if management of the limited liability company is vested in a manager or managers. If this company is to be managed by managers, include the name and address of each initial manager.
- (a) George B. Buchanan, Jr.
- | | | |
|---|----------|----------|
| Name | | |
| c/o Wilkinson Consulting and CPA, Attention: Tammy Setliff 299 Pirley Forest Road | | |
| Street Address | | |
| Danville | Virginia | 24540 |
| City | State | Zip Code |
- (b) _____
- Name _____
- Street Address _____
- City _____ State _____ Zip Code _____
7. ☐ Check this box only if one or more of the members of the company are to be liable for its debts and obligations under §33-44-303(c). If one or more members are so liable, specify which members, and for which debts, obligations or liabilities such members are liable in their capacity as members. This provision is optional and does not have to be completed.
8. Unless a delayed effective date is specified, these articles will be effective when endorsed for filing by the Secretary of State. Specify any delayed effective date and time.
Time of Filing _____
9. Any other provisions not inconsistent with law which the organizers determine to include, including any provisions that are required or are permitted to be set forth in the limited liability company operating agreement may be included on a separate attachment. Please make reference to this section if you include a separate attachment.
10. Each organizer listed under number 4 must sign.

Chris B. Setliff
Signature of Organizer

September 6, 2012
Date

Signature of Organizer

Date

Form Revised by South Carolina
Secretary of State, July 2012

COUNTY OF AIKEN

Case No. 2012-CP-02-0173

Plaintiff,

vs.

Springs North Augusta, LLC,

Defendant:

ASSIGNMENT OF BID

10/26/62
L. J. [illegible]
C.C.P. 403
Channon [illegible]
Deputy Clerk

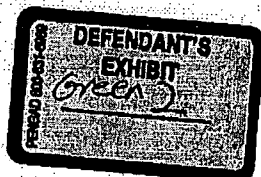
Second Avenue consents to the deduction of the Master in Equity's commission and all other court costs associated with the foreclosure sale from its Deposit. The remaining funds shall be refunded to Second Avenue Holdings, LLC with the check to be delivered to be delivered to

I, Robert J. Harris, Clerk of Court of Common Pleas and General Sessions for Alkon County, South Carolina do hereby certify that the foregoing constitutes a true and correct copy of the original documents which have been filed in my office this

AUG 29 2017

Robert J. White
C.C.P. of G., Aiken County, S.C.

Deputy Clerk



Stanley H. McCuffin on behalf of Second Avenue, LLC

SECOND AVENUE HOLDINGS, LLC

By: Stanley H. McCuffin
Its: Manager

October 24, 2012

The above stated terms of assignment are approved and accepted by the Plaintiff as assignee.

HARRY P. SAKELLARIS, AS TRUSTEE
OF THE GEORGE B. BUCHANAN, JR.
IRREVOCABLE FAMILY TRUST,
DATED THE 15TH DAY OF JULY, 2001

By: Harry P. Sakellaris
Harry P. Sakellaris
Its: Trustee

October 24, 2012

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-02-0173

Harry P. Sakellaris, as Trustee of the George B.
Buchanan, Jr. Irrevocable Family Trust, et al.

Springe North Augusta, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:
Stanley H. McGuffin
Haynsworth Sinkler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211
(803) 779.3080

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.
Additional Information for the Clerk:

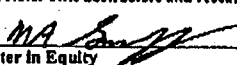
INFORMATION FOR THE PUBLIC INDEX

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

Judgment In Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001	Springe North Augusta, LLC	\$2,484,163.95

If applicable, describe the property, including tax map information and address, referenced in the order:
TMS Nos. 022-17-01-001; 011-11-02-001; and 011-10-07-006

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

MA 
Master in Equity

Judge Code

Date

Oct 26, 2012

SCRCP Form 4C (10/2011)

Page 1 of 2

For Clerk of Court Office Use Only

This judgment was entered on the 24 day of October, 2012 and a copy mailed first class or placed in the appropriate attorney's box on this 24 day of October, 2012 to attorneys of record or to parties (when appearing pro se) as follows:

Stanley H. McGuffin
Haynsworth Sinkler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211
(803) 779-3080

Springs North Augusta, LLC
c/o Michael W. Tighe, Registered Agent
1812 Lincoln Street, Ste 200
Columbia, SC 29201

ATTORNEY(S) FOR THE PLAINTIFF(S)
Michael H. McGuffin

ATTORNEY(S) FOR THE DEFENDANT(S)
Michael W. Tighe
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

Stephen Wilkinson, as Trustee of
George B. Buchanan, Jr.
Irrevocable Family Trust dated the
15th day of July, 2001,

Plaintiff,

vs.

Redd Green Investments, LLC,
Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce
Green, William Otha Bodie,
Herbert Keith Anderson, and L.
Cliff Redd,

Defendants.

IN THE COURT OF COMMON PLEAS

Case No. 2015-CP-41-172

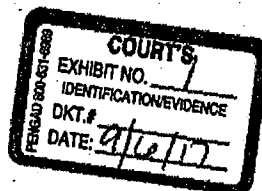
PLAINTIFF'S REQUEST FOR JUDICIAL
NOTICE

2017 SEP -6 PM 1:50
CLERK OF COURT
SALUDA CO. S.C.

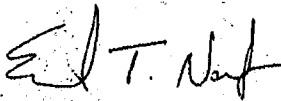
FILED

Plaintiff Stephen Wilkinson, as Trustee of George B. Buchanan, Jr. Irrevocable Family Trust dated the 15th day of July, 2001 ("Plaintiff" or "Trust") requests that this Court take judicial notice of the following facts, pursuant to S.C. R. Evid. 201:

1. In case number 2012-CP-02-0173, a deficiency judgment in the amount of \$2,753,192.70 with interest accruing at the annual rate of 15% was entered against Springs North Augusta, LLC and in favor of Plaintiff in this matter by Order of M. Anderson Griffith, Aiken County Master in Equity. The deficiency judgment was entered as of October 4, 2012.
2. The total amount of the deficiency judgment against Springs North Augusta, LLC as of September 1, 2017 is \$4,781,882.55.



NELSON MULLINS RILEY & SCARBOROUGH LLP



By: _____

John T. Moore

SC Bar No. 004056

E-Mail: john.moore@nelsonmullins.com

Erik T. Norton

SC Bar No. 73860

E-Mail: erik.norton@nelsonmullins.com

1320 Main Street / 17th Floor

Post Office Box 11070 (29211-1070)

Columbia, SC 29201

(803) 799-2000

Attorneys for Plaintiff

Columbia, South Carolina
September 6, 2017.

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

Stephen Wilkinson, as Trustee of George B.)
Buchanan, Jr. Irrevocable Family Trust)
Dated the 15th day of July, 2001,)

Plaintiff,

vs.

Redd Green Investments, LLC, Anderson)
North Augusta, LLC, Herbert Anderson, Jr.,)
A. Bruce Green, Herbert Keith Anderson,)
And L. Cliff Redd,)

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2015-CP-41-00172

MOTION FOR NEW TRIAL

2017 SEP 18 PM 12:52
CLERK OF COURT
SALUDA CO. S.C.

Defendant Redd Green Investments, LLC, Defendant A. Bruce Green, and Defendant L. Cliff Redd hereby move for a new trial in this case pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. The basis of this motion is that it was error for the Court to direct a verdict in favor of Plaintiff and against Defendant Redd Green Investments, LLC, Defendant A. Bruce Green, and Defendant L. Cliff Redd because, viewing the evidence in the light most favorable to said Defendants, there were material issues of fact to be decided by the trier of fact at the trial of this case. Those material issues of fact include, but are not limited to the following:

1. Whether Second Avenue Holdings, LLC was acting as a representative of Plaintiff at the second foreclosure sale in violation of South Carolina Ann. §15-39-720;
2. Whether Plaintiff violated the statute found at South Carolina Ann. §15-39-720;
3. Whether Plaintiff's violation of South Carolina Ann. §15-39-720 constitutes a breach of the covenant of good faith and fair dealing implied in the terms of the written guarantys which are the subject of this action;

PAID

Date

9-18-17

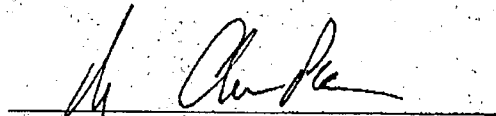
SALUDA COUNTY
CLERK OF COURT

\$ 25.00

4. Whether Plaintiff's violation of the South Carolina Ann. §15-39-720 constitutes a waiver of Plaintiff's right to seek recovery from Defendant Redd Green Investments, LLC, Defendant A. Bruce Green, and Defendant L. Cliff Redd;
5. Whether Plaintiff is estopped from recovering judgment against Defendant Redd Green Investments, LLC, Defendant A. Bruce Green, and Defendant L. Cliff Redd as a result of Plaintiff's violation of South Carolina Ann. §15-39-720.

This motion shall be further based upon such citations to the transcript of record in this case, legal authority, and argument of counsel as may be appropriate at the hearing hereof.

HARRELL, MARTIN & PEACE, P.A.



M. ALAN PEACE, ESQ.
135 Columbia Avenue
P.O. Box 1000
Chapin, South Carolina 29036
(803) 345-3353
Attorneys for Defendants Redd Green Investments,
LLC, A. Bruce Green, and L. Cliff Redd

September 15, 2017
Chapin, South Carolina

CERTIFICATE OF SERVICE

I, Tracy Slice Moore, paralegal to M. Alan Peace, Esq., of the firm of Harrell, Martin & Peace, P.A., do hereby certify that I have served a copy of the below named document(s) upon the parties listed below by U.S. Mail, postage prepaid, and addressed as follows:

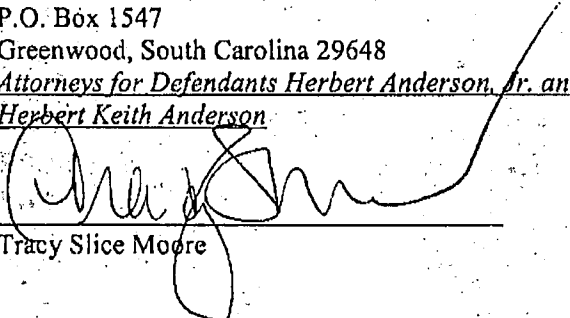
DOCUMENTS SERVED:

MOTION FOR NEW TRIAL

SERVED:

Erik T. Norton, Esq.
Nelson Mullins
1320 Main Street, 17th Floor
P.O. Box 11070
Columbia, South Carolina 29211-1070
Attorneys for Plaintiff

Roy H. Hemphill, Esq.
McDonald Patrick Poston Hemphill & Roper, LLC
414 Main Street (29646)
P.O. Box 1547
Greenwood, South Carolina 29648
Attorneys for Defendants Herbert Anderson, Jr. and
Herbert Keith Anderson


Tracy Slice Moore

September 15, 2017

2017 SEP 18 PM 12:52
CLERK OF COURT
SALUDA CO. S.C.

FILED

STATE OF SOUTH CAROLINA

COUNTY OF SALUDA

Stephen Wilkinson, as Trustee of George B. Buchanan, Jr. Irrevocable Family Trust
Dated the 15th day of July, 2001,

Plaintiff,

vs.

Redd Green Investments, LLC, Anderson
North Augusta, LLC, Herbert Anderson, Jr.,
A. Bruce Green, Herbert Keith Anderson,
And L. Cliff Redd,

Defendants.

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2015-CP-41-00172

AMENDED MOTION FOR NEW TRIAL
OR IN THE ALTERNATIVE TO ALTER
OR AMEND THE JUDGMENT OF THE
COURT

CLERK OF COURT
SALUDA CO. S.C.

SEP 19 PM 2:31

FILED

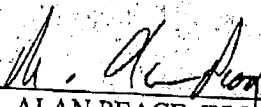
Defendant Redd Green Investments, LLC, Defendant A. Bruce Green, and Defendant L. Cliff Redd hereby move for a new trial or in the alternative for the Court to alter or amend its judgment in this case pursuant to Rule 59 of the South Carolina Rules of Civil Procedure. The basis of this motion is that it was error for the Court to direct a verdict in favor of Plaintiff and against Defendant Redd Green Investments, LLC, Defendant A. Bruce Green, and Defendant L. Cliff Redd because, viewing the evidence in the light most favorable to said Defendants, there were material issues of fact to be decided by the trier of fact at the trial of this case. Those material issues of fact include, but are not limited to the following:

1. Whether Second Avenue Holdings, LLC was acting as a representative of Plaintiff at the second foreclosure sale in violation of South Carolina Ann. §15-39-720;
2. Whether Plaintiff violated the statute found at South Carolina Ann. §15-39-720;

3. Whether Plaintiff's violation of South Carolina Ann. §15-39-720 constitutes a breach of the covenant of good faith and fair dealing implied in the terms of the written guarantys which are the subject of this action;
4. Whether Plaintiff's violation of the South Carolina Ann. §15-39-720 constitutes a waiver of Plaintiff's right to seek recovery from Defendant Redd Green Investments, LLC, Defendant A. Bruce Green, and Defendant L. Cliff Redd;
5. Whether Plaintiff is estopped from recovering judgment against Defendant Redd Green Investments, LLC, Defendant A. Bruce Green, and Defendant L. Cliff Redd as a result of Plaintiff's violation of South Carolina Ann. §15-39-720.

This amended motion shall be further based upon such citations to the transcript of record in this case, legal authority, and argument of counsel as may be appropriate at the hearing hereof.

HARRELL, MARTIN & PEACE, P.A.


M. ALAN PEACE, ESQ.

135 Columbia Avenue

P.O. Box 1000

Chapin, South Carolina 29036

(803) 345-3353

Attorneys for Defendants Redd Green Investments,
LLC, A. Bruce Green, and L. Cliff Redd

September 18, 2017
Chapin, South Carolina

CERTIFICATE OF SERVICE

I, Tracy Slice Moore, paralegal to M. Alan Peace, Esq., of the firm of Harrell, Martin & Peace, P.A., do hereby certify that I have served a copy of the below named document(s) upon the parties listed below by U.S. Mail, postage prepaid, and addressed as follows:

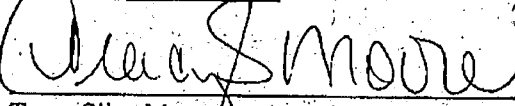
DOCUMENTS SERVED:

**AMENDED MOTION FOR NEW TRIAL OR IN THE
ALTERNATIVE TO ALTER OR AMEND THE
JUDGMENT OF THE COURT**

SERVED:

Erik T. Norton, Esq.
Nelson Mullins
1320 Main Street, 17th Floor
P.O. Box 11070
Columbia, South Carolina 29211-1070
Attorneys for Plaintiff

Roy H. Hemphill, Esq.
McDonald Patrick Poston Hemphill & Roper, LLC
414 Main Street (29646)
P.O. Box 1547
Greenwood, South Carolina 29648
Attorneys for Defendants Herbert Anderson, Jr. and
Herbert Keith Anderson


Tracy Slice Moore

September 18, 2017

FILED
2017 SEP 19 PM 2:31
CLERK OF COURT
SALUDA CO. S.C.

STATE OF SOUTH CAROLINA)

COUNTY OF SALUDA)

IN THE COURT OF COMMON PLEAS

Stephen Wilkinson, as Trustee of)
George B. Buchanan, Jr.)
Irrevocable Family Trust dated the)
15th day of July, 2001,)

Case No. 2015-CP-41-172

Plaintiff,)

vs.)

PLAINTIFFS' OPPOSITION TO MOTION
FOR NEW TRIAL

Redd Green Investments, LLC,)
Anderson North Augusta, LLC,)
Herbert Anderson, Jr., A. Bruce)
Green, William Otha Bodie,)
Herbert Keith Anderson, and L.)
Cliff Redd,)

Defendants.)

Plaintiff Stephen Wilkinson, as Trustee of George B. Buchanan, Jr. Irrevocable Family Trust dated the 15th day of July, 2001 ("Plaintiff" or "Trust") hereby submits its opposition to the Amended Motion for New Trial or in the Alternative to Alter or Amend the Judgment of the Court filed by Defendants Redd Green Investments, LLC, A. Bruce Green and L. Cliff Redd. The Motion should be denied because it fails to identify any evidence or legal precedent that this Court overlooked or misapprehended when, viewing the evidence in the light most favorable to Defendants, it directed a verdict in favor of Plaintiff. Indeed, all of the grounds relied upon by Defendants were argued and ruled upon at trial, and Defendants offered no new facts or legal precedent in their motion.

BACKGROUND

In this matter, Plaintiff sought judgment against all Defendants, jointly and severally, in the amount of \$4,781,882.65 based on Guarantees provided by the Defendants for the debts of non-party Springs North Augusta, LLC. Previously, Plaintiff foreclosed on property owned by Springs North Augusta and a deficiency judgment was entered against it. Plaintiff initiated this action to collect the deficiency judgment by enforcing the Guaranty given by Defendants. Defendants answered and counterclaimed, but withdrew their counterclaims at trial. Defendants instead asserted that they were not liable because Plaintiff allegedly violated South Carolina's foreclosure bidding statute, S.C. Code Ann. § 15-39-720, during the prior proceeding. Specifically, Defendants alleged that Plaintiff violated the statute when Second Avenue Holdings, LLC won the bidding at the second sale and then assigned the bid to Plaintiff. Plaintiffs conceded that they were not challenging the validity of the deficiency judgment against Springs North Augusta, but claimed that they argued that the alleged irregularity in the foreclosure bidding procedure nonetheless excused them from performance under the Guaranty.

A trial by jury was held on September 6, 2013 in Saluda County. At the conclusion of presentation of all evidence, Plaintiff moved for directed verdict. This Court, after considering the evidence in a light most favorable to Plaintiff, rightly granted the motion because, among other reasons, (1) the alleged violation of the bidding statute does not constitute a defense to Plaintiff's claims as a matter of law and (2) 2nd Avenue was not the Trust or its representative at the second foreclosure sale.

Each of Defendant's grounds for a new trial rest upon their claim that Plaintiff violated the bidding statute. However, as this Court found at the trial, even if the bidding statute had

been violated, it would not constitute a defense to the debts owed by Defendants. The Guaranty expressly provides that the Defendants were responsible for all debts of Springs North Augusta. Defendants conceded the validity of the judgment against Springs North Augusta. Therefore, pursuant to the express terms of the Guaranty, Defendants are obligated to pay the deficiency judgment. This Court therefore rightly concluded that, even if Plaintiff did violate the foreclosure bidding statute, it was not a valid defense to the Defendants' obligation to pay the deficiency judgment.

Further, this Court correctly determined that the foreclosure bidding statute was not violated in this case. The only evidence in the record is that 2nd Avenue was a separate, distinct corporate entity from Plaintiff. Further, there was no evidence offered that 2nd Avenue acted as a representative for the Plaintiff as that term is used in the foreclosure bidding statute. Therefore, the foreclosure bidding statute was not violated and Plaintiff was entitled to directed verdict.

CONCLUSION

For the reasons set forth above, Plaintiff is entitled to directed verdict. Plaintiff notes that Defendants reserved the right to submit additional authority in support of their motion, and Plaintiff similarly reserves the right to respond to any later submission by Defendants.

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NELSON MULLINS RILEY & SCARBOROUGH LLP

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Columbia, SC 29201

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Attorneys for Plaintiff

Columbia, South Carolina
October 11, 2017.

STATE OF SOUTH CAROLINA)
COUNTY OF SALUDA) IN THE COURT OF COMMON PLEAS

Stephen Wilkinson, as Trustee of)
George B. Buchanan, Jr. Irrevocable) Case No. 2015-CP-41-172
Family Trust dated the 15th day of July,)
2001,)

Plaintiff,)

vs.)

Redd Green Investments, LLC,)
Anderson North Augusta, LLC,)
Herbert Anderson, Jr., A. Bruce)
Green, William Otha Bodie, Herbert)
Keith Anderson, and L. Cliff Redd,)

Defendants.)

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I caused the below named parties to be served with a copy of the following document(s): Plaintiffs' Opposition to Motion for New Trial by causing said document(s) to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, with return address clearly shown, as set forth below.

Roy R. Hemphill, Esquire
P.O. Box 1547
Greenwood, SC 29648

M. Alan Peace, Esquire
Harrell, Martin & Peace, P.A.
P.O. Box 1000
Chapin, SC 29036

s/ Erik T. Norton

October 11, 2017

STATE OF SOUTH CAROLINA)

COUNTY OF SALUDA)

Stephen Wilkinson, as Trustee of)
George B. Buchanan, Jr.)
Irrevocable Family Trust Dated the)
15th day of July, 2001,)

Plaintiff,)

vs.)

Redd Green Investments, LLC,)
Anderson North Augusta, LLC,)
Herbert Anderson, Jr., A. Bruce)
Green, Herbert Keith Anderson, and)
L. Cliff Redd,)

Defendants.)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION NO.: 2015-CP-41-00172

**MEMORANDUM IN SUPPORT OF
AMENDED MOTION FOR NEW
TRIAL OR IN THE ALTERNATIVE TO
ALTER OR AMEND THE JUDGMENT
OF THE COURT**

Defendants Redd Green Investments, LLC, A. Bruce Green, and L. Cliff Redd respectfully submit this Memorandum in Support of the Amended Motion for New Trial or in the Alternative to Alter or Amend the Judgment of the Court filed on September 19, 2017.

BACKGROUND

Plaintiff Stephen Wilkinson, as Trustee of George B. Buchanan, Jr. Irrevocable Family Trust Dated the 15th day of July, 2001 ("Trust") sought judgment jointly and severely against all Defendants pursuant to written guarantees issued by Defendants to Trust related to a real estate investment in Aiken County. Trust was originally set up by George B. Buchanan, Jr. ("Buchanan"). Trust previously foreclosed on the real property in Aiken County and obtained a deficiency judgment against the property owner, Springs North Augusta, LLC ("Springs North Augusta"). Trust then brought this case in Saluda County against the Defendants based on the deficiency

2. 2nd Avenue is a separate entity from Trust and was not acting as a representative of Trust at the second sale.

Based upon the granting of the motion for directed verdict, the Court dismissed the jury and granted judgment against Defendants jointly and severally in the amount of Four Million Seven Hundred Eighty One Thousand Eight Hundred Eighty-two and 65/100 (\$4,781,882.65) Dollars. Defendant Redd Green Investments, LLC, Defendant A. Bruce Green, and Defendant L. Cliff Redd moved for a new trial or in the alternative for the Court to alter or amend its judgment pursuant to Rule 59 of the South Carolina Rules of Civil Procedure.

The moving Defendants respectfully submit that the Court misperceived the evidence or reasonable inferences from the evidence to justify its decision and the Court's decision was contrary to applicable law.

ARGUMENT

1. The Court misapprehended the law in ruling that a violation of §15-39-720 is not a defense on a guarantee of a debt.

In considering the motion for directed verdict by Trust, the Court ruled that a violation of the statute found at South Carolina Code Ann. §15-39-720 was not a defense to an action on a guarantee of a debt. (Transcript, p. 132, l. 13 - 24.). It is clear that §15-39-720 prohibits Trust, as mortgagee, any "representative" of Trust, or "all persons acting in [the Trust's] behalf" from entering any other bid in any amount at any other time except on the day of the foreclosure sale. The purpose and intent of this statute is to maximize the mortgagee's bid at the initial sale and to minimize any deficiency. See 27 S.C. Jur. Mortgages § 128 ("This effectively forces the mortgagee to enter his highest and best bid at the initial sale."); *Holliday v. McFadden*, 188 S.C. 187, 198 S.E. 392, 394 (1938) ("[T]he policy of the Statute is to prevent property being sold at judicial sales for sacrifice prices...."). By forcing the mortgagee to only bid at the initial sale, the

mortgagee must offer a bid of fair market value or risk that a third party will outbid it at the second sale and thereby in essence take from the mortgagee what it could have received in payment for the debt. In exchange for being forced to make its highest and best bid, the mortgagee receives the benefit of a deficiency judgment, and the mortgagor receives the benefit of the debt being reduced by the best bid. This benefit to the mortgagor (and in turn any guarantors) is lost if the mortgagee can bid at the second sale and therefore potentially bid an amount that is less than its best bid, and it also stifles competition for the highest and best bid. The result is an illegal bid resulting in an inflated deficiency judgment. *Hamilton v. Hamilton*, 19 S.C. Eq. 355 (S.C. App. Eq. 1845) ("The principle which governs all sales at auction, and especially judicial sales, is, that there should be full and fair competition. Any agreement or combination, therefore, the object and effect of which is to chill the sale and stifle competition is illegal, and no party to the agreement or combination can derive benefit from the sale.).

Because the provisions allowing for a deficiency judgment do not apply when a mortgagee waives the deficiency and competes with other bidders, the mortgagee should not gain the benefit of a deficiency when it violates those provisions by bidding at the second sale. Nor should the mortgagee be able to make an end run around the statute by creating (or by its representative creating or by someone acting on its behalf creating) a single member LLC that it (or its representative or someone acting on its behalf) effectively controls and using the LLC to make the bid. In this situation, the LLC could only be viewed as a representative of the mortgagee or as a person acting on behalf of the mortgagee. This conclusion is further bolstered when that LLC assigns the bid back to the mortgagee for what amounts to a lack of reasonable consideration.

Additionally, it is a well-founded policy of law in the State of South Carolina that no person should be permitted to acquire a right of action from their own unlawful act and one who

participates in an unlawful act cannot recover damages for the consequences of that act. Jackson v. Bi Lo Stores, Inc., 313 S.C. 272, 437 S.E.2d 168 (S.C. Ct. App., 1993), Wachovia Bank, NA v. Coffey, 389 S.C. 68, 698 S.E.2d 244 (S.C. Ct. App. 2010). This rule applies at both law and in equity and whether the cause of action is in contract or in tort. (Jackson, at 170). Based on the policy of law espoused in Jackson and Wachovia Bank set forth above, Defendants respectfully submit that this Court misapprehended the law of this state in ruling that a violation of the bidding statute found at §15-39-720 would not serve as the basis for a defense to a claim on the guaranty of a debt. The claim of Trust against moving Defendants under the guaranty is based on the deficiency judgment. If Trust obtained its deficiency judgment utilizing procedures prohibited by §15-39-720, then moving Defendants are entitled to assert that violation of the statute in defense of the claims of Trust against moving Defendants. Trust should not be permitted to recover from moving Defendants based on a deficiency judgment obtained unlawfully. Such a recovery under the guaranty would violate the implied covenant of good faith and fair dealing within the guaranty agreement because the mortgagee effectively acted in a way that impaired the guarantors' rights under the guaranty by increasing the amounts due under the guaranty, substituting the guaranty obligation for the collateral, and depriving the guarantors of their benefit of the bargain. *See, e.g., Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 500, 473 S.E.2d 52, 53 (1996) (noting that the essence of the implied covenant of good faith and fair dealing is "that neither party will do anything to impair the other's rights to receive benefits under the contract."); *see also Shelton v. Oscar Mayer Foods Corp.*, 319 S.C. 81, 91, 459 S.E.2d 851, 857 (Ct. App. 1995), *aff'd*, 325 S.C. 248, 481 S.E.2d 706 (1997) ("Under South Carolina law, there exists in every contract an implied covenant of good faith and fair dealing. . . . If, therefore, the jury finds [a contract], then the question of whether [a party to the contract] breached an implied covenant of good faith and fair

dealing based on an [the] contract is for the jury to decide.”). Further, the Trust should be barred by principles of unclean hands,¹ estoppel,² and waiver.³

2. The Court misperceived the evidence or reasonable inferences from the evidence by concluding that 2nd Avenue Holdings was acting in a representative capacity for the Trust.

In granting the motion for directed verdict, the Court further ruled that 2nd Avenue is a separate entity, and was not acting as a representative at the second sale. (Transcript, p. 132, 1.24 – p. 133, 1.19.). Section 15-39-720 prohibits a mortgagee or his “representative” or “all persons

¹ See, e.g. *Wachovia Bank, N.A. v. Coffey*, 389 S.C. 68, 75, 698 S.E.2d 244, 247 (Ct. App. 2010), *aff’d as modified*, 404 S.C. 421, 746 S.E.2d 35 (2013) (“The doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.”).

² See, e.g., *Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 477, 451 S.E.2d 924, 928 (Ct. App. 1994):

Under South Carolina law, the essential elements of estoppel are divided between the estopped party and the party claiming estoppel. *Southern Dev. Land and Golf Co. v. South Carolina Pub. Serv. Auth.*, 311 S.C. 29, 426 S.E.2d 748 (1993), *aff’g in part and rev’g in part* 305 S.C. 507, 409 S.E.2d 428 (Ct.App.1991). As to the estopped party, the essential elements are: (1) conduct amounting to a false representation or concealment of material facts, or conduct calculated to convey the impression that the facts are otherwise than, and inconsistent with, the party's subsequent assertions; (2) intention or expectation that such conduct be acted upon by the other party; and (3) actual or constructive knowledge of the real facts. *Id.* As to the party claiming estoppel, the essential elements are: (1) lack of knowledge or the means of acquiring, with reasonable diligence, knowledge of the true facts; (2) reasonable reliance on the other party's conduct; and (3) a prejudicial change in position. *Id.* Unlike waiver, the estopped party need not intend to relinquish or change any existing right for estoppel to arise. *Janasik v. Fairway Oaks Villas*, 307 S.C. 339, 415 S.E.2d 384 (1992). The reliance by the party claiming estoppel must be reasonable, and it must proceed in good faith. *Southern Dev., supra*; *Masonic Temple, Inc. v. Ebert*, 199 S.C. 5, 18 S.E.2d 584 (1942).

³ See, e.g., *Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 928–29 (Ct. App. 1994):

Waiver is the voluntary and intentional relinquishment of a known right. *Janasik*, 307 S.C. at 344, 415 S.E.2d at 387. It may be implied from circumstances indicating an intent to waive. *Bonnette v. State*, 277 S.C. 17, 282 S.E.2d 597 (1981); *Lyles v. BMI, Inc.*, 292 S.C. 153, 355 S.E.2d 282 (Ct.App.1987). Acts that are inconsistent with the continued assertion of a right may also give rise to a waiver. **929 *Bonnette*, 282 S.E.2d 597.

acting in his behalf" from entering any kind of bid in any amount at any other time except the mortgagee's last bid at the foreclosure sale. *Id.* (emphasis added). The reasonable inferences from the evidence presented at trial support Defendants' position that 2nd Avenue was acting as a representative of Trust or otherwise acting on behalf of Trust at the second sale on October 4, 2012.

Trust was established by Buchanan. (Transcript, p. 93, 1.19-23.). Trust foreclosed and participated in the first foreclosure sale on September 4, 2012. (Transcript p. 95, 1.25 – p. 96, 1.7.). The Trustee for the Trust consulted with Buchanan prior to the first foreclosure sale. (Transcript, p. 95, 1.25 – p. 96, 1.14.). Indeed, the Trustee admitted that he always listens to Buchanan's advice before acting and that he has never turned down any recommendation from Buchanan, (Transcript, pp. 78-79), which demonstrates Buchanan's control over the Trust and that his actions reasonably may be viewed as actions on behalf of the Trust. Buchanan knew that there would be a second sale and that Trust, as mortgagee, was prohibited from participating at the second sale. (Transcript, p. 96; 1.15-25.). 2nd Avenue was organized, based upon the filing data indicated on the Articles of Organization, on September 10, 2012. (Transcript, p. 97, 1.24 – p. 98, 1.13, Defendant Exhibit No. 1.). That was 6 days after the first sale took place. The second sale occurred on October 14, 2012 and Buchanan was present and submitted the bid on behalf of 2nd Avenue at the second sale. (Transcript, p. 99, 1.20–25.). Less than three weeks later, on October 24, 2012 2nd Avenue assigned its bid from the second sale to the Trust for only reimbursement of costs advanced. (Transcript, p. 100, 1.1 – p. 101, 1.19, Defendant Exhibit 2.).

While the Court correctly identified the standard by which the motion for directed verdict by Trust must be considered, Defendants respectfully submit that there is more than reasonable inference from the evidence in the record that 2nd Avenue was acting as a representative of Trust

at the second sale or otherwise acting as a representative of the Trust in violation of the statute. The Trust was originally set up by Buchanan. The Trust participated in the first sale in direct consultation and approval of Buchanan. The Trustee always followed the recommendations and advice of Buchanan. Buchanan knew that South Carolina law prohibited Trust, as mortgagee, from participating in the second sale. Six days after the first sale, the Articles of Organization for 2nd Avenue was filed with the South Carolina Secretary of State's office. The sole member of that limited liability company was Buchanan. Buchanan participated in the second sale on behalf of 2nd Avenue. After being the high bidder at the second sale, 2nd Avenue assigned its bid to Trust less than three weeks later. Trust then proceeded to obtain its deficiency judgment against Springs North Augusta based upon the bid from the second sale. Based upon the evidence presented at trial, a reasonable inference can be made by the jury that 2nd Avenue was acting in a representative capacity for the Trust at the second sale (or otherwise acted on behalf of the Trust) in violation of South Carolina Code Ann. §15-39-720. By violating the statute, the jury could reasonably infer that Trust willfully acquired its deficiency judgment unlawfully and then reach a verdict in favor of Defendants based on the defenses of unclean hands, waiver, estoppel, and/or breach of the covenant of good faith and fair dealing implied in every contract.

CONCLUSION

Based upon the foregoing, Defendants respectfully submit that a new trial should be granted in this case. The policy of this state is that no person should be permitted to acquire a right of action or recover damages as a consequence of unlawful conduct. Nor should a lender be able to violate its covenant of good faith with a guarantor. Evidence was presented at the trial of this case from which a jury could reasonably conclude that 2nd Avenue was acting as a representative of the Trust or otherwise acting on behalf of the Trust by participating in the second sale. And such

participation violated its implied covenant of good faith to guarantors and/or should result in it being barred from enforcing the guaranties by virtue of unclean hands, waiver, and/or estoppel. Accordingly, moving Defendants respectfully submit that directing a verdict against Defendants and in favor of Trust in this case was in error and a new trial should be granted.

Respectfully submitted,

HARRELL, MARTIN & PEACE, P.A.

/s/ M. Alan Peace

M. ALAN PEACE, ESQ., SC Bar No.:4384

135 Columbia Avenue

P.O. Box 1000

Chapin, South Carolina 29036

(803) 345-3353

Attorneys for Defendants Redd Green Investments,
LLC, A. Bruce Green, and L. Cliff Redd

May 29, 2018
Chapin, South Carolina

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA

Case No. 2013-CP-41-42

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr. Irrevocable
Family Trust, dated the 15th Day of July,
2001,

2013-CP-41-172

**PLAINTIFF'S MOTION FOR SUMMARY
JUDGMENT**

Plaintiff,

vs.

Redd Green Investments, LLC, Anderson
North Augusta, LLC, Herbert Anderson,
Jr., A. Bruce Green, William Otha Bodie,
Herbert Keith Anderson, and L. Cliff
Redd,

Defendants.

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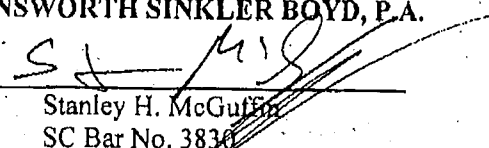
25.00

YOU WILL PLEASE TAKE NOTICE that the Plaintiff, by and through its undersigned attorney, will move, pursuant to Rule 56 of the South Carolina Rules of Civil Procedure, before the Presiding Judge for the Court of Common Pleas for Saluda, at the Saluda County Courthouse, Saluda, South Carolina, on the tenth (10th) day after service hereof, or as soon thereafter as counsel may be heard, for an Order granting summary judgment in Plaintiff's favor as to all claims in its Complaint against each of the Defendants and for an Order granting summary judgment in Plaintiff's favor as to Defendants' counterclaims on the grounds that there is no genuine issue as to any material fact with respect to the claims asserted by Plaintiff.

This Motion is based upon the pleadings filed by the parties, any memorandum in support of this motion and/or Affidavits that may be later filed by the Plaintiff.

For the foregoing reasons, Plaintiff is entitled to summary judgment against Defendant.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Stanley H. McGuffin
SC Bar No. 3830

1201 Main Street, Suite 2200
Post Office Box 11889 (29211-1889)
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(803) 779.3080 Tel
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Attorneys for Harry P. Sakellaris, as Trustee
of the George B. Buchanan, Jr. Irrevocable
Family Trust, dated the 15th Day of July,
2001

April 11, 2014

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA

Case No. 2013-CP-41-42

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr. Irrevocable
Family Trust, dated the 15th Day of July,
2001,

2013 CP-41-172

**AFFIDAVIT IN SUPPORT OF PLAINTIFF'S
MOTION FOR SUMMARY JUDGMENT AND
MOTION TO AMEND CAPTION TO
DESIGNATE SUCCESSOR TRUSTEE AS
REAL PARTY IN INTEREST**

Plaintiff,

vs.

Redd Green Investments, LLC, Anderson
North Augusta, LLC, Herbert Anderson,
Jr., A. Bruce Green, William Otha Bodie,
Herbert Keith Anderson, and L. Cliff
Redd,

Defendants.

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CLERK OF COURT
SALUDA CO. S.C.

PERSONALLY appeared before Stephen Wilkinson, who being duly sworn, says that:

1. Effective August 8, 2013, I became the Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001 ("Trust"). A copy of the Appointment of Successor Trustee is attached hereto as Exhibit 1.
2. The Trust is the owner and holder of the Note, Guarantees, and related loan documents subject to this action.
3. Pursuant to the terms of the Trust, the Trustee has sole and exclusive control of the Trust and management decisions related thereto.
4. Neither George B. Buchanan, Jr. nor his wife retains any legal or beneficial title to the Trust assets.

5. The First Article of the Trust provides that during the life of George B. Buchanan, Jr., the sole beneficiaries of the Trust are his "children and their issue", and the distributions are completely within the discretion of the Trustee.

6. The Trust is irrevocable and pursuant to the Twelfth Article, George B. Buchanan, Jr., has no right to amend or revoke the Trust, although he is permitted to make additions to principal.

7. George B. Buchanan, Jr., has no power to discharge a Trustee or name a successor. Under the Thirteenth article, the Trustee "shall not be a person who is, will be or may be, or any of whose issue or spouse is, will be or may be, a beneficiary under this trust instrument, shall not be the Settlor [George B. Buchanan, Jr.,] or his wife, and shall not be a related or subordinate party to the Settlor or his wife...[.]"

8. The Trust is not a grantor's trust under the Internal Revenue Code. The Fifteenth Article provides that "no trust hereunder, nor any part of such trust, shall be considered a 'Grantor's Trust' within the meaning of [Sections 671-679, inclusive, of the Internal Revenue Code]."

9. The tax identification number for the Trust is 26-6646010.

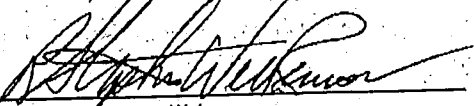
10. Installments of principal and interest required by the Note, Guarantees, and related loan documents have not been paid, although demand for the payment thereof has been made by Plaintiff, and all required notices have been provided. All property that served as collateral for the Note has been liquidated by judicial foreclosure and the proceeds thereof applied to the Note.

11. There is now due and owing and unpaid upon said Guarantees the amount of \$2,918,384.26, as of February 28, 2013, which includes the principal balance of \$2,753,192.70, and interest of \$165,191.56. Additionally, Guarantors are indebted to Plaintiff for interest at the

rate of 15% per annum from March 1, 2013, until the balance due is paid, plus reasonable attorney's fees and costs of collections as provided by the Guarantees.

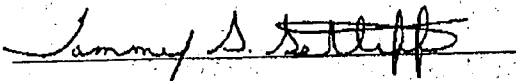
12. The attorneys of the firm of Haynsworth Sinkler Boyd, P.A., are authorized to testify on behalf of the Plaintiff in connection with the above-captioned action.

**THE GEORGE B. BUCHANAN, JR. IRREVOCABLE
FAMILY TRUST, DATED THE 15TH DAY OF JULY, 2001**

By: 
Stephen Wilkinson
Its: Trustee

SWORN to and subscribed before me

on this 7th day of February, 2014.



Notary Public for Virginia

My commission expires: 9/30/2017

Tammy S. Selliff
NOTARY PUBLIC
Registration #7282549
COMMONWEALTH OF VIRGINIA
My Commission Expires 9/30/2017

**APPOINTMENT OF SUCCESSOR TRUSTEE AND
RESIGNATION OF TRUSTEE OF
THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST**

WHEREAS, a Trust Agreement was entered into between George B. Buchanan, Jr., as the Settlor and D. Richard Crumpler, as the initial Trustee, dated July 15, 2001, known as The George B. Buchanan, Jr. Irrevocable Family Trust (the "Trust"); and

WHEREAS, Harry P. Sakellaris was appointed as successor Trustee of the Trust by D. Richard Crumpler, who thereafter resigned as Trustee, by a written instrument dated April 19, 2010, in accordance with Article **THIRTEENTH** of the Trust; and

WHEREAS, Paragraph A. of Article **THIRTEENTH** of the Trust provides that any Trustee vacancy occurring as to a successor Trustee appointed under said paragraph, shall be filled by an individual Trustee appointed by the vacating Trustee by a written instrument executed by the vacating Trustee during his or her lifetime or by his or her Last Will, making specific reference to this power; and

WHEREAS, Paragraph D. of Article **THIRTEENTH** of the Trust provides that any Trustee may resign as a Trustee of the Trust at any time without the consent of any or all of the beneficiaries and without approval or order of the Court having jurisdiction of the administration of the Trust, by a writing delivered to the remaining Trustee, or, if none, to the current beneficiary or beneficiaries of the Trust; provided, however, that if any such beneficiary is then a minor or under any other legal disability, such notice may be delivered to the parent or guardian of such beneficiary; and

WHEREAS, Harry P. Sakellaris now wishes to (i) appoint Stephen Wilkinson as the successor Trustee of the Trust pursuant to Paragraph A. of Article **THIRTEENTH** of the Trust, and (ii) resign as the Trustee of the Trust pursuant to Paragraph D. of Article **THIRTEENTH** of the Trust, immediately thereafter; and

WHEREAS, Stephen Wilkinson wishes to accept his appointment as successor Trustee immediately upon the resignation of Harry P. Sakellaris as Trustee; and

WHEREAS, Stephen Wilkinson, in accepting the trusteeship of the Trust, hereby agrees to compensate Harry P. Sakellaris for the unbilled balance of his fiduciary fee already incurred and for his additional time and efforts incurred in settling the transition in the trusteeship.

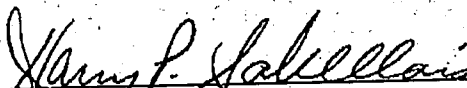
NOW, THEREFORE, effective immediately,

Exhibit 4

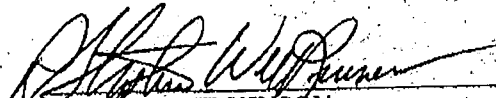
APPOINTMENT OF SUCCESSOR TRUSTEE AND RESIGNATION OF TRUSTEE OF
THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST

1. Harry P. Sakellaris hereby appoints Stephen Wilkinson as successor Trustee and resigns as Trustee of the Trust, and Stephen Wilkinson hereby accepts his appointment as successor Trustee;
2. Stephen Wilkinson, in accepting the trusteeship of the Trust, hereby agrees to compensate Harry P. Sakellaris for the unbilled balance of his fiduciary fee already incurred and for his additional time and efforts incurred in settling the transition in the trusteeship.

IN WITNESS WHEREOF, the undersigned have executed this instrument.


HARRY P. SAKELLARIS

8-8-2013
Date


STEPHEN WILKINSON

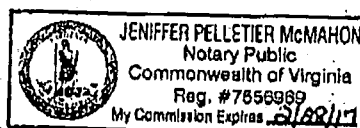
8-12-13
Date

APPOINTMENT OF SUCCESSOR TRUSTEE AND RESIGNATION OF TRUSTEE OF
THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST

COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE

On the 8th day of August, 2013, before me, the undersigned, personally appeared HARRY P. SAKELLARIS, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

Jennifer Pelletier McMahon
Notary Public



COMMONWEALTH OF VIRGINIA
CITY OF DANVILLE

On the 12th day of August, 2013, before me, the undersigned, personally appeared STEPHEN WILKINSON, personally known to me or proved to me on the basis of satisfactory evidence to be the individual whose name is subscribed to the within instrument and acknowledged to me that he executed the same in his capacity and that by his signature on the instrument, the individual, or the person upon behalf of which the individual acted, executed the instrument.

James S. Little
Notary Public



**APPOINTMENT OF SUCCESSOR TRUSTEE AND RESIGNATION OF TRUSTEE OF
THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST**

The undersigned, individually and on behalf of their minor children, as the current beneficiaries of the Trust, hereby acknowledge receipt of the foregoing executed
**APPOINTMENT OF SUCCESSOR TRUSTEE AND RESIGNATION OF TRUSTEE
OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST.**

ROBERT S. BUCHANAN

Date

SALLY B. CLINE

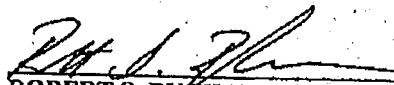
Date

GEORGE B. BUCHANAN III

Date

**APPOINTMENT OF SUCCESSOR TRUSTEE AND RESIGNATION OF TRUSTEE OF
THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST**

The undersigned, individually and on behalf of their minor children, as the current beneficiaries of the Trust, hereby acknowledge receipt of the foregoing executed
**APPOINTMENT OF SUCCESSOR TRUSTEE AND RESIGNATION OF TRUSTEE
OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST.**



ROBERT S. BUCHANAN

August 7, 2013

Date

SALLY B. CLINE

Date

GEORGE B. BUCHANAN III

Date

APPOINTMENT OF SUCCESSOR TRUSTEE AND RESIGNATION OF TRUSTEE OF
THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST

The undersigned, individually and on behalf of their minor children, as the current beneficiaries of the Trust, hereby acknowledge receipt of the foregoing executed
**APPOINTMENT OF SUCCESSOR TRUSTEE AND RESIGNATION OF TRUSTEE
OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST.**

ROBERT S. BUCHANAN

Date

Sally B. Alexander
SALLY B. ~~CLINE~~ Alexander (SBA)

8/8/2013
Date

GEORGE B. BUCHANAN III

Date

APPOINTMENT OF SUCCESSOR TRUSTEE AND RESIGNATION OF TRUSTEE OF
THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST

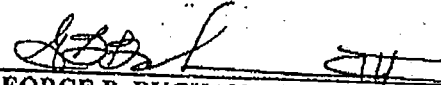
The undersigned, individually and on behalf of their minor children, as the current
beneficiaries of the Trust, hereby acknowledge receipt of the foregoing executed
**APPOINTMENT OF SUCCESSOR TRUSTEE AND RESIGNATION OF TRUSTEE
OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST.**

ROBERT S. BUCHANAN

Date

SALLY B. CLINE

Date



GEORGE B. BUCHANAN III

8/7/13

Date

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

IN THE COURT OF COMMON PLEAS

Case No. 2013-CP-41-42

Harry P. Sakellaris, as Predecessor
Trustee of The George B. Buchanan, Jr.
Irrevocable Family Trust, dated the 15th
Day of July, 2001,

Plaintiff,

vs.

Redd Green Investments, LLC, Anderson
North Augusta, LLC, Herbert Anderson,
Jr., A. Bruce Green, William Otha Bodie,
Herbert Keith Anderson, and E. Cliff
Redd,

Defendants.

2013-CP-41-172

**AFFIDAVIT OF HARRY P. SAKELLARIS IN
SUPPORT OF PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

FILED
2014 APR 15 AM 10:51
CLERK OF COURT
SALUDA CO. S.C.

The undersigned being duly sworn deposes and says the following:

1. I served as trustee of The George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July 2001 (the Trust"), from April 19, 2010 to August 8, 2013. Effective August 8, 2013, Stephen Wilkinson became the successor trustee for the Trust.
2. During the period of my service as Trustee, the Trust did not have any ownership interest in, management authority or control of 2nd Avenue Holdings, LLC, a South Carolina limited liability company.
3. Pursuant to the terms of the Trust, the Trustee has sole and exclusive control of the Trust and management decisions related thereto.
4. Neither George B. Buchanan, Jr. nor his wife retains any legal or beneficial title to the Trust assets.

5. The First Article of the Trust provides that during the life of George B. Buchannan, Jr., the sole beneficiaries of the Trust are his "children and their issue", and the distributions are completely within the discretion of the Trustee.
6. The Trust is irrevocable and pursuant to the Twelfth Article, George B. Buchannan, Jr., has no right to amend or revoke the Trust, although he is permitted to make additions to principal.
7. George B. Buchannan, Jr., has no power to discharge a Trustee or name a successor. Under the Thirteenth article, the Trustee "shall not be a person who is, will be or may be, or any of whose issue or spouse is, will be or may be, a beneficiary under this trust instrument, shall not be the Settlor [George B. Buchannan, Jr.,] or his wife, and shall not be a related or subordinate party to the Settlor or his wife...[.]"
8. The Trust is not a grantor's trust under the Internal Revenue Code. The Fifteenth Article provides that "no trust hereunder, nor any part of such trust, shall be considered a 'Grantor's Trust' within the meaning of [Sections 671-679, inclusive, of the Internal Revenue Code]."
9. The tax identification number for the Trust is 26-6646010.
10. The Trust submitted its bid of \$6,600,000.00 on the property which was the subject

matter of the foreclosure sale that occurred on September 4, 2012.

Further Affiant sayeth not.

Harry P. Sakellaris

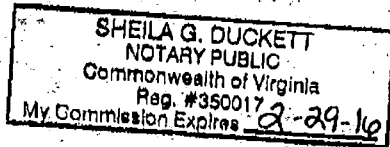
Harry P. Sakellaris, as Predecessor Trustee of The George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001

SWORN to and subscribed before me

on this 10th day of February, 2014.

Sheila G. Duckett
Notary Public for Commonwealth of Virginia

My commission expires: 2-29-16



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA

Case No. 2013-CP-41-42

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr. Irrevocable
Family Trust, dated the 15th Day of July,
2001,

Plaintiff,

vs.

Redd Green Investments, LLC, Anderson
North Augusta, LLC, Herbert Anderson,
Jr., A. Bruce Green, William Otha Bodie,
Herbert Keith Anderson, and L. Cliff
Redd,

Defendants.

2013-CP-41-172

**AFFIDAVIT OF 2nd AVENUE HOLDINGS,
LLC SUPPORT OF PLAINTIFF'S MOTION
FOR SUMMARY JUDGMENT**

FILED
2013 APR 15 AM 10:51
CLERK OF COURT
SALUDA CO. S.C.

The undersigned being duly sworn deposes and says the following:

PERSONALLY appeared before me, George B. Buchanan, who being duly sworn deposes and says the following:

1. I am the sole member and manager of owner of 2nd Avenue Holdings, LLC. a/k/a/ Second Avenue Holdings, LLC.
2. 2nd Avenue Holdings, LLC is a limited liability company organized in the State of South Carolina for the purpose of holding and developing real property.
3. 2nd Avenue Holdings, LLC was formed for the purpose of real estate development.
4. 2nd Avenue Holdings, LLC was the successful bidder of the real property which was sold at a public foreclosure sale in Aiken County, South Carolina on October 4, 2013.
5. The George B. Buchanan Irrevocable Trust does not now have and has never had any ownership interest or managerial control in 2d Avenue Holdings, LLC.
6. 2nd Avenue Holdings, LLC was the successful bidder for the subject property at the foreclosure sale held on October 4, 2012 for the sum of \$7,160,000. 2nd Avenue Holdings, LLC paid a bid deposit of \$500,000 on October 4, 2012 to the Office of the

Aiken County Master-In-Equity in accordance with the terms and requirements of the Notice of Sale published in Aiken County.

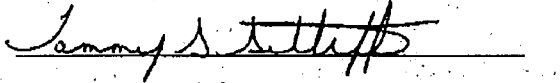
7. 2nd Avenue Holdings, LLC reached an agreement with plaintiff for the assignment of its bid and assigned its bid to Plaintiff on October 24, 2012.

Further Affiant sayeth not.


George B. Buchanan

SWORN to and subscribed before me

on this 6th day of February, 2014.


Notary Public for State of Virginia

My commission expires: 9/30/2017

Tammy S. Setliff
NOTARY PUBLIC
Registration #7282549
COMMONWEALTH OF VIRGINIA
My Commission Expires 9/30/2017

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA

2015 OCT 19 AM CIVIL ACTION NO.: 2013-CP-41-0042

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr. Irrevocable
Family Trust, dated the 15th day of July, 2001,

CLERK OF COURT
SALUDA CO. S.C.

Plaintiff,

vs.

Redd Green Investments, LLC, Anderson
North Augusta, LLC; Herbert Anderson, Jr.,
A. Bruce Green, William Otha Bodie,
Herbert Keith Anderson, and L. Cliff Redd,

Defendants.

**AFFIDAVIT IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

PERSONALLY appeared before me L. Cliff Redd, who being duly sworn, deposes and says as follows:

1. My name is L. Cliff Redd, I am over the age of eighteen (18) years, and am a Defendant in this case.
2. I am a member of Redd Green Investments, LLC, which is also a Defendant in this case.
3. Upon information and belief, the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th day of July, 2001 ("Trust") was established by George B. Buchanan, Jr. ("Buchanan").
4. Second Avenue Holdings, LLC ("Second Avenue") is a South Carolina limited liability company established with the Office of the South Carolina Secretary of State on September 10, 2012. The sole member and manager of Second Avenue is Buchanan.
5. I am a guarantor for a loan from the Trust secured by a mortgage that was foreclosed upon by the Trust in a foreclosure action in Aiken County, South Carolina captioned Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th day of July, 2001 v. Springs North Augusta, LLC, Aiken County, South Carolina Court of Common Pleas Civil Action No. 2012-CP-02-0173 ("Foreclosure Action").
6. The Trust was the successful bidder at the foreclosure sale on September 4, 2012 in the Foreclosure Action.

7. On September 10, 2012, after the foreclosure sale, but prior to the upset bid sale, Second Avenue was organized at the Office of the South Carolina Secretary of State with Buchanan being the sole member and manager of Second Avenue.

8. Upon information and belief, Buchanan and other Trust representatives became aware that other third parties were intending to bid on the property as the upset bid sale in the Foreclosure Action scheduled for October 4, 2012, and established Second Avenue for the purpose of bidding at the upset bid sale on behalf of the Trust.

9. Upon information and belief, Buchanan directs and controls decisions and operations of the Trust and Second Avenue. In the course of dealings for the loan for the Trust which was the subject of the Foreclosure Action and the potential development of the property which was the subject of the Foreclosure Action, Buchanan is the only person with whom I have communicated or dealt in matters pertaining to the foreclosed mortgage or property. I have not communicated or dealt directly with any trustee of the Trust.

10. Upon information and belief, the Trust and Buchanan set up Second Avenue to bid at the upset bid sale in order to circumvent the requirements of South Carolina law which would have prohibited the Trust from submitting a bid at the upset bid sale. Further, they did so because of the possibility of others submitting bids at the upset bid sale higher than the bid submitted by the Trust at the foreclosure sale.

11. Second Avenue, in fact, bid at the upset bid sale on October 4, 2012 and was the successful bidder.

12. On October 24, 2012, Second Avenue assigned its bid for the upset bid sale to the Trust for no consideration. That is further indication that Second Avenue was acting as a representative of the Trust for the purpose of circumventing the statutory requirements of South Carolina prohibiting the Trust or its representatives from bidding at the upset bid sale.

13. I and other Defendants have been damaged because of the acts of the Trust and Second Avenue because, upon information and belief, it chilled other potential bidders from participating in or bidding at the upset bid sale.

14. Upon information and belief, Second Avenue was acting for and as a representative of the Trust in participating in the upset bid sale. Further, the actions of the Trust and Second Avenue were controlled and directed by Buchanan.

FURTHER, DEPONENT SAYETH NOT.

SWORN to and subscribed before me
this 15th day of October, 2015


L. CLIFF REDD


Notary Public for South Carolina
My Commission Expires: March 4, 2025

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF SALUDA

2015 OCT 19 AM 9: CIVIL ACTION NO.: 2013-CP-41-0042

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr. Irrevocable
Family Trust, dated the 15th day of July, 2001,

CLERK OF COURT
SALUDA CO. S.C.

2015-CP-41-172

Plaintiff,

vs.

**AFFIDAVIT IN OPPOSITION TO
PLAINTIFF'S MOTION FOR
SUMMARY JUDGMENT**

Redd Green Investments, LLC, Anderson
North Augusta, LLC, Herbert Anderson, Jr.,
A. Bruce Green, William Otha Bodie,
Herbert Keith Anderson, and L. Cliff Redd,

Defendants.

PERSONALLY appeared before me A. Bruce Green, who being duly sworn, deposes and says as follows:

1. My name is A. Bruce Green, I am over the age of eighteen (18) years, and am a Defendant in this case.
2. I am a member of Redd Green Investments, LLC, which is also a Defendant in this case.
3. Upon information and belief, the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th day of July, 2001 ("Trust") was established by George B. Buchanan, Jr. ("Buchanan").
4. Second Avenue Holdings, LLC ("Second Avenue") is a South Carolina limited liability company established with the Office of the South Carolina Secretary of State on September 10, 2012. The sole member and manager of Second Avenue is Buchanan.
5. I am a guarantor for a loan from the Trust secured by a mortgage that was foreclosed upon by the Trust in a foreclosure action in Aiken County, South Carolina captioned Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th day of July, 2001 v. Springs North Augusta, LLC, Aiken County, South Carolina Court of Common Pleas Civil Action No. 2012-CP-02-0173 ("Foreclosure Action").
6. The Trust was the successful bidder at the foreclosure sale on September 4, 2012 in the Foreclosure Action.

7. On September 10, 2012, after the foreclosure sale, but prior to the upset bid sale, Second Avenue was organized at the Office of the South Carolina Secretary of State with Buchanan being the sole member and manager of Second Avenue.

8. Upon information and belief, Buchanan and other Trust representatives became aware that other third parties were intending to bid on the property as the upset bid sale in the Foreclosure Action scheduled for October 4, 2012, and established Second Avenue for the purpose of bidding at the upset bid sale on behalf of the Trust.

9. Upon information and belief, Buchanan directs and controls decisions and operations of the Trust and Second Avenue. In the course of dealings for the loan for the Trust which was the subject of the Foreclosure Action and the potential development of the property which was the subject of the Foreclosure Action, Buchanan is the only person with whom I have communicated or dealt in matters pertaining to the foreclosed mortgage or property. I have not communicated or dealt directly with any trustee of the Trust.

10. Upon information and belief, the Trust and Buchanan set up Second Avenue to bid at the upset bid sale in order to circumvent the requirements of South Carolina law which would have prohibited the Trust from submitting a bid at the upset bid sale. Further, they did so because of the possibility of others submitting bids at the upset bid sale higher than the bid submitted by the Trust at the foreclosure sale.

11. Second Avenue, in fact, bid at the upset bid sale on October 4, 2012 and was the successful bidder.

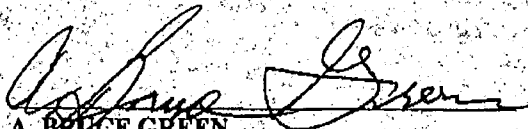
12. On October 24, 2012, Second Avenue assigned its bid for the upset bid sale to the Trust for no consideration. That is further indication that Second Avenue was acting as a representative of the Trust for the purpose of circumventing the statutory requirements of South Carolina prohibiting the Trust or its representatives from bidding at the upset bid sale.

13. I and other Defendants have been damaged because of the acts of the Trust and Second Avenue because, upon information and belief, it chilled other potential bidders from participating in or bidding at the upset bid sale.

14. Upon information and belief, Second Avenue was acting for and as a representative of the Trust in participating in the upset bid sale. Further, the actions of the Trust and Second Avenue were controlled and directed by Buchanan.

FURTHER, DEPONENT SAYETH NOT.

SWORN to and subscribed before me
this 14th day of October, 2016
ROY LEE GRIMM
NOTARY PUBLIC
My Commission Expires 6-1-2019
Notary Public for South Carolina
My Commission Expires 6-1-16


A. BRUCE GREEN

STATE OF SOUTH CAROLINA)

COUNTY OF SALUDA)

IN THE COURT OF COMMON PLEAS

Stephen Wilkinson, as Trustee of)
George B. Buchanan, Jr.)
Irrevocable Family Trust dated the)
15th day of July, 2001,)

Plaintiff,)

vs.)

Redd Green Investments, LLC,)
Anderson North Augusta, LLC,)
Herbert Anderson, Jr., A. Bruce)
Green, William Otha Bodie,)
Herbert Keith Anderson, and L.)
Cliff Redd,)

Defendants.)

Case No. 2015-CP-41-172

MOTION TO DISMISS

CLERK OF COURT
SALUDA CO. S.C.

2017 MAR -1 AM 11:09

FILED

Plaintiff Stephen Wilkinson, as Trustee of George B. Buchanan, Jr. Irrevocable Family Trust dated the 15th day of July, 2001 ("Plaintiff" or "Trust") hereby moves for an order dismissing the cross-claims of Defendants pursuant to S.C. R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. The grounds for this motion are that Defendants' counterclaims are an improper collateral attack on the Master-in-Equity's foreclosure orders. This Court does not have jurisdiction to vacate or overturn the Master's foreclosure orders confirming the validity of the foreclosure sale and the deficiency judgments at issue.

PAID

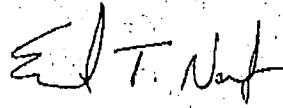
Date 3-1-17

< Signature page to follow >

SALUDA COUNTY
CLERK OF COURT

\$ 25.00

NELSON MULLINS RILEY & SCARBOROUGH LLP



By: _____

John T. Moore
SC Bar No. 004056
E-Mail: john.moore@nelsonmullins.com
Erik T. Norton
SC Bar No. 73860
E-Mail: erik.norton@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Plaintiff

Columbia, South Carolina

February 28, 2017

FILED
STATE OF SOUTH CAROLINA
COUNTY OF SALUDA
IN THE COURT OF COMMON PLEAS

CLERK OF COURT
SALUDA CO. S.C.
Case No. 2015-CP-41-172
Stephen Wilkinson, as Trustee of
George B. Buchanan, Jr.
Irrevocable Family Trust dated the
15th day of July, 2001,

Plaintiff,

vs.

Redd Green Investments, LLC,
Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce
Green, William Otha Bodie,
Herbert Keith Anderson, and L.
Cliff Redd,

Defendants.

**PLAINTIFFS' MEMORANDUM IN
SUPPORT OF MOTION TO DISMISS
COUNTERCLAIMS**

Plaintiff Stephen Wilkinson, as Trustee of George B. Buchanan, Jr. Irrevocable Family Trust dated the 15th day of July, 2001 ("Plaintiff" or "Trust") hereby submits this memorandum in support of his motion for an order dismissing the counterclaims of Defendants pursuant to S.C.R. Civ. P. 12(b)(1) for lack of subject matter jurisdiction. The grounds for the motion are that Defendants' counterclaims are an improper collateral attack on the Master-in-Equity's foreclosure orders. This Court does not have jurisdiction to vacate or overturn the Master's foreclosure orders confirming the validity of the foreclosure sale and the deficiency judgments at issue.

BACKGROUND

This matter was instituted as an action to collect a deficiency judgment from the Defendant guarantors following a foreclosure sale. Initially, Plaintiff sued Springs North Augusta, LLC ("Borrower") seeking to foreclose on certain real property and establish a deficiency. The Master in Equity entered his Order and Judgment of Foreclosure on August 14, 2012 ("Foreclosure Decree"). The Final Sale was held on October 4, 2012 and the Order of Deficiency Judgment in the amount of \$2,484,163.95 was entered on October 26, 2012 ("Deficiency Order"). The Foreclosure Decree and Deficiency Order, attached here as *Exhibit A*, were not appealed.

On March 5, 2013, the instant action was filed seeking collection against the Defendant guarantors, which controlled the borrower LLC. The Defendants counterclaimed, asserting causes of action for civil conspiracy, constructive fraud, and fraud and deceit. The gravamen of each of these claims was that the Plaintiff in this action, through an affiliated company, "deceived the Court in the foreclosure process." *See, e.g.,* Answer and Counterclaim of Defendants Redd Green Investments, LLC, A. Bruce Green and L. Cliff Redd ¶ 20.

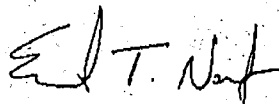
ARGUMENT

Under South Carolina law, an order for the sale of real estate is not open to collateral attack where the court has jurisdiction. *See Gates v. Irick*, 2 Rich. 593 (1846); *see also* 60 C.J.S. Motions and Orders § 78 (order entered by court having jurisdiction is not subject to collateral attack). Here, no question exists as to the jurisdiction of the Master to order the sale of the property, enter the foreclosure decree and establish the deficiency as to the borrower. Defendants, guarantors of the borrower, now seek to attack the orders of the Master where the

borrower, which the guarantors controlled, failed to do so. Such an effort is an impermissible attack on the Master's orders and should not be allowed by this Court.

Even if the orders of the Master could be collaterally attacked, South Carolina appellate courts have held that guarantors do not have standing to assert such claims. *See Prof'l Bankers Corp. v. Floyd*, 285 S.C. 607, 612, 331 S.E.2d 362, 364-65 (Ct. App. 1985). Instead, it is the borrower's obligation to challenge such orders through the foreclosure process, including appeals, because the borrower, not defendant guarantors, is in privity of contract with the Plaintiff. *Id.* Guarantors, on the other hand, have no standing to assert such claims and are not permitted to raise them either before the Master or in subsequent proceedings, such as the instant action. The counterclaims in this action therefore should be dismissed.

NELSON MULLINS RILEY & SCARBOROUGH LLP



By: _____

John T. Moore
SC Bar No. 004056
E-Mail: john.moore@nelsonmullins.com
Erik T. Norton
SC Bar No. 73860
E-Mail: erik.norton@nelsonmullins.com
1320 Main Street / 17th Floor
Post Office Box 11070 (29211-1070)
Columbia, SC 29201
(803) 799-2000

Attorneys for Plaintiff

Columbia, South Carolina
April 27, 2017.

EXHIBIT A

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON
PLEAS

Second Judicial Circuit

Harry P. Sakellaris, as Trustee of the George B.
Buchanan, Jr. Irrevocable Family Trust, dated the
15th Day of July, 2001

Case Number: 2012CP0200173

Plaintiff/s,

MASTER'S REPORT ON SALE

-vs-
Springs North Augusta, LLC

Defendant/s

1. Pursuant to Order of Court and after due notice and advertisement, the undersigned
Master in Equity sold the property described therein to:

(X) The highest bidder on Sales Day, October 4, 2012, for the sum of \$7,160,000.00. The
bidder thereafter complied with the bid, as provided in said Order and assigned the
bid to: **Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr.
Irrevocable Family Trust, dated the 15th Day of July, 2001.**

2. That I have executed and delivered to said grantee a good and sufficient deed of
conveyance of said property.

3. I have received and disbursed the costs.

FILED 20 March 20 13
L. J. Hodard
C.C.P. & G.S.
9:45 Angel Miles am
am Deputy Clerk

March 20, 2013
Aiken, SC

M. Anderson Griffith
M. Anderson Griffith
Master-in-Equity, Aiken County

ME02118

STATE OF SOUTH CAROLINA
COUNTY OF AIKEN

IN THE COURT OF COMMON
PLEAS

Second Judicial Circuit

Harry P. Sakellaris, as Trustee of the George B.
Bughanan, Jr. Irrevocable Family Trust, dated the
15th Day of July, 2001

Case Number: 2012CP0200173

Plaintiff/s,

ORDER

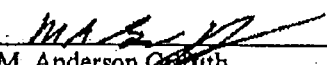
-vs-
Springs North Augusta, LLC

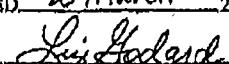
Defendant/s

ALL of the funds having been disbursed, I hereby ORDER the file closed and the case ended.

THE undersigned retains jurisdiction, however, to handle routine matters pertaining to this file not presently anticipated, including but not limited to, the preparation and/or execution of a corrective Master's Deed or Deeds; ordering the issuance of a certificate or certificates of title to mobile home(s) or other personalty; and issuing a writ of assistance. This jurisdiction is retained so that no orders opening the file and/or re-referring the case to the undersigned shall be necessary.

March 20, 2013
Aiken, SC


M. Anderson
Master-in-Equity, Aiken County

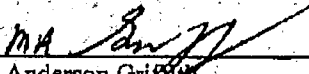
FILED 20 March 2013

L.C.C.P. & G.S.
9:45 Angel Miles am
am Deputy Clerk

ME02121

M. Anderson Griffith
Master In Equity for Aiken County
P.O. Box 1397
109 Park Avenue S.E. Room 211
Aiken, SC 29802
Phone: (803) 642-2026 Fax: (803) 643-1993

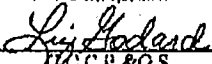
Lien of mortgage recorded in Book 4284, Page 1885, Office of the R.M.C. for Aiken County
is released, canceled, and satisfied by sale under foreclosure the October 4, 2012. See Civil
Action No. 2012CP0200173.

March 20, 2013


M. Anderson Griffith
Master In Equity for Aiken County

	Book	Page
Mortgage from Springs North Augusta, LLC to Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15 th Day of July, 2001	4284	1885
Modified Amendment to Mortgage and Security Agreement	4357	676

FILED 20 March 20 13


L. J. Hadard
C.C.P. & O.S.
9:45 Angel Miles am
am Deputy Clerk

MB02123

FORM 4

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

JUDGMENT IN A CIVIL CASE
CASE NUMBER 2012CP0200173

Harry P Sakellaris	George B Buchanan Jr Irrevocable Family Trust	Springs North Augusta Llc	Springs North Augusta Llc.
PLAINTIFF(S)		DEFENDANT(S)	

Submitted by:	Attorney for: ☐ Plaintiff - ☐ Defendant ☐ Self-Represented Litigant

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

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

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

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

Circuit Court Judge	Judge Code	3/20/2013
For Clerk of Court Office Use Only		Date

This judgment was entered on 20th day of March 2013, and a copy mailed first class or placed in the appropriate attorney's box on 20th day of March 2013, to attorneys of record or to parties (when appearing pro se) as follows:

Stanley H. McGuffin PO Box 11889 Columbia, SC
292111889

Copy to Master / Rmc

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

Liz Godard by Angel Miller

Liz Godard - Clerk of Court

Court Reporter

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF AIKEN

Case No. 2012-CP-02-0173 ⁸¹⁴ 12
FILED

Harry P. Sakellaris, as Trustee of the
George B. Buchanan, Jr. Irrevocable
Family Trust, dated the 15th Day of July,
2001,

Lis Pendens
DOE, et al.
Anita Knoke 1200
Deputy Clerk

Plaintiff,

vs.

MASTER IN EQUITY'S ORDER AND
JUDGMENT OF FORECLOSURE AND
SALE

Springs North Augusta, LLC,

Defendant.

I, the undersigned, Master in Equity for Aiken County, hereby find that pursuant to the Order of Default and Mandatory Order of Reference entered on April 18, 2012 in the above captioned case, a hearing was held on May 31, 2012, attended by Stanley H. McGuffin of Haynesworth Sinkler Boyd, P.A., attorneys for the Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001 ("Plaintiff") and *C. Rauch Wise, Esq. on behalf of the defendant. (MAG)* Testimony was proffered, which is herewith reported, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT

1. The Lis Pendens was filed on January 20, 2012.
2. The Civil Action Coversheet, Certificate of Exemption from May 2, 2011 Administrative Order, Certificate of Exemption from ADR, Summons and Verified Complaint with Exhibit were filed on January 20, 2012.
3. The Civil Action Coversheet, Certificate of Exemption from May 2, 2011 Administrative Order, Certificate of Exemption from ADR, Summons and Verified Complaint with Exhibit will hereinafter be collectively referred to as "Pleadings."

#1 MAG

4. Said Pleadings were served upon the defendant Springs North Augusta, LLC ("Defendant") via personal service on its registered agent, Michael W. Tighe on February 20, 2012, as evidenced by the Affidavit of Service item on file with the Court.

5. After a period of more than thirty (30) days, no notice, motion, or other pleading was filed by or on behalf Defendant and said Defendant is now, and has been, in default.

6. On April 18, 2012, the Order of Default and Mandatory Order of Reference was signed, and on April 18, 2012, it was entered by the Court, wherein the above captioned case was referred to M. Anderson Griffith, Master in Equity for Alcon County, for the purpose of taking testimony and making findings of fact and conclusions of law, and to enter a final decree of foreclosure and sale.

7. Defendant is not an individual, therefore is not entitled to protection under the Servicemembers Civil Relief Act, 50 USCS Appx. §§ 501 *et seq.* (2004). Additionally, this action involves the foreclosure of a commercial loan. The real property that is the subject of this foreclosure action is not the principal residence of the Mortgagor.

8. The Defendant was notified of the time, date, and place of the hearing in this matter.

9. Defendant made, executed, and delivered unto Plaintiff a Loan Agreement dated November 18, 2009, which was modified by the November 16, 2010 Amendment to Loan Agreement (collectively "Loan Agreement").

10. Pursuant to the terms of the Loan Agreement and for valuable consideration given, on or about November 18, 2009, Defendant executed and delivered to Plaintiff a promissory note in the original principal amount of Seven Million Five Hundred Ninety Thousand and 00/100 (\$7,590,000.00) Dollars, which was modified by November 16, 2010 Modification to Promissory Note in the amount of Eight Million Seven Hundred Twenty Eight Thousand Five Hundred and 00/100 (\$8,728,500.00) Dollars (collectively "Note").

11. To secure the repayment of the Note, and the debt evidenced thereby, Defendant made, executed, and delivered to Plaintiff, a certain Mortgage and Security Agreement dated November 18, 2009, whereby, Defendant mortgaged to Plaintiff the real property described in the Mortgage. The Mortgage was recorded on November 18, 2009, in the Office of the Register of Mesne Conveyance for Aiken County in Book RB 4284 at Page 1885. Said Mortgage was modified by November 16, 2010 Amendment to Mortgage and Security Agreement recorded on May 13, 2011 in Book RB 4357 at Page 676. The Mortgage and Security Agreement and November 16, 2010 Amendment to Mortgage and Security Agreement are collectively referred to herein as the "Mortgage."

12. A portion of the property originally encumbered by the Mortgage has been conveyed to the City of North Augusta and was released by the Mortgage subsequent to the filing of this action and is further described in Exhibit A-1 to the order.

13. As additional and further security for the Note and the debt evidenced thereby, Defendant executed and delivered to Plaintiff an Assignment of Leases, Rents and Profits dated November 18, 2009 whereby Defendant did, among other terms, assign, grant a security interest in and convey to Plaintiff all of Defendant's present and future rights, interest, and estates in and to the leases, agreements, rental agreements, property management agreements, rents, rentals, monies, awards, revenues, profits, royalties, rights and benefits ("Rents") from the Mortgaged Property. The Assignment of Rents was recorded on November 18, 2009 in the Office of the Register of Mesne Conveyance for Aiken County in Book RB 4284 at Page 1920. Said Assignment of Leases, Rents and Profits was modified by November 16, 2010 Amendment to Assignment of Leases, Rents and Profits recorded on May 13, 2011 in Book RB 4357 at Page 679. The Assignment of Leases, Rents and Profits and November 16, 2010 Amendment to Assignment of Leases, Rents and Profits are collectively referred to herein as the "Assignment of Rents."

14. The Loan Agreement, Note, Mortgage and Assignment of Rents will be collectively referred to herein as the "Loan Documents."

15. Defendant is the legal owner of the Mortgaged Property.

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

17. Defendant is in default under the terms of the Loan Documents by reason, among others, of its failure to make payments when due.

18. Payments due under the Loan Documents have not been made as provided for therein, and Plaintiff, as the holder thereof, elected to require immediate payment of the entire amounts due thereon and placed the Loan Documents in the hands of attorneys for collection.

19. The amount due and owing on the Loan Documents, with interest at the rate provided in the Note, and other costs and expenses of collection, including attorneys' fees, secured by the Loan Documents, as of May 31, 2012, are as follows:

(a) Principal Balance	\$ 8,728,500.00
(b) Accrued Interest	\$ 703,062.74
Total amount due on Note and Mortgage	\$ 9,431,562.74
(c) Filing, service, motion, and other fees	\$ 976.76
(d) Referral Fee	\$ <u>125.00</u>
Total Balance on Loan Documents	\$ 9,432,662.50
(e) Legal Fees	\$ <u>18,000.00</u>
Total debt secured by the Loan Documents including interest to date shown	\$ 9,450,662.50

Interest continues to accrue on the default rate of 15% *per annum* (which is currently \$3,587.05 *per diem*) from May 31, 2012; until judgment and at the judgment rate thereafter until paid.

20. Plaintiff is seeking foreclosure of its Mortgage.

21. Because this foreclosure action involves a mortgage on commercial property, the Home Affordable Modification Program is inapplicable. Additionally, the commercial property securing the Mortgage is not Mortgagor's principal residence.

CONCLUSIONS OF LAW

I, therefore, conclude that the subject Mortgage is not subject to modification under the Home Affordable Modification Program or subject to the Supreme Court's Administrative Order dated May 2, 2011, that the Plaintiff should have judgment of foreclosure of its Mortgage, and the Mortgaged Property should be ordered sold at public auction after due advertisement, and that a personal or deficiency judgment against Defendant with a credit against the judgment to be given for the net proceeds received by the Plaintiff for the sale, shall be entered upon the judgment rolls for Aiken County.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. The subject foreclosure action involves a mortgage on commercial property and the Home Affordable Modification Program is inapplicable. This action involves the foreclosure of a commercial loan that is secured by a lien on commercial real estate that is not the principal residence of the Mortgagor.

2. The Mortgage constitutes a valid first lien on the subject property.

3. That there is due to the Plaintiff on its Loan Documents, as set forth in the Verified Complaint the sum \$9,450,662.50 as of May 18, 2012, and Plaintiff is entitled to a personal judgment against *Springs North Augusta, LLC (MAG)* ~~Low Country~~ for said amount.

4. The amount due in the preceding paragraph shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter at the default rate of 15% *per annum* (which is currently \$3,587.05 *per diem*) from May 31, 2012; until the date of the entry of judgment and at the judgment rate thereafter. Further, to the extent Plaintiff advances money for insurance or

other expenses to preserve the property after May 31, 2012, such advances may be added to the total judgment debt.

5. Defendant is liable for the aforesaid debt, and shall on or before the date of sale of the property hereinafter described, may pay to the Plaintiff's attorneys, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

6. On default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint and hereafter set forth, be sold by the Aiken County Master in Equity or his agent, at public auction, at the Aiken County Courthouse, Aiken, South Carolina, County and State aforesaid, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the day designated by the selling officer succeeding such holiday), on the following terms, that is to say:

The sale shall be for cash, and the highest bidder shall be required to make a cash deposit of five (5%) percent on the bid as earnest money and as evidence of good faith. If the Plaintiff is the successful bidder at the sale, the Plaintiff may, after paying the costs of the sale, apply the debt due upon its Mortgage against its bid in lieu of cash. Should the person making the highest bid at the sale fail to comply with the terms of his bid by depositing the said five (5%) percent in cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the selling officer may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of his bid within thirty (30) days of the final acceptance of his bid, then the selling officer shall re-advertise and resell the property on the same terms on a subsequent date at the risk of such bidder. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of their bids in cash as prescribed above. The Aiken Master in Equity or his designated representative, shall promptly return all deposits except the deposit securing the highest bid. The sale shall be subject to taxes, to existing easements and restrictions, and to homeowners association assessments accruing subsequent to the date of the deed/title issued to the purchaser. Purchaser shall pay all costs of recording the deed.

7. Plaintiff is seeking foreclosure of the Mortgage and does not waive the right to a personal or deficiency judgment against Defendant, with a credit against the judgment to be

given for the net proceeds received by Plaintiff for the sale. However, Plaintiff reserves the right to waive deficiency prior to the sale.

8. After advertisement according to law, give notice of the time and place of such sale, and the terms thereof, that the Alken County Master in Equity or his agent convey to the purchaser, or purchasers, a deed to the premises sold; and that the Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers should fail to comply with the terms thereof, the Court may advertise the said premises of sale on the next, or some other subsequent Sales Day, at the risk of the former highest bidder, and so from time to time thereafter until a compliance shall be secured. The deed will be taken subject to payment by grantee of any taxes or special assessments constituting a lien against the property sold under this Report and hereinafter more fully described. Pursuant to S.C. Code §12-24-40(13), the successful bidder other than Plaintiff shall pay the cost of deed stamps on said deed.

9. The proceeds of the sale be applied as follows:

FIRST, to payment of the amount of the costs and expenses of this action, including the Master in Equity fee and the costs of advertising the Notice of Sale, and any taxable disbursements by the attorneys in the action;

SECOND, to the payment of the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, or so much thereof as the purchase money will pay on the same; and

THIRD, any surplus proceeds to be held subject to further order of this Court.

10. That upon the making of the sale of said mortgaged premises, as hereby ordered, and the execution and delivery to the purchaser of a deed to the premises, the said purchaser or purchasers be let into possession of the premises on production of the deed; and the Sheriff of Alken County shall put the holder of the deed into possession of the premises. *All valid tenant rights shall be protected. (MAG)*

11. The defendants named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

12. The undersigned Master In Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(o) SCRPC.

13. The property described on Exhibit A less and except the property described in Exhibit A-1 attached hereto is ordered to be sold.

14. If the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-referenced property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.


M. Anderson Griffith
Aiken County Master in Equity

August ~~May~~ 14, 2012
Aiken, South Carolina.

EXHIBIT A

PLAT BOOK 54 PAGE 915-903

TRACT 1: (TMS No. 022-17-01-001)

BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, CONTAINING 1,306.369 ACRES ACCORDING TO AN "ALTA/ACSM LAND TITLE SURVEY FOR SPRINGS NORTH AUGUSTA, LLC." DATED JUNE 26, 2003, LAST REVISED 10/22/09 BY SITE DESIGN, INC. WITH THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT A 5/8" REBAR IRON PIN SET LOCATED ON THE SOUTHERN RIGHT OF WAY OF ASCAUGA LAKE ROAD (S-2-33) AND THE EASTERN RIGHT OF WAY OF I-520 (PALMETTO PARKWAY), SAID IRON PIN ALSO BEING LOCATED 1412.6 FEET +/- FROM THE EASTERN RIGHT OF WAY OF U.S. HIGHWAY 25 THENCE RUNNING ALONG SAID RIGHT OF WAY OF ASCAUGA LAKE ROAD (S-2-33) AND RUNNING ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 4483.66 FEET AND A CHORD BEARING AND DISTANCE OF N 73-35-27 E, 135.67 FEET TO POINT AT THE JOINT CORNER OF HELEN EVANS, NOW OR FORMERLY, THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG SAID EVANS PROPERTY, S23-25-49E 191.43 FEET TO AN OLD 3" OPEN TOP IRON PIN AT THE JOINT CORNER OF ALEXANDER AND PATSY LARROBBE, NOW OR FORMERLY, THENCE ALONG SAID LARROBBE PROPERTY S28-09-02E, 249.47 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF LOT 7, BLOCK B, OF BARCLAY SUBDIVISION, THENCE ALONG SAID BARCLAY SUBDIVISION S58-19-45E 221.59 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 6, BLOCK B, BARCLAY SUBDIVISION, THENCE S58-32-08E, 279.90 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 5, BLOCK B, BARCLAY SUBDIVISION, THENCE S58-20-53E 790.25 FEET TO AN OLD 1/2" REBAR IRON PIN AT THE JOINT CORNER OF LOT 1, BLOCK B, BARCLAY SUBDIVISION, THENCE S58-43-42E 200.08 FEET TO AN OLD 3/4" OPEN TOP IRON PIN ON THE WESTERN RIGHT OF WAY OF BUCKHALL ROAD, THENCE ALONG THE END OF BUCKHALL ROAD AND LOT 7, BLOCK A, BARCLAY SUBDIVISION S58-33-54E, 261.42 FEET TO AN OLD 1/2" CRIMP TOP IRON PIN AT THE JOINT CORNER OF LOT 6, BLOCK A, BARCLAY SUBDIVISION, CROSSING OVER AN OLD 1" OPEN TOP IRON PIN AT 50.07, THENCE S58-18-20E, 208.63 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 5, BLOCK A, BARCLAY SUBDIVISION, THENCE S58-36-24E 210.09 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 4, BLOCK A, BARCLAY SUBDIVISION, THENCE S58-33-13E 299.97 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 3, BLOCK A, BARCLAY SUBDIVISION, THENCE ALONG SAID LOT 3 AND PROPERTY OF NORMA M. FATE, NOW OR FORMERLY, S 58-27-56 E 952.94 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N09-47-08 W 446.47 FEET TO A POINT IN TREE NEAR THE RIGHT OF WAY OF BLANCHARD ROAD, CROSSING OVER A REFERENCE 5/8" REBAR IRON PIN SET ON LINE AT 445.16 FEET, THENCE S53-45-32E 142.86 FEET TO AN OLD 2" OPEN TOP IRON PIN AT THE JOINT CORNER OF LOT 1, RIPPLERIDGE SUBDIVISION, THENCE ALONG SAID LOT 1 S09-55-18E 423.07 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE ALONG LOT 1, LOT 2, LOT 3, LOT 4, LOT 5, LOT 6, LOT 7 AND PART OF LOT 8 OF RIPPLERIDGE SUBDIVISION THE

FOLLOWING METES AND BOUNDS: S61-23-01E 186.72 FEET TO A 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 3, THENCE S61-23-12E 159.86 FEET TO AN OLD 5/8" REBAR AT THE JOINT CORNER OF LOT 4, THENCE S60-47-56E 158.24 FEET TO AN OLD 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 5, THENCE S61-58-19E 156.91 FEET TO AN OLD 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 6, THENCE S61-24-05E 155.23 FEET TO AN OLD 1/2" STEEL ROD AT THE JOINT CORNER OF LOT 7, THENCE S61-24-15E 153.93 FEET TO AN OLD 5/8" STEEL ROD AT THE JOINT CORNER OF LOT 8, THENCE S61-28-23E 102.98 FEET TO AN OLD 3" OPEN TOP IRON PIN AT THE JOINT CORNER OF EDWARD K. & JUNE B. CARTER, NOW OR FORMERLY, THENCE ALONG SAID CARTER PROPERTY S30-48-30W 523.66 FEET TO AN OLD 1" OPEN TOP IRON PIN, THENCE S56-37-45E 71.77 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF PHILLIP L. & ALISA T. SOLESBEE, NOW OR FORMERLY, THENCE ALONG SAID SOLESBEE PROPERTY S56-37-05E 295.82 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF FAY ELLA BROCK BRYANT, NOW OR FORMERLY, THENCE ALONG SAID BRYANT PROPERTY AND PROPERTY OF EDWARD H. WOOD, NOW OR FORMERLY, AND PROPERTY OF AUSTIN R. TAYLOR, JR., NOW OR FORMERLY, S56-39-12E 433.14 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF FAY ELLA BROCK BRYANT, THENCE S56-36-54E 144.85 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF PHILLIP C. MALCOM & SUSAN H. MALCOM, NOW OR FORMERLY, THENCE ALONG SAID MALCOM PROPERTY, S56-39-04E 59.88 FEET TO AN OLD 3" AXLE AT THE JOINT CORNER OF RONALD W. & BECKY B. ALLEN, THENCE ALONG SAID ALLEN PROPERTY S25-06-34E 891.44 FEET TO AN OLD 3" OPEN TOP IRON PIN, THENCE S70-07-10E 419.10 FEET TO AN OLD ANGLE IRON AT THE JOINT CORNER OF MAURICE SAMUAL, ETAL, NOW OR FORMERLY, THENCE ALONG SAID SAMUAL PROPERTY S69-53-40E, 842.45 FEET TO AN OLD 3" OPEN TOP IRON PIN AT THE JOINT CORNER OF ELBERT J. GRINER, NOW OR FORMERLY, THENCE ALONG SAID GRINER PROPERTY S69-24-03E 462.55 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF MARGARET B. BROWN, NOW OR FORMERLY, THENCE ALONG SAID BROWN PROPERTY S69-14-04E, 146.11 FEET TO AN OLD 2" OPEN TOP IRON PIN, THENCE S69-26-27E, 254.68 FEET TO AN OLD 1" OPEN TOP IRON PIN, THENCE S69-21-24E 387.32 FEET TO AN OLD 1" SQUARE ROD AT THE JOINT CORNER OF CALVIN D. & GEORGIA D. THOMASON, NOW OR FORMERLY, THENCE ALONG SAID THOMASON PROPERTY, S69-27-06E 243.56 FEET TO OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF ARTHUR & IRENE ABRAHAM, NOW OR FORMERLY, THENCE ALONG SAID ABRAHAM PROPERTY S21-05-40W, 473.68 FEET TO AN OLD AXLE, THENCE ALONG SAID ABRAHAM PROPERTY AND PROPERTY OF IRENE ABRAHAM MAYE, NOW OR FORMERLY, S69-11-10E 479.37 FEET TO AN OLD 1/2" REBAR IRON PIN AT THE JOINT CORNER OF ERIC & DEMETRIA HOLLOWAY, NOW OR FORMERLY, THENCE ALONG SAID HOLLOWAY PROPERTY S69-26-07E 104.76 FEET TO AN OLD 1/2" REBAR IRON PIN AT THE JOINT CORNER OF ARTHUR AND CARRIE ABRAHAM, NOW OR FORMERLY, THENCE ALONG SAID ABRAHAM PROPERTY S69-14-18E 103.81 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF JAMES ABRAHAM, NOW OR FORMERLY, THENCE ALONG SAID ABRAHAM PROPERTY S69-16-09E 233.10 FEET TO A POINT IN THE CENTER OF OLD SUDLOW LAKE ROAD (S-2-1760), CROSSING

OVER AN OLD 1" OPEN TOP IRON PIN AT 211.81 FEET, THENCE DOWN THE CENTER OF SAID OLD SUDLOW LAKE ROAD THE FOLLOWING METES AND BOUNDS TO WIT: S12-12-35W, 1347.60 FEET TO A POINT, THENCE ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 1914.63 FEET AND A CHORD OF S18-39-41W 496.18 FEET TO A POINT, THENCE S28-39-51W 626.68 FEET TO A POINT, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 1147.18 FEET AND A CHORD OF S18-21-21W 492.20 FEET TO A POINT, THENCE S03-29-39W 299.73 FEET TO A POINT IN THE CENTER OF THE BRIDGE OVER ELLEN HAWKINS BRANCH AT THE JOINT CORNER OF HENRY & ELIZABETH THOMPSON, NOW OR FORMERLY, THENCE ALONG SAID THOMPSON PROPERTY AND ALONG A TRAVERSE LINE OF ELLEN HAWKINS BRANCH WITH THE CREEK AS THE LINE, S73-12-28E 62.28 FEET TO A POINT, CROSSING OVER AN OLD 1/2" REBAR IRON PIN AT 34.12 FEET, THENCE N68-08-02E 91.23 FEET TO A POINT, THENCE S78-09-25E 129.79 FEET TO A POINT, THENCE S66-12-17E 99.09 FEET TO A POINT IN THE PROPERTY LINE OF PRINCE A. WARE, NOW OR FORMERLY, THENCE ALONG SAID WARE PROPERTY S17-40-41W 92.25 FEET TO AN OLD AXLE, THENCE CONTINUING ALONG SAID WARE PROPERTY AND PROPERTY OF PRINCE A. WARE & SARAH REEVES, NOW OR FORMERLY, S71-09-56E 441.83 FEET TO A POINT AT THE JOINT CORNER OF HERMAN JACKSON, ETAL, NOW OR FORMERLY, THENCE ALONG SAID JACKSON PROPERTY S73-38-36E 159.38 FEET TO AN OLD FENCE POST AT THE JOINT CORNER OF JAMES & MARY WARE, NOW OR FORMERLY, THENCE ALONG SAID WARE PROPERTY S71-31-21E 135.07 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF JUANITA HAZEL BUTLER, NOW OR FORMERLY, THENCE ALONG SAID BUTLER PROPERTY S70-27-29E 148.62 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF JAMES & MARY WARE, NOW OR FORMERLY, THENCE ALONG SAID WARE PROPERTY S73-10-02E 214.86 FEET TO A POINT IN ELLEN HAWKINS BRANCH AT THE JOINT CORNER OF JOHN & RUTH MORRIS, NOW OR FORMERLY, THENCE ALONG SAID MORRIS PROPERTY S26-18-56W 504.22 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE JOINT CORNER OF DON & JUDITH KING, NOW OR FORMERLY, CROSSING OVER OTHER OLD 1" OPEN TOP IRON PINS AT 196.44 FEET AND 314.50 FEET, THENCE S26-19-26W, 913.36 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER JOYCE & JACK GREGORY, NOW OR FORMERLY, THENCE ALONG SAID GREGORY PROPERTY S30-30-02W 1830.42 FEET TO AN OLD 1/2" STEEL ROD, THENCE S30-29-15W, 260.32 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF JAMES & GWENDOLYN MCKINNEY, THENCE ALONG SAID MCKINNEY PROPERTY AND THE WESTERN RIGHT OF WAY OF PATRICIA DRIVE S19-34-10W 1098.80 FEET TO AN OLD CONCRETE MONUMENT, THENCE CONTINUING ALONG THE SAID WESTERN RIGHT OF WAY S19-56-17W 379.71 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF LOT 4, BLOCK K, BELCLEAR HEIGHTS, THENCE ALONG SAID LOT 4 N 34-53-41 W 28.39 FEET TO THE JOINT CORNER OF MARK E. & DALE C. HETT PROPERTY, NOW OR FORMERLY, THENCE ALONG SAID HETT PROPERTY AND OTHER PROPERTY OF HETT, NOW OR FORMERLY, PROPERTIES OF SAM B. & REBECCA A. CHERLY, NOW OR FORMERLY, PROPERTY OF JOHN L. CRESON, NOW OR FORMERLY, PROPERTIES OF JAMES B. & VICKI REESE, NOW OR FORMERLY, PROPERTY OF NORA D. S. NORRIS, NOW OR FORMERLY, AND PROPERTY OF

MICHAEL & BEVERLY SEAY, NOW OR FORMERLY N38-46-20W, 2133.95 FEET TO AN OLD 1" OPEN TOP IRON PIN (BENT) AT THE JOINT CORNER OF SAID SEAY PROPERTY, CROSSING OVER AN OLD 5/8" REBAR IRON PIN AT 1757.56 FEET, THENCE CONTINUING ALONG SAID SEAY PROPERTY AND ALSO ALONG THE LINE OF PROPERTY OF JOHN B. CHRISTIAN, SR., NOW OR FORMERLY, AND PROPERTIES OF W. B. COOPER, NOW OR FORMERLY N 51-02-27 W 724.96 FEET TO A POINT ON THE LINE OF CLYDE OWENS PROPERTY, NOW OR FORMERLY; THENCE TURNING AND RUNNING ALONG THE LINE OF CLYDE OWENS PROPERTY AND ALSO ALONG THE LINE OF LOUIS OWENS PROPERTY, NOW OR FORMERLY, N 38-59-32 E 219.31 FEET TO AN OLD 1" OPEN TOP IRON PIN ON THE LINE OF DOUGLAS SWEARINGEN PROPERTY, NOW OR FORMERLY, THENCE TURNING AND RUNNING ALONG THE LINE OF THE SWEARINGEN PROPERTY S 33-08-42 E 137.75 FEET TO AN OLD CONC. MONUMENT BROKEN AT THE JOINT CORNER OF THE GEORGE G. BEASLEY PROPERTY NOW OR FORMERLY, THENCE TURNING AND RUNNING ALONG THE LINE OF THE BEASLEY PROPERTY THE FOLLOWING METES AND BOUNDS: S 57-07-49 W 96.80 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 55-19-41 E 598.21 FEET TO A POINT IN A POWER POLE, THENCE S 34-59-02 E 640.13 FEET TO AN OLD 1/2" REBAR IRON PIN, THENCE N57-03-22E 1200.28 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N40-15-00W 1200.90 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N33-02-28W 437.31 FEET TO A POINT IN THE CENTER OF OLD SUDLOW LAKE ROAD, CROSSING OVER AN OLD 5/8" REBAR IRON PIN AT 404.77 FEET, THENCE ALONG THE CENTER OF SAID ROAD N56-02-55E 108.96 FEET TO A POINT, THENCE LEAVING THE CENTER OF SAID ROAD AND RUNNING ALONG PROPERTY OF JERRY DUNCAN, NOW OR FORMERLY, N19-18-00W 427.28 FEET TO AN OLD 3/4" CRIMP TOP IRON PIN, CROSSING OVER AN OLD 3/4" OPEN TOP IRON PIN AT 33.69 FEET, THENCE S57-36-26W 204.77 FEET TO AN OLD 1.25" OPEN TOP IRON PIN, THENCE S18-48-20E 400.86 FEET TO A NEW 5/8" REBAR IRON PIN ON THE WESTERN RIGHT OF WAY OF OLD SUDLOW LAKE ROAD, THENCE ALONG SAID WESTERN RIGHT OF WAY S56-38-53W 40.34 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF BERT & SHERRIE HAWKINS, NOW OR FORMERLY, THENCE ALONG SAID HAWKINS PROPERTY N18-44-55W 401.51 FEET TO AN OLD 1.25" OPEN TOP IRON PIN, THENCE S57-33-28W 199.89 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF ROBERT AND DIANNE HARRELL, NOW OR FORMERLY, THENCE ALONG SAID HARRELL PROPERTY S57-34-44W 199.89 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF SHIRLEY A. SMITH, NOW OR FORMERLY, THENCE ALONG SAID SMITH PROPERTY S57-34-31W 200.02 FEET TO AN OLD 1/2" OPEN TOP AT AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF RICHARD & SANDRA STUART, NOW OR FORMERLY, THENCE ALONG SAID STUART PROPERTY S57-34-07W, 294.71 FEET TO AN OLD 1.5" OPEN TOP IRON PIN AT THE JOINT CORNER OF ROGER D. ADERHOLDT, NOW OR FORMERLY, THENCE ALONG SAID ADERHOLDT PROPERTY, S57-35-01W 169.70 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE S60-33-30W 254.99 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT THE JOINT CORNER OF TERESA N. CHASE, NOW OR FORMERLY, THENCE ALONG SAID CHASE PROPERTY S60-37-02W 234.30 FEET TO AN OLD 3/4" OPEN TOP IRON PIN ON THE NORTHERN RIGHT OF WAY OF RIDGELAND ROAD.

THENCE CROSSING OVER RIDGELAND ROAD S60-25-43W 30.46 FEET TO AN OLD 3/4" CRIMP TOP IRON PIN AT THE JOINT CORNER OF JUDY B. HALL, NOW OR FORMERLY, THENCE ALONG SAID HALL PROPERTY AND THE SOUTHERN RIGHT OF WAY OF RIDGELAND ROAD, N17-08-49W 122.86 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE LEAVING SAID RIDGELAND ROAD AND CONTINUING ALONG SAID HALL PROPERTY S60-02-25W 367.65 FEET TO AN OLD 1.5" CRIMP TOP IRON PIN, THENCE S19-46-22E 121.79 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF T. WARREN GRIFFIN, NOW OR FORMERLY, THENCE ALONG SAID GRIFFIN PROPERTY AND PROPERTY OF MARCIA H. FOREMAN AND LARRY & TAMMY HENDRIX, NOW OR FORMERLY, S19-38-14E 443.32 FEET TO A POINT IN THE CENTER OF OLD SUDLOW LAKE ROAD, CROSSING OVER AN OLD 1/2" REBAR IRON PIN AT 409.77 FEET, THENCE ALONG SAID CENTERLINE AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 520.45 FEET AND A CHORD OF S86-40-21W 320.14 FEET TO A POINT, THENCE N74-08-32W 167.49 FEET TO A POINT, THENCE LEAVING SAID CENTERLINE AND RUNNING ALONG PROPERTY OF JAMES E. RAWL, SR, NOW OR FORMERLY, N41-26-23E 364.36 FEET TO AN OLD 5/8" REBAR IRON PIN, CROSSING OVER AN OLD 3/4" OPEN TOP IRON PIN AT 51.53 FEET, THENCE ALONG SAID RAWL PROPERTY AND PROPERTY OF DOUGLAS & ADA LOPER, NOW OR FORMERLY, N51-39-11W 515.86 FEET TO AN OLD 1" OPEN TOP IRON PIN, THENCE CONTINUING ALONG SAID LOPER PROPERTY, S46-29-01W 562.29 FEET TO A 5/8" REBAR IRON PIN SET ON THE NORTHERN RIGHT OF WAY OF CLEARWATER ROAD (S.C. HWY. 126) THENCE ALONG SAID NORTHERN RIGHT OF WAY N51-11-46W 181.08 FEET TO A 5/8" REBAR IRON PIN SET THE JOINT CORNER OF CECIL T. LASTER, NOW OR FORMERLY, THENCE ALONG SAID LASTER PROPERTY N38-57-26E 1029.95 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE N51-24-16W 208.78 FEET TO AN OLD 5/8" REBAR IRON PIN AT THE JOINT CORNER OF JAMES L. ROWLEY, NOW OR FORMERLY, THENCE ALONG SAID ROWLEY PROPERTY N49-32-12W 202.58 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF CAROLYN D. ROWLEY, NOW OR FORMERLY, THENCE ALONG SAID ROWLEY PROPERTY N52-59-14W 218.41 FEET TO AN OLD CONCRETE MONUMENT AT THE JOINT CORNER OF ANDREW & ANNE MARTIN, NOW OR FORMERLY, THENCE ALONG SAID MARTIN PROPERTY N51-02-01W 210.36 FEET TO AN OLD CONCRETE MONUMENT, THENCE N49-27-28W 220.65 FEET TO AN OLD 1.5" OPEN TOP IRON PIN, THENCE S38-29-39W 855.33 FEET TO A 5/8" REBAR IRON PIN SET ON THE NORTHERN RIGHT OF WAY OF CLEARWATER ROAD (S.C. HWY. 126) AND THE NEW RIGHT OF WAY OF I-520 (PALMETTO PARKWAY) THENCE ALONG SAID NEW RIGHT OF WAY N46-17-55W 92.13 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF THE KELLOGG CORPORATION, NOW OR FORMERLY, THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG SAID KELLOGG PROPERTY N35-15-13E 1043.58 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N11-21-01W 874.34 FEET TO AN OLD 1" CRIMP TOP IRON PIN, THENCE N39-32-09W 896.27 FEET TO A NEW 5/8" REBAR IRON PIN LOCATED ON THE EASTERN RIGHT OF WAY OF I-520 (PALMETTO PARKWAY), THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY AND ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10390.01 FEET AND A CHORD BEARING AND DISTANCE OF N03-56-49W 589.86 FEET TO A 5/8" REBAR IRON PIN SET, THENCE STILL ALONG SAID RIGHT OF WAY

THE FOLLOWING COURSES AND DISTANCES N17-33-54W 681.96 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N19-04-01W 976.97 FEET TO A 5/8" REBAR IRON PIN SET, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10150.00 FEET AND A CHORD BEARING AND DISTANCE OF N16-27-36W 608.91 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N11-14-13W 514.81 FEET TO A 5/8" REBAR IRON PIN SET, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10225.00 FEET AND A CHORD BEARING AND DISTANCE OF N21-53-24W 302.08 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N19-46-00W 1404.69 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N27-13-48E 348.31 FEET TO A 5/8" REBAR IRON PIN SET, THENCE S73-33-10E 111.00 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N16-32-01E 99.56 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N73-27-59W 98.10 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N08-17-50E 407.78 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N06-11-29W 624.52 FEET TO A 5/8" REBAR IRON PIN SET, THENCE S83-48-31W 95.51 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N87-30-54W 311.57 FEET TO A 5/8" REBAR IRON PIN SET, THENCE S88-14-18W 142.43 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N03-19-13E 571.33 FEET TO A 5/8" REBAR IRON PIN SET, THENCE ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10387.74 FEET AND A CHORD BEARING AND DISTANCE OF N03-30-33W 293.11 FEET TO A 5/8" REBAR IRON PIN SET, THENCE N07-45-03W 695.80 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF C. T. HARRIS, INC. PROPERTY NOW OR FORMERLY, THENCE TURNING AND LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE LINE OF C. T. HARRIS, INC. PROPERTY N56-04-55E 156.60 FEET TO AN OLD 1/2" REBAR IRON PIN BENT, THENCE TURNING AND RUNNING N21-24-02W 351.33 FEET TO A 5/8" REBAR IRON PIN SET LOCATED ON THE EASTERN RIGHT OF WAY OF I-520 (PALMETTO PARKWAY), THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY AND ALONG A CURVE TO THE RIGHT WITH A RADIUS OF 10320.36 FEET AND A CHORD BEARING AND DISTANCE OF N03-58-20E 169.79 FEET TO THE POINT OF BEGINNING.

LESS AND EXCEPT:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, WITH IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA AND DESCRIBED AS A UTILITY SITE, CONSISTING OF 5,576 SQ.FT. OR 0.13 ACRES, AS SHOWN ON A SURVEY PREPARED FOR THE CITY OF NORTH AUGUSTA BY B.P. BARBER & ASSOCIATES, INC., DATED NOVEMBER 30, 2001, REVISED MARCH 28, 2006, AS RECORDED IN THE OFFICE OF THE ROD FOR AIKEN COUNTY, SC IN PLAT BOOK 54 AT PAGE 435.

TRACT 2: (TMS No. 011-11-02-001)

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND SITUATE, LYING AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, CONTAINING 20.668 ACRES ACCORDING TO AN "ALTA/ACSM LAND TITLE SURVEY FOR SPRINGS NORTH AUGUSTA, LLC.", DATED JUNE 6, 2005, LAST REVISED 10/22/09 BY SITE DESIGN, INC. WITH THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT A 5/8" REBAR IRON PIN SET LOCATED ON THE WESTERN RIGHT OF WAY INTERSTATE I-520 (PALMETTO PARKWAY) AT THE JOINT CORNER OF JOHN L. & LARRY MURRAY, SAID IRON PIN BEING 711.1 FEET +/- SOUTH OF THE INTERSECTION OF THE SOUTHERN RIGHT OF WAY OF ASCAUGA LAKE ROAD; THENCE RUNNING ALONG SAID WESTERN RIGHT OF WAY AND ALONG A CURVE TO THE LEFT WITH A RADIUS OF 10637.41 FEET, AN ARC LENGTH OF 1274.52 FEET AND A CHORD BEARING AND DISTANCE OF S 03-41-38 E 1273.76 FEET TO A 5/8" REBAR IRON PIN SET; THENCE TURNING AND RUNNING ALONG A NORTHERN RIGHT OF WAY FOR SAID INTERSTATE I-520 THE FOLLOWING COURSES AND DISTANCES: S 83-48-32 W 156.16 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 658.83 FEET, AN ARC LENGTH OF 127.61 FEET AND A CHORD BEARING AND DISTANCE OF S 89-21-28 W 127.41 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 66-29-10 W 94.73 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 708.83 FEET, AN ARC LENGTH OF 295.27 FEET AND A CHORD BEARING AND DISTANCE OF N 66-24-34 W 293.14 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 535-31-28 W 20.00 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 728.83 FEET, AN ARC LENGTH OF 73.51 FEET AND A CHORD BEARING AND DISTANCE OF N 51-35-10 W 73.48 FEET TO A 5/8" REBAR IRON PIN SET; THENCE N 48-41-48 W 310.79 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 41-18-12 W 50.00 FEET TO A 5/8" REBAR IRON PIN SET; THENCE N 48-41-48 W 249.64 FEET TO A 5/8" REBAR IRON PIN SET; THENCE TURNING AND RUNNING N 14-22-53 W 39.26 FEET TO A 5/8" REBAR IRON PIN SET ON THE EASTERN RIGHT OF WAY OF A FUTURE ROAD; THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY N 08-19-07 E 52.23 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 125.00 FEET AND A CHORD BEARING AND DISTANCE OF N 28-02-06 E 57.38 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF ADAMS BROS. PROPERTY, LLC, NOW OR FORMERLY; THENCE TURNING AND LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE LINE OF SAID ADAMS BROS. PROPERTY, LLC PROPERTY AND ALSO ALONG THE LINE OF JOHN L. MURRAY, JR. PROPERTY, NOW OR FORMERLY N 36-14-07 E 575.54 FEET TO AN OLD CONC. MONUMENT AT THE JOINT CORNER OF JOHN L. & LARRY MURRAY PROPERTY, NOW OR FORMERLY; THENCE TURNING AND RUNNING ALONG THE LINE OF SAID MURRAY PROPERTY N 55-49-56 E 615.83 FEET TO AN OLD 1" OPEN TOP IRON PIN; THENCE TURNING AND RUNNING N 55-48-56 E 77.99 FEET TO THE POINT OF BEGINNING.

TRACT 3: (TMS No. 011-10-07-008)

ALL THAT CERTAIN PIECE, PARCEL OR LOT OF LAND, LYING, SITUATE, AND BEING IN THE COUNTY OF AJKEN, STATE OF SOUTH CAROLINA, CONTAINING 92.977 ACRES ACCORDING TO AN "ALTA/ACSM LAND TITLE SURVEY FOR SPRINGOS NORTH AUGUSTA, LLC." DATED JUNE 6, 2005, LAST REVISED 10/22/09 BY SITE DESIGN, INC. WITH THE FOLLOWING METES AND BOUNDS TO WIT:

BEGINNING AT AN OLD 2" OPEN TOP IRON PIN ON THE EASTERN RIGHT OF WAY OF U.S. HWY 25 AT THE JOINT CORNER OF RAYMOND D. TIMMERMAN, NOW OR FORMERLY, SAID OLD IRON PIN ALSO BEING S 04-09-10 W 139.98 FEET FROM THE CL-CL INTERSECTION OF US HWY. 25 AND PINECREST ROAD; THENCE ALONG SAID EASTERN RIGHT OF WAY AND ALONG A CURVE TO THE RIGHT HAVING A RADIUS OF 2242.40 FEET AND A CHORD OF N 27-18-37 E 729.67 FEET TO AN OLD 1/2" OPEN TOP IRON PIN AT THE JOINT CORNER OF HAROLD R. & BETTY J. HAMMETT, NOW OR FORMERLY, THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE JOINT PROPERTY LINE OF SAID HAMMETT PROPERTY, S67-22-37E, 171.64 FEET TO AN OLD 3/4" CRIMP TOP IRON PIN, THENCE N16-04-42E, 154.34 FEET TO AN OLD RAILROAD SPIKE IN THE CENTER OF AN OLD ROAD BED IN THE PROPERTY LINE OF REBECCA BENNETT, NOW OR FORMERLY, THENCE ALONG SAID BENNETT PROPERTY AND OTHER PROPERTY OF JOE O. EDWINS, NOW OR FORMERLY, N87-24-20E, 769.54 FEET TO AN OLD 5/8" REBAR IRON PIN AT THE JOINT CORNER OF JOE O. EDWINS, ETAL, NOW OR FORMERLY, THENCE ALONG SAID EDWINS PROPERTY N87-47-14E 604.21 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N14-23-00W 424.51 FEET TO A 5/8" REBAR IRON PIN SET ON THE SOUTHERN RIGHT OF WAY OF INTERSTATE I-520 (PALMETTO PARKWAY), THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES AND DISTANCES: S 39-47-08 E 386.70 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 1013.83 FEET, AN ARC LENGTH OF 401.07 FEET AND A CHORD BEARING AND DISTANCE OF S 64-21-50 E 398.46 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 43-53-58 E 83.67 FEET TO A 5/8" REBAR IRON PIN SET ALONG THE WESTERN RIGHT OF WAY OF INTERSTATE I-520 (PALMETTO PARKWAY); THENCE TURNING AND RUNNING ALONG SAID RIGHT OF WAY THE FOLLOWING COURSES AND DISTANCES: S 11-17-10 E 559.05 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE LEFT HAVING A RADIUS OF 903.94 FEET, AN ARC LENGTH OF 147.91 FEET AND A CHORD BEARING AND DISTANCE OF S 35-15-20 E 147.74 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 30-12-00 E 605.96 FEET TO A 5/8" REBAR IRON PIN SET; THENCE ALONG A CURVE TO THE RIGHT HAVING RADIUS OF 1142.39 FEET, AN ARC LENGTH OF 438.65 FEET AND A CHORD BEARING AND DISTANCE OF S 28-48-59 E 435.96 FEET TO A 5/8" REBAR IRON PIN SET; THENCE S 27-43-14 E 542.17 FEET TO A 5/8" REBAR IRON PIN SET AT THE JOINT CORNER OF THE KELLOGG CORP. PROPERTY, NOW OR FORMERLY; THENCE LEAVING SAID RIGHT OF WAY AND RUNNING ALONG THE LINE OF SAID KELLOGG CORP. PROPERTY THE FOLLOWING COURSES AND DISTANCES: N 45-17-36 W 105.06 FEET TO AN OLD 1" CRIMP TOP IRON PIN; THENCE N49-46-06W 323.72 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N 69-45-14 W 394.95 FEET TO AN OLD 1" CRIMP TOP IRON PIN, THENCE N80-18-31W 280.13 FEET TO AN OLD 1" CRIMP TOP IRON PIN, THENCE S74-44-03W 804.31 FEET TO AN OLD 3/4" OPEN TOP IRON PIN, THENCE N71-34-29W 614.60 FEET TO AN OLD 1/2" STEEL ROD, THENCE N69-37-51W 302.01 FEET TO A POINT IN THE PROPERTY LINE OF LOT 1, BLOCK D, BONNIE GLEN SUBDIVISION, CROSSING OVER AN OLD 5/8" REBAR IRON PIN AT 299.20 FEET, THENCE ALONG SAID LOT 1, N17-32-47E 29.89 FEET TO AN OLD 1" OPEN TOP IRON PIN AT THE

JOINT CORNER OF LOT 2, BLOCK D, BONNIE GLEN SUBDIVISION, THENCE ALONG SAID LOT 2, N17-34-15E 95.25 FEET TO AN OLD 1" CRIMP TOP IRON PIN AT THE JOINT CORNER OF LOT 3, BLOCK D, BONNIE GLEN SUBDIVISION, THENCE ALONG SAID LOT 3, N17-43-31E 94.69 FEET TO AN OLD 3/4" OPEN TOP IRON PIN AT THE JOINT CORNER OF LEWIS BLACK, NOW OR FORMERLY, THENCE ALONG SAID BLACK PROPERTY, N17-31-29E 188.40 FEET TO AN OLD 1.25" CRIMP TOP IRON PIN AT THE JOINT CORNER OF BRUCE GARDNER PROPERTY, NOW OR FORMERLY, THENCE ALONG SAID GARDNER PROPERTY AND PROPERTY OF RAYMOND D. TIMBERMAN, NOW OR FORMERLY, N18-00-18E 199.02 FEET TO AN OLD 5/8" REBAR IRON PIN, THENCE N74-36-16W 222.22 FEET TO AN OLD 2" CRIMP TOP IRON PIN, THENCE N74-46-29W 294.15 FEET TO AN OLD 1.25" OPEN TOP IRON PIN, THENCE N74-48-47W 517.65 FEET TO THE POINT OF BEGINNING.

DERIVATION: THIS BEING THE IDENTICAL PROPERTY CONVEYED UNTO SPRINGS NORTH AUGUSTA, LLC BY DEED OF THE SPRINGS DEVELOPMENT COMPANY, LLC DATED NOVEMBER 10, 2009 AND RECORDED NOVEMBER 18, 2009 IN BOOK 4284 AT PAGE 1872, AIKEN COUNTY RECORDS.

EXHIBIT A-1

LESS AND EXCEPT:

ALL THAT CERTAIN PIECE, PARCEL OR TRACT OF LAND, WITH THE IMPROVEMENTS THEREON, SITUATE, LYING AND BEING IN THE COUNTY OF AIKEN, STATE OF SOUTH CAROLINA, AND LOCATED IN THE ASCAUGA LAKE ROAD/ I-520 PALMETTO PARKWAY VICINITY. SAID PROPERTY CONSISTS OF 0.801 ACRES AND IS IDENTIFIED AS "NEW ELEVATION TANK SITE" ON A PLAT PREPARED FOR THE CITY OF NORTH AUGUSTA BY B. P. BARBER DATED MARCH 29, 2010. SAID PLAT IS RECORDED IN THE OFFICE OF THE RMC FOR AIKEN COUNTY, SOUTH CAROLINA IN PLAT BOOK 55 AT PAGE 447. ALSO INCLUDED ARE THOSE TEMPORARY AND PERMANENT EASEMENTS AS ARE DESCRIBED AS PARCEL 2 IN A DEED RECORDED IN RECORD BOOK 4295, PAGES 2400-2404.

SAID "LESS AND EXCEPT" IS SET FORTH IN THAT CERTAIN PARTIAL RELEASE OF MORTGAGE BY AND BETWEEN HARRY P. SAKELLARIS, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED JULY 15, 2001 AND THE CITY OF NORTH AUGUSTA DATED APRIL 19, 2012 AND RECORDED IN THE OFFICE OF THE REGISTER OF MESNE CONVEYANCE FOR AIKEN COUNTY ON MAY 1, 2012 IN BOOK RB 4403 AT PAGE 1864.

SAID PROPERTY BEING A PORTION OF THAT PROPERTY CONVEYED TO SPRINGS NORTH AUGUSTA, LLC BY DEED DATED NOVEMBER 16, 2009, AND RECORDED IN THE OFFICE OF THE RMC FOR AIKEN COUNTY, SOUTH CAROLINA IN RECORD BOOK 4284, PAGES 1872-1884.

FORM 4

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2012-CP-02-0173

Harry P. Sakellaris, as Trustee of the George B.
Buchanan, Jr. Irrevocable Family Trust, et al.

Springs North Augusta, LLC and the City of
North Augusta

PLAINTIFF(S)

DEPENDANT(S)

Submitted by:
Stanley H. McGuffin
Haynesworth Slinker Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211
(803) 779-3080

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

DISPOSITION TYPE (CHECK ONE)

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

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

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

ORDER INFORMATION

This order ☒ ends ☐ does not end this case.

Additional Information for the Clerk: Master in Equity's Order and Judgment of Foreclosure and Sale

INFORMATION FOR THE PUBLIC INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
Harry P. Sakellaris, as Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001	Springs North Augusta, LLC	N/A

If applicable, describe the property, including tax map information and address, referenced in the order:
TMS Nos. 022-17-01-001; 011-11-02-001; and 011-10-07-006

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

MA
Circuit Court Judge M. Anderson Griffith
Master in Equity

3076
Judge Code

8/14/12
Date

SCRPC Form 4C (10/2011)

Page 1 of 2

For Clerk of Court Office Use Only

This judgment was entered on the 14 day of August, 2012 and a copy mailed first class or
placed in the appropriate attorney's box on this 14 day of August, 2012 to attorneys of record or
to parties (when appearing pro se) as follows:

Stanley H. McCuffin
Haynsworth Sinkler Boyd, P.A.
P.O. Box 11889
Columbia, SC 29211
(803) 779.3080

~~Spring North Augusta, LLC~~
~~c/o Michael W. Tighe, Registered Agent~~
~~1812 Lincoln Street, Ste 200~~
~~Columbia, SC 29204~~

Master

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)
On Record by [Signature]
CLERK OF COURT

Court Reporter:

STATE OF SOUTH CAROLINA)

COUNTY OF SALUDA)

IN THE COURT OF COMMON PLEAS

Stephen Wilkinson, as Trustee of)
George B. Buchanan, Jr. Irrevocable)
Family Trust dated the 15th day of July,)
2001,)

Plaintiff,)

vs.)

Redd Green Investments, LLC,)
Anderson North Augusta, LLC,)
Herbert Anderson, Jr., A. Bruce)
Green, William Otha Bodie, Herbert)
Keith Anderson, and L. Cliff Redd,)

Defendants.)

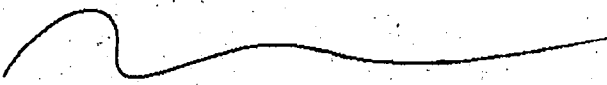
Case No. 2015-CP-41-172

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that I caused the below named parties to be served with a copy of the following document(s): Memorandum in Support of Motion to Dismiss by causing said document(s) to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, with return address clearly shown, as set forth below.

Roy R. Hemphill, Esquire
P.O. Box 1547
Greenwood, SC 29648

M. Alan Peace, Esquire
Harrell, Martin & Peace, P.A.
P.O. Box 1000
Chapin, SC 29036


Maria Keeve
Administrative Assistant

April 27, 2017

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SALUDA COUNTY
Court of Common Pleas
R. Knox McMahon, Circuit Court Judge

Lower Case No. 2015-CP-41-00172

Stephen Wilkinson, as Trustee of George B. Buchanan, Jr.
Irrevocable Family Trust Dated the 15th day of July, 2001, ...Respondent,
v.

Redd Green Investments, LLC, Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce Green, Herbert Keith Anderson,
and L. Cliff Redd,

of Whom

Redd Green Investments, LLC, A. Bruce Green, and L. Cliff Redd
are..... Appellants.

RECEIVED
JUL 24 2018
SC Court of Appeals

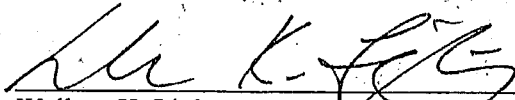
NOTICE OF APPEAL

Redd Green Investments, LLC, A. Bruce Green, and L. Cliff Redd hereby appeal from
(1) the Order of Judge R. Knox McMahon, announced at trial on September 6, 2017, and entered
September 7, 2017, granting Respondent's motion for a directed verdict, and (2) the Order of
Judge R. Knox McMahon, entered June 29, 2018, denying Appellants' Amended Motion for
New Trial or in the Alternative to Alter or Amend the Judgment of the Court.

Following the ruling from the bench at trial on September 6, 2017, and the entry of the
order granting Respondent's motion for directed verdict on Thursday September 7, 2017,

Appellants timely served on Friday September 15, 2017, a Motion for New Trial, and timely served on Monday September 18, 2017, an Amended Motion for New Trial or in the Alternative to Alter or Amend the Judgment of the Court. Appellants received written notice of entry of the order denying the Motion for New Trial and Amended Motion for New Trial or in the Alternative to Alter or Amend the Judgment of the Court (entered on June 29, 2018) on June 29, 2018, and this Notice of Appeal was timely served within thirty days of receipt.

The Orders are appealable pursuant to S.C. Code §14-3-330(1) (providing for appellate review of final judgments in actions commenced in the court of common pleas) and (2) (providing for appellate review of an order that refuses a new trial). Copies of the Orders are attached hereto.



Wallace K. Lightsey (S.C. Bar No. 6476)
William M. Wilson III (S.C. Bar No. 15808)
Wyche, P.A.
Post Office Box 728
Greenville, S.C. 29602-0728
(864) 242-8200

July 23, 2018

Attorneys for Appellants

Counsel of Record:

Roy R. Hemphill, Esq.
McDonald Patrick Poston Hemphill & Roper, LLC
414 Main Street (29646)
P.O. Box 1547
Greenwood, South Carolina 29648
(864) 229-2511

Attorneys for Herbert Keith Anderson, Anderson North Augusta, and Herbert Anderson, Jr.

Erik T. Norton, Esq.
John T. Moore, Esq.
1320 Main Street, 17th Floor
P.O. Box 11070
Columbia, South Carolina 29211-1070
(803) 799-2000

Attorneys for Stephen Wilkinson, as Trustee of George B. Buchanan, Jr. Irrevocable Family Trust Dated the 15th day of July, 2001

M. Alan Peace, Esq.
Harrell, Martin & Peace, P.A.
P.O. Box 1000
Chapin, SC 29036
(803) 345-3353

Attorneys for Redd Green Investments, LLC, A. Bruce Green, and L. Cliff Redd

Gene Trotter, Esq.
2 Cedarwood Lane
Columbia S.C. 29205
(803) 254-5320

Attorneys for Redd Green Investments, LLC, A. Bruce Green, and L. Cliff Redd

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

APPEAL FROM SALUDA COUNTY
Court of Common Pleas
R. Knox McMahon, Circuit Court Judge

Lower Case No. 2015-CP-41-00172

Stephen Wilkinson, as Trustee of George B. Buchanan, Jr.
Irrevocable Family Trust Dated the 15th day of July, 2001, ... Respondent,

v.

Redd Green Investments, LLC, Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce Green, Herbert Keith Anderson,
and L. Cliff Redd,

of Whom

Redd Green Investments, LLC, A. Bruce Green, and L. Cliff Redd
are..... Appellants.

RECEIVED
JUL 24 2018
SC Court of Appeals

PROOF OF SERVICE

The undersigned certifies that the foregoing **NOTICE OF APPEAL** was served upon all counsel of record, including counsel of record for Respondents, by causing a copy of the same to be deposited in the United States mail, postage prepaid, addressed as follows:

Erik T. Norton, Esq.
John T. Moore, Esq.
1320 Main Street, 17th Floor
P.O. Box 11070
Columbia, South Carolina 29211-1070
Attorneys for Respondent

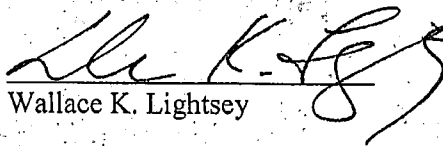
Roy R. Hemphill, Esq.
McDonald Patrick Poston Hemphill & Roper, LLC
414 Main Street (29646)

P.O. Box 1547
Greenwood, South Carolina 29648
Attorneys for Herbert Keith Anderson, Anderson North Augusta,
and Herbert Anderson, Jr.

M. Alan Peace, Esq.
Harrell, Martin & Peace, P.A.
P.O. Box 1000
Chapin, SC 29036
Attorneys for Redd Green Investments, LLC, A. Bruce Green, and
L. Cliff Redd

Gene Trotter, Esq.
2 Cedarwood Lane
Columbia S.C. 29205
Attorneys for Redd Green Investments, LLC, A. Bruce Green, and
L. Cliff Redd

This 23 day of July, 2018.


Wallace K. Lightsey

STATE OF SOUTH CAROLINA
COUNTY OF SALUDA

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015-CP-41-00172

Stephen Wilkinson, as Trustee of George B. Buchanan,
Jr. Irrevocable Family Trust Dated the 15th day of July,
2001

Redd Green Investments, LLC, Anderson North
Augusta, LLC, Herbert Anderson, Jr., A. Bruce
Green, Herbert Keith Anderson, And L. Cliff
Redd

PLAINTIFF(S)

DEFENDANT(S)

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

- DISPOSITION TYPE (CHECK ONE)**
- ☐ **JURY VERDICT.** This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ **DECISION BY THE COURT.** This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ **ACTION DISMISSED (CHECK REASON):** ☐ Rule 12(b), SCRPC; ☐ Rule 41(a), SCRPC (Vol. Nonsuit); ☐ Rule 43(k), SCRPC (Settled); ☐ Other
- ☐ **ACTION STRICKEN (CHECK REASON):** ☐ Rule 40(j), SCRPC; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ **STAYED DUE TO BANKRUPTCY**
- ☐ **DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):**
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

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

ORDER INFORMATION
MOTION FOR NEW TRIAL IS DENIED

This order ☐ ends ☐ does not end the case.

Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX		
Complete this section below when the judgment affects title to real or personal property or if any amount should be enrolled. If there is no judgment information, indicate "N/A" in one of the boxes below.		
Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount to be enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

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

Date _____

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2015 CP- 41-00172

Stephen Wilkinson, et al

Fedd Green Investments,

et al

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

- ☐ JURY VERDICT. This action came before the court for a trial by jury. The issues have been tried and a verdict rendered.
- ☐ DECISION BY THE COURT. This action came to trial or hearing before the court. The issues have been tried or heard and a decision rendered. ☐ See Page 2 for additional information.
- ☐ ACTION DISMISSED (CHECK REASON): ☐ Rule 12(b), SCRCP; ☐ Rule 41(a), SCRCP (Vol. Nonsuit); ☐ Rule 43(k), SCRCP (Settled); ☐ Other
- ☐ ACTION STRICKEN (CHECK REASON): ☐ Rule 40(j), SCRCP; ☐ Bankruptcy; ☐ Binding arbitration, subject to right to restore to confirm, vacate or modify arbitration award; ☐ Other
- ☐ STAYED DUE TO BANKRUPTCY
- ☐ DISPOSITION OF APPEAL TO THE CIRCUIT COURT (CHECK APPLICABLE BOX):
☐ Affirmed; ☐ Reversed; ☐ Remanded; ☐ Other

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Directed Verdict in Favor of Plaintiff in the amount of \$4,781,882.65

ORDER INFORMATION

This order ☐ ends ☐ does not end the case.
Additional Information for the Clerk:

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$ RECEIVED
		\$ JUL 24 2018
		\$ SC Court of Appeals

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

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

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

[Signature]
Circuit Court Judge

2145
Judge Code

7 Sept 17
Date

SCRCP Form 4C (02/2017)

Page 1 of 4

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

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

SCRCP Form 4C (02/2017)

Page 2 of 4

IN THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SALUDA COUNTY
COURT OF COMMON PLEAS

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2018-001388

Stephen Wilkinson, as Trustee of George B. Buchanan, Jr.
Irrevocable Family Trust Dated the 15th day of July, 2001, ... Respondent

v.

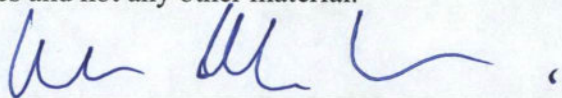
Redd Green Investments, LLC, Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce, Green, Herbert Keith Anderson,
and L. Cliff Redd, ... Defendants,

Of which Redd Green Investments, LLC, A. Bruce Green,
and L. Cliff Redd are Appellants.374

CERTIFICATE OF COUNSEL

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

February 1, 2019


Wallace K. Lightsey (S.C. Bar # 6476)
William M. Wilson III (S.C. Bar # 15808)
WYCHE P.A.
PO Box 728
Greenville, SC 29602-0728
(864) 242-8200
Attorneys for Appellants

RECEIVED
FEB 21 2019
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SALUDA COUNTY
COURT OF COMMON PLEAS

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2018-001388

Stephen Wilkinson, as Trustee of George B. Buchanan, Jr.
Irrevocable Family Trust Dated the 15th day of July, 2001, ...Respondent,

v.

Redd Green Investments, LLC, Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce Green, Herbert Keith Anderson,
and L. Cliff Redd, ... Defendants,

Of which Redd Green Investments, LLC, A. Bruce Green,
and L. Cliff Redd are Appellants.

FINAL BRIEF OF APPELLANTS

Wallace K. Lightsey (S.C. Bar Id. No. 6476)
William M. Wilson III (S.C. Bar Id. No. 15808)
WYCHE P.A.
PO Box 728
Greenville, SC 29602-0728
(864) 242-8200

Attorneys for Appellants

RECEIVED
FEB 21 2019
SC Court of Appeals

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

**APPEAL FROM SALUDA COUNTY
COURT OF COMMON PLEAS**

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2018-001388

Stephen Wilkinson, as Trustee of George B. Buchanan, Jr.
Irrevocable Family Trust Dated the 15th day of July, 2001, ...Respondent,

v.

Redd Green Investments, LLC, Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce Green, Herbert Keith Anderson,
and L. Cliff Redd, ... Defendants,

Of which Redd Green Investments, LLC, A. Bruce Green,
and L. Cliff Redd are Appellants.

FINAL BRIEF OF APPELLANTS

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STATEMENT OF ISSUES ON APPEAL

The present action involves a claim for breach of guaranty by a lender against the guarantors of a commercial loan. In a prior foreclosure action against the borrower only, the lender obtained the property through a foreclosure sale and also obtained a personal deficiency judgment against the borrower, which it now seeks to enforce against the guarantors in this action. Under S.C. Code § 15-39-720 (the “**Deficiency Statute**”), a lender may obtain a deficiency judgment only if it submits a single bid on the first day of the foreclosure sale and does not participate in a second “upset sale” held thirty days later, when the property is auctioned to the highest bidder. Here, the guarantors defended on the basis that the lender violated the Deficiency Statute by participating in the initial bidding and then later winning the property at the upset sale. The trial court ruled as a matter of law that the lender’s violation of the Deficiency Statute could not serve as a defense to payment on the guaranty.

This appeal contends that this ruling was error and raises the following issues on appeal:

1. Did the trial court err by ruling as a matter of law that a mortgagee’s violation of S.C. Code § 15-39-720 in a prior foreclosure action cannot serve as a defense to a subsequent action for breach of guaranty when the guarantor was not party to the prior foreclosure action?
2. Does a mortgagee’s violation of S.C. Code § 15-39-720 in a prior foreclosure action constitute a defense as a matter of law in a subsequent action for breach of guaranty when the guarantor was not a party to the prior foreclosure action?

STATEMENT OF THE CASE

This action was filed on March 5, 2013, by Respondent Stephen Wilkinson, as Trustee of George B. Buchanan, Jr. Irrevocable Family Trust Dated the 15th day of July, 2001 (“Respondent” or “Trust”). Respondent brought the action seeking to recover on certain guaranties executed by the Appellants (Redd Green Investments, LLC, A. Bruce, Green, and L. Cliff Redd) (“Appellants” or “Guarantors”) and the other Defendants (Anderson North Augusta,

LLC, Herbert Anderson, Jr., and Herbert Keith Anderson) (“Defendants”), in conjunction with a commercial loan made to Springs North Augusta, LLC (the “Borrower”) and secured by real property located in Aiken County. (Complaint pp. 2-4) (R. pp. 17-19). Respondent’s claim was based upon a deficiency judgment in the amount of \$2,753,192.70, plus interest at the rate of 15% per annum, (“Deficiency Judgment”) obtained against the Borrower following the foreclosure sale in a prior foreclosure action (“Foreclosure Action”). (Trial Ex. 10; Court Ex. 1) (R. pp. 282, 289-90). The guarantors were not included as defendants in the Foreclosure Action but were pursued separately in the instant action, where the claim had ballooned into one for \$4,781,882.55 at the time of trial. (*Id.*) (R. pp. 282, 289-90).

On May 1, 2013, Appellants filed an Answer, alleging that they were prejudiced by Respondent’s improper violation of the bidding statute during the prior Foreclosure Action and that the Respondent therefore should be precluded from enforcing the Deficiency Judgment against the Guarantors in this separate action. (Answer at 3-5) (R. pp. 87-91). The Answer included counterclaims for Civil Conspiracy, Constructive Fraud, and Fraud and Deceit, (*id.*) (R. pp. 89-91), which were withdrawn as counterclaims at trial but retained as providing “the factual basis for the defenses,” (Transcript p. 81) (R. p. 174).

On April 15, 2014, Respondent moved for summary judgment on its claims and against Defendants’ counterclaims, (Plaintiff’s Motion for Summary Judgment) (R. pp. 310-11), and filed a supporting affidavit of Stephen Wilkinson seeking to be named as successor Trustee, (Affidavit in Support of Plaintiff’s Motion for Summary Judgment and Motion to Amend Caption to Designate Successor Trustee as Real Party in Interest) (R. pp. 312-21). The affidavit stated that George B. Buchanan, Jr. established the Trust for his children and their issue and that Mr. Buchanan was “permitted to make additions” to the assets of the Trust. (*Id.* at 2) (R. p. 313).

Mr. Buchanan's children, George B. Buchanan, III, Robert S. Buchanan, and Sally B. Alexander, signed the attached Appointment of Successor Trustee along with the former trustee, Mr. Sakellaris, and the successor trustee, Mr. Wilkinson. (*Id.* at 4-10) (R. p. 315-21).

Mr. Sakellaris provided a supporting affidavit, testifying that the Trust submitted a bid at the first foreclosure sale in the prior Foreclosure Action on September 4, 2012, in the amount of \$6,600,000. (Affidavit of Harry P. Sakellaris in Support of Plaintiff's Motion for Summary Judgment) (R. pp. 322-24). Mr. George Buchanan also provided an affidavit, testifying that he was the sole member and manager of 2nd Avenue Holdings, LLC ("Second Avenue Holdings"), which he formed for real estate investment, and that Second Avenue Holdings bid at the second foreclosure sale held on October 4, 2012, in the Foreclosure Action. (Affidavit of Second Avenue Holdings in Support of Plaintiff's Motion for Summary Judgment p. 1) (R. p. 325). Second Avenue Holdings was the successful bidder at this second sale, with a bid of \$7,160,000. (*Id.*) (R. p. 325). Mr. Buchanan further averred that Second Avenue Holdings paid a bid deposit of \$500,000 on October 4, 2012, and later assigned this bid to the Trust. (*Id.*) (R. pp. 325-26).

On October 19, 2014, Appellants Bruce Green and Cliff Redd filed affidavits in opposition to summary judgment, averring that Mr. Buchanan formed Second Avenue Holdings on September 10, 2012 (six days after the Trust's bid at the first foreclosure sale) for the apparent purpose of bidding at the second "upset" sale; that all of their prior dealings with the Trust concerning the mortgage or property were with Mr. Buchanan himself, not any Trustee; and that, upon information and belief, Mr. Buchanan established Second Avenue Holdings to attempt to keep the subject property with the Trust after learning of third parties who intended to present an "upset bid" at the second foreclosure sale where the Trust was forbidden by law from bidding. (Affidavits of Cliff Redd and Bruce Green in Opposition to Plaintiff's Motion for

Summary Judgment pp. 1-2) (R. pp. 327-28, 330-331). Mr. Green and Mr. Redd further averred that Second Avenue Holdings was the high bidder at the second sale and assigned its bid to the Trust for no consideration, thereby indicating that it was acting on behalf of the Trust when it bid at the second sale, which was a violation of the foreclosure statutes allowing for a deficiency judgment and which chilled bidding at the second sale. (*Id.* p. 2) (R. pp. 328, 331).

On March 1, 2016, Stephen Wilkinson was substituted for Harry P. Sakellaris as Trustee, and the caption was amended to reflect this change as well as the removal of William Otha Bodie as a defendant. (Order Amending Caption and Substituting Counsel filed March 1, 2016) (R. p. 1).

On March 1, 2016, the Court, without elaboration, denied Plaintiff's motion for summary judgment on Appellants' Counterclaims and stated that the matters could be raised at the directed verdict stage. (Order p. 2) (R. p. 6).

On March 1, 2017, Respondent filed a Motion to Dismiss, seeking to dismiss the counterclaims of Appellants for lack of subject matter jurisdiction under Rule 12(b)(1). (Motion to Dismiss p. 1) (R. p. 333). Respondent contended that the counterclaims were an improper collateral attack on the order for foreclosure and Deficiency Judgment obtained against the Borrower in the prior Foreclosure Action. (Plaintiff's Memorandum in Support of Motion to Dismiss Counterclaims pp. 2-3 & Ex. A) (R. pp. 336-63).¹ Respondent further contended that "the [B]orrower, not defendant guarantors, is in privity of contract with the [Respondent]" and therefore that the Appellants as guarantors "have no standing to assert such claims and are not

¹ The Defendants in the instant action were not named defendants in the Foreclosure Action, and the Borrower went into default and did not defend. (*Id.* at Ex. A (Master in Equity's Order and Judgment of Foreclosure and Sale ("Foreclosure Order"))) at p. 1-2) (R. pp. 342, 345).

permitted to raise them either before the Master [in the Foreclosure Action] or in subsequent proceedings, such as the instant action.” (*Id.*) (R. p. 337).

On June 2, 2017, following a hearing on May 8, 2017, Judge R. Ferrell Cothran, Jr. denied the Motion to Dismiss, ruling that it “is uncontested that Defendants in this case were not parties to the Foreclosure [Action]” and therefore that the deficiency judgment is not the law of the case with respect to the Defendants in the instant action. (Order Denying Plaintiff’s Motion to Dismiss p. 2) (R. p. 8). He further ruled that Defendants’ counterclaims “are not contesting [or seeking to overturn or otherwise attack] the Deficiency Judgment that Plaintiff obtained against [Borrower] in the Foreclosure [Action]” but instead are seeking “to hold the [Respondent] accountable for an alleged violation of the foreclosure upset bid statute found at South Carolina Code Ann. § 15-39-720.” (*Id.* at 2-3) (R. pp. 8-9).

On September 5-6, 2017, the matter went to a jury trial before Judge R. Knox McMahon. (Tr. p. 1) (R. p. 94). After both sides rested their case, the trial judge entered a directed verdict for the Respondent on the basis that, even if there was a violation of the foreclosure bidding statute, S.C. Code Ann. § 15-39-720 (which the trial judge assumed for purposes of a directed verdict), such a violation would not provide a defense to the Defendant’s guaranties on the debt. (Tr. pp. 132-33) (R. pp. 225-26). On September 7, 2017, the trial court issued a Form 4 Order directing a verdict in the amount of \$4,781,882.65. (Order dated September 7, 2017) (R. pp. 10-11).

On Friday September 15, 2017, Appellants served a Motion for New Trial. (Motion for New Trial) (R. pp. 291-93). On September 18, 2017, Appellants served an Amended Motion for New Trial or in the Alternative to Alter or Amend the Judgment of the Court (“Amended

Motion”). (Amended Motion for New Trial or in the Alternative to Alter or Amend the Judgment of the Court) (R. pp. 294-96).

On June 29, 2018, Appellants received written notice of entry of the Order denying the Amended Motion (entered on June 29, 2018), (Order) (R. pp. 12-15), and timely served their Notice of Appeal within thirty days of receipt on July 23, 2018, (Notice of Appeal) (R. pp. 365-69), appealing from (1) the Order of Judge R. Knox McMahon, announced at trial on September 6, 2017, and entered September 7, 2017, granting Respondent’s motion for a directed verdict, and (2) the Order of Judge R. Knox McMahon, entered June 29, 2018, denying Appellants’ Amended Motion for New Trial or in the Alternative to Alter of Amend the Judgment of the Court. The Orders are appealable pursuant to S.C. Code § 14-3-330(1) (providing for appellate review of final judgments in actions commenced in the court of common pleas) and (2) (providing for appellate review of an order that refuses a new trial).

STATEMENT OF THE FACTS

This case involves a loan by the Trust to the Borrower in the amount of \$8,728,500, which was secured by 1400 acres of commercial property valued at \$30 Million and guaranteed by the Defendants. (Tr. pp. 68, 85 & Pl. Exs. 6-9) (R. pp. 161, 178, 266-81). One of the guaranties (“Guaranties”) was executed by Appellant Redd Green Investments, LLC and Defendant Anderson North Augusta, LLC, and the other was executed by Appellants A. Bruce Green and L. Cliff Redd and the other individual Defendants. (Pl. Exs. 8-9) (R. pp. 276-81). The two Guaranties are substantially similar and provide, in part, that the Guarantors will guaranty the debts “of Borrower . . . in accordance with the terms of any such notes . . . or agreements”; that the Lender may surrender or compromise collateral “with reasonable notice” to the Guarantors; that the Guarantors have a “right of recourse to security for the debts and

obligations of the Borrower to Lender” if the Guarantors pay the debts in full; and that “the high bid at the judicial foreclosure sale will be applied to the debt” in the event that the Trust were to foreclose on the collateral. (*Id.*) (R. pp. 276-81).

Prior to the instant action against the Guarantors, the Trust initiated a foreclosure action against the Borrower, but not against the Guarantors. (Tr. pp. 68, 87) (R. pp. 161, 180). The Borrower did not defend the action and defaulted. (*Id.* p. 70 & Pl. Ex. 1) (R. pp. 163, 230). The court entered a default judgment of foreclosure against the Borrower and ordered the property to be sold at a foreclosure auction with the proceeds to be applied to a total debt of \$9,450,662.50. (*Id.* p. 70 & Pl. Ex. 1) (R. pp. 163, 229-36). Because the Trust claimed a deficiency judgment, (*id.*) (R. pp. 163, 234-35), it would be allowed under S.C. Code Ann. § 15-39-720 to bid only one time, with the sale then being held open for thirty days to receive upset bids.

At the foreclosure sale, the Trust bid \$6.6 Million, which was \$2.9 Million less than the debt and well below the \$30 million value that the Appellants assigned to the property. (Tr. pp. 52, 85, 88) (R. pp. 145, 178, 181).² The sale was then held open for thirty days for upset bids. (*Id.* pp. 52, 88) (R. pp. 145, 181). At the close of thirty days, Mr. Buchanan himself appeared at the auction, bid against other bidders, and won. (*Id.*) (R. pp. 145, 181). Mr. Buchanan indicated that his bid was made on behalf of one his wholly owned LLCs, and he assigned his bid back to the Trust. (*Id.* pp. 52-53) (R. pp. 145-46). As outlined by the Trust in its opening statement at trial:

[T]he way that the two sales work is that at the first sale the person who is owed the money can put in a bid for the property. . . . There’s then a second sale, what might be referred to as the upset bid, okay? **At the second sale, the person who’s owed the money is not allowed to bid, nor is that party’s representative**

² The Trust itself valued the Property at \$15 Million in the days following the sale. (Tr. p. 32) (R. p. 125). Even at this value, the Property was worth well above the debt of \$9.5 Million.

allowed to bid, and the reason for that is to try to encourage the party who is owed the money to put in the highest bid possible, okay?

What happened in this case is at the first sale the trust put in a bid for 6.6 million. . . . [A]nd then after that Mr. Buchanan, who was concerned that someone else might come in and take this property and leave the trust in a bad position, losing some money, decided that it would be better for one of his companies to own it rather than the -- rather than somebody other than the trust. So Mr. Buchanan, on behalf of a company he owned called Second Avenue Holdings, LLC, it was a company he had set up to hold some property previously, went to the second sale and there were other bidders there and multiple bids were put in. In the end, Second Avenue Holdings, LLC, won the bid and held the property.

After that point, Mr. Buchanan after consulting with some others and the trustee decided that it would be better from a tax perspective and from his children's perspective for the trust to hold onto that property rather than Second Avenue Holdings, LLC. So Second Avenue Holdings, LLC, assigned the bid that it won back to the trust so the trust could hold on to the property.

(Tr. pp. 52-53) (R. pp. 145-46 (emphasis added)).³

Second Avenue Holdings was solely owned by Mr. Buchanan, (*id.* p. 111) (R. p. 204), and it was created six days after the Trust's bid at the first sale on September 4, 2012, (*id.* pp. 96-97 & Green Ex. 1) (R. pp. 189-90, 283-84).⁴ Its winning bid was for \$7,160,000. (*Id.* p. 69 & Pl. Ex. 5) (R. pp. 162, 265). That same day it deposited \$500,000 toward its bid and, on October 24, 2012, assigned its bid to the Trust for no consideration. (Tr. pp. 100-101 & Green Ex. 2) (R. pp. 193-94, 285-86).⁵ The property then was deeded from the Master in Equity to the Trust, and the Trust claimed an exemption from the deed recording fee on the basis that it obtained the

³ A party is bound by the admissions of counsel at opening statement. 88 C.J.S. Trial § 267.

⁴ Mr. Buchanan contended at trial that he created this company several years earlier, but he was impeached with the Articles of Organization revealing that it came into existence on September 10, 2012. S.C. Code Ann. § 33-44-202(b) ("Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.").

⁵ The Assignment of Bid noted that the deposit would be returned to Second Avenue Holdings less the Master's commission and other court costs, and those costs were reimbursed by the Trust. (Tr. p. 101 & Green Ex. 2) (R. pp. 194, 285). Thus, Second Avenue Holdings netted zero dollars, and so there was no consideration.

deed as mortgagee pursuant to foreclosure proceedings. (Tr. pp. 71-72 & Pl. Ex. 3) (R. pp. 164-65, 252, 261-62).

The Court then entered an Order of Deficiency against the Borrower in the amount of \$2,484,163.95 on October 26, 2012, which was amended to \$2,753,192.70, plus 15% annual interest, on February 13, 2013. (Tr. pp. 71-72 & Pl. Exs. 2, 4) (R. pp. 164-65, 249-51, 263-64). The net result was that the Trust, which *was not allowed to bid at the upset sale*, ended up with the property (valued at \$15 to \$30 Million) *as a result of a bid at the upset sale*, and it also ended up with a deficiency judgment of \$2.8 Million (now \$4.8 Million) even though the value of the property exceeded the total debt owed by the Borrower. (Tr. pp. 32, 52-53, 71-73, 85 & Pl. Exs. 2-4, 10) (R. pp. 125, 145-46, 164-66, 178, 249-64, 282).

After it obtained a Deficiency Judgment against the Borrower in the Foreclosure Action, the Trust brought the instant action against the Guarantors seeking to recover on the Guaranties. The Appellants contended at trial that when Mr. Buchanan appeared at the upset sale and presented the winning bid, he violated the Deficiency Statute, S.C. Code Ann. § 15-39-720, because he was acting on behalf of the Trust who was forbidden from bidding at the upset sale, and therefore that the Trust is precluded from recovery on the Guaranties because it violated the implied covenant of good faith and fair dealing with the Guarantors. (Tr. p. 123) (R. p. 216).

At trial, the Appellants presented a great deal of evidence supporting its contention that Mr. Buchanan, and in turn his wholly owned entity, Second Avenue Holdings, was acting on behalf of the Trust at the second foreclosure sale. Mr. Buchanan's own testimony established that he regularly and routinely acted on behalf the Trust in its operations. He testified that he set up the Trust and funded it out of his own assets, (*id.* pp. 93-94) (R. pp. 186-87); that he holds the title of "financial advisor" of the Trust, (*id.* p. 111) (R. p. 204); and that he routinely identifies

properties to be put into the Trust, (*id.* p. 110) (R. p. 203). He further testified that he was the one who identified the loan opportunity to the Borrower and met with the Appellants on behalf of the Trust—without the Trustee—in order to initiate the transaction. (*Id.* p. 110) (R. p. 203). The Trustee also obtained his consent before proceeding with the foreclosure action in this matter. (*Id.* p. 95) (R. p. 188).

The Trustee, Mr. Wilkinson, concurred that the assets held by the Trust have “all been put in there by Mr. Buchanan” in order to eliminate estate taxes and to benefit Mr. Buchanan’s children. (*Id.* pp. 65-66, 74) (R. pp. 158-59, 167). He explained that his role as Trustee is to make “distributions for the health, education and welfare” of Mr. Buchanan’s children. (*Id.* p. 65) (R. p. 158). He agreed that Mr. Buchanan gives financial advice to the Trust, brings most of the investments to the table, and makes recommendations about buying or selling property. (*Id.* pp. 76, 78) (R. pp. 169, 171). Mr. Wilkinson conceded that he has never turned down one of Mr. Buchanan’s recommendations. (*Id.* p. 79) (R. p. 172). He even referred to the Trust loaning money to the Borrower as if it were Mr. Buchanan himself loaning the money: “Mr. Buchanan was contacted by someone . . . [who] told him there was an opportunity” and that “if he wanted to loan some money, you know, there was an opportunity to make some money.” (*Id.* pp. 66-67 (emphasis added)) (R. pp. 159-60).

STANDARD OF REVIEW

When considering a directed verdict motion, the trial court should view the evidence and all reasonable inferences in the light most favorable to the non-moving party. If more than one reasonable inference can be drawn ... the case should be submitted to the jury. The trial court should be concerned only with the existence or nonexistence of evidence, not its credibility or weight.

S.C. Fed. Credit Union v. Higgins, 394 S.C. 189, 193–96, 714 S.E.2d 550, 552–53 (2011)

(internal quotations and citations omitted). “The trial court must eliminate from its consideration

all evidence contrary to or in conflict with the evidence favorable to the nonmoving party and give to the nonmoving party every favorable inference that the facts reasonably suggest. *Small v. Pioneer Mach., Inc.*, 316 S.C. 479, 482, 450 S.E.2d 609, 611 (Ct. App. 1994). “In essence, [the appellate court] must determine whether a verdict for a party opposing the motion would be reasonably possible under the facts as liberally construed in his favor.” *Bultman v. Barber*, 277 S.C. 5, 7, 281 S.E.2d 791, 792 (1981).

ARGUMENT

This appeal presents the question of whether a mortgagee is precluded from recovering a deficiency judgment against a guarantor in a subsequent action when the mortgagee fails to name the guarantor in the initial foreclosure action and violates the Deficiency Statute by bidding at the upset sale. The Deficiency Statute exists in order to protect a mortgagor and any guarantors from the foreclosure sale of a property below market value by requiring the mortgagee (or anyone acting on its behalf) to bid only one time—not knowing how high the later bidding ultimately will go—thereby requiring the mortgagee to give its best and highest bid so as not to lose any value in the property to an upset bidder. If a mortgagee (or someone on its behalf) could bid at the second “upset” sale, then the mortgagee no longer would be required to present its best and highest bid.

Thus, the Appellants respectfully ask this Court to hold that the trial court erred by ruling as a matter of law that a mortgagee’s violation of S.C. Code § 15-39-720 in a prior foreclosure action cannot serve as a defense (whether by breach of the implied covenant of good faith and fair dealing, waiver, unlawful act, or unclean hands) to a subsequent action for breach of guaranty when the guarantor was not party to the prior foreclosure action.

In addition, the Appellants seek a ruling that a violation of the Deficiency Statute constitutes a defense *as a matter of law* (whether by breach of the implied covenant of good faith and fair dealing, waiver, unlawful act, or unclean hands) to a subsequent action for breach of guaranty when the guarantor was not party to the prior foreclosure action.

I. THE TRIAL COURT ERRED BY RULING AS A MATTER OF LAW THAT A MORTGAGEE'S VIOLATION OF S.C. CODE § 15-39-720 IN A PRIOR FORECLOSURE ACTION CANNOT SERVE AS A DEFENSE TO A SUBSEQUENT ACTION FOR BREACH OF GUARANTY WHEN THE GUARANTOR WAS NOT PARTY TO THE PRIOR FORECLOSURE ACTION.

A. The trial court directed a verdict against the Appellants even though it assumed a violation of the Deficiency Statute by the Trust.

Appellants opposed the Trust's motion for directed verdict on the basis that it was precluded from recovery under the Guaranties on the basis of a violation of the Deficiency Statute constituting a breach of the implied covenant of good faith and fair dealing, unclean hands, waiver, and/or unlawful act. (Tr. pp. 123, 129; Amended Motion) (R. pp. 216, 222, 294-95). The trial court directed a verdict against Appellants on the basis that a violation of the Deficiency Statute was not a defense to the payment obligation on the Guaranty. After outlining the standard of review for a directed verdict, the court's reasoning and decision are set forth in full as follows:

Although I think there is more than one inference that can be drawn from parts of the testimony, I do not think they are significant. Even if -- and that -- I say it like that because I'm not interested in the weight of the evidence but the existence of the evidence. If we're looking at the evidence in the light most favorable to the Defendants, there was a violation of Section 15-39-720, upset bid within thirty days on foreclosure or execution sale. That's an inference that can be drawn. To this Court that makes not a whit of difference. Not a whit of difference. I look at Plaintiff's Exhibit Number 8, Plaintiff's Exhibit Number 9, which [are] the guaranty agreements that are the documents upon which this lawsuit has been brought. I do not think a violation of the statute that I just cited is a defense on a guaranty of a debt. Again, tight-roping -- not tight-roping, but following the standard of directed verdict, drawing that inference, it would be in the light most favorable to the Defendant and I do not think there was a violation. I don't think you can turn Rambo into Superman or Superman into Rambo.

Second Avenue Holdings is not the irrevocable trust. They're two separate and distinct legal existing entities so for that reason I will direct a verdict for the Plaintiff in the amount of the deficiency judgment and the interest for that \$4,781,882.65.

(Tr. pp. 132-33) (R. pp. 225-26).

Following a question by Appellants' counsel, the trial judge clarified that he assumed a violation of the Deficiency Statute for purposes of the directed verdict:

And I understand and I cited the statute. As I say, I don't want to weigh the evidence and say it's -- based on my ruling that there wasn't a violation; I assume there was a violation of the statute for purposes of my ruling.

(*Id.* p. 133) (R. p. 226).

Although the trial court clarified that it was assuming a violation of the Deficiency Statute for purposes of its ruling, the trial court also recognized that "the evidence in the light most favorable to the Defendants [showed] there was a violation of Section 15-39-720." (*Id.* p. 132) (R. p. 225). Nonetheless, the court did not set forth the specific basis as to why or how it ruled that such a violation could not operate as a defense to the Trust's claims on the Guaranties.

B. A guarantor may defend an obligation to pay the debt of the borrower on the basis that the lender breached the implied covenant of good faith and fair dealing by impairing the guarantor's right to receive the benefit of the collateral.

As an initial matter, the rules for interpreting contracts apply to guaranties:

A guaranty is a contract. The cardinal rule of contract interpretation is to ascertain and give legal effect to the parties' intentions as determined by the contract language.

In construing a contract, it is axiomatic that the main concern of the court is to ascertain and give effect to the intention of the parties. If its language is plain, unambiguous, and capable of only one reasonable interpretation, no construction is required and the contract's language determines the instrument's force and effect.

On the other hand, a contract is ambiguous when its terms are capable of having more than one meaning when viewed by a reasonably intelligent person who has examined the entire agreement. [A] court will construe any doubts and ambiguities in an agreement against the drafter of the agreement.

CoastalStates Bank v. Hanover Homes of S.C., LLC, 408 S.C. 510, 518–19, 759 S.E.2d 152, 157 (Ct. App. 2014) (citations and internal quotations omitted).

In addition, “[u]nder South Carolina law, there exists in every contract an implied covenant of good faith and fair dealing.” *Shelton v. Oscar Mayer Foods Corp.*, 319 S.C. 81, 91, 459 S.E.2d 851, 857 (Ct. App. 1995), *aff’d*, 325 S.C. 248, 481 S.E.2d 706 (1997) (emphasis in original). The essence of this obligation is “that neither party will do anything to impair the other’s rights to receive benefits under the contract.” *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 500, 473 S.E.2d 52, 53 (1996) (internal quotations omitted) (emphasis added). This implied obligation of good faith on the part of the lender gives a guarantor a defense to payment under a guaranty when the lender breaches the implied obligation. *See Commercial Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 362–70, 147 S.E.2d 481, 481–85 (1966).

The *Nelson* case is instructive because it involved what in essence was a suit on a guaranty, and the defendant guarantor successfully interposed a defense based upon the failure to comply with the implied obligation of good faith and fair dealing. In *Nelson*, an automobile dealer sold automobile loans (made to third party consumers) to a finance company and agreed to pay the balance of any unpaid loan following the repossession and sale of the vehicle by the finance company. *Id.* at 362, 147 S.E.2d at 482. This arrangement in essence was a guaranty of the loans by the dealer. The finance company brought an action against the dealer for breach of the guaranty agreement, and the dealer asserted a defense that the finance company had an implied duty to use reasonable diligence to collect payments before seeking payment from the dealer. *Id.* The finance company moved to strike this defense and counterclaim, and the court denied the motion on the basis of the implied covenant of good faith and fair dealing:

Although implied covenants are not favored in the law, Nelson's reliance is upon the settled principles that **noncontradictory terms may be implied in a contract in order to effectuate the manifest intention of the parties when the circumstances warrant it, and that there exists in every contract an implied covenant of good faith and fair dealing.**

Id. at 366, 147 S.E.2d at 484 (emphasis added).

The court added: "Although no obligation is expressly imposed, unlimited authority and discretion are conferred on [the finance company] to deal with the obligors, without notice to or consent by [the dealer]. Yet, [the dealer] had the greater pecuniary stake in the successful collection of the accounts. *Id.* at 369, 147 S.E.2d at 485. Thus, the court ruled it was "fairly arguable that [the finance company] was impliedly obligated to pursue the collection of the accounts with reasonable and customary diligence," and so it denied the finance company's motion to strike the defense. *Id.*

Numerous cases from multiple jurisdictions hold, in the context of a loan guaranty, that the guarantor may defend against an action on the guaranty on the basis that the lender breached the implied obligation of good faith and fair dealing as a result of the lender's impairment of the collateral or other wrongdoing. *See, e.g., Union Bank, N.A. v. Blanchard*, 194 Wash. App. 340, 362–63, 378 P.3d 191, 202–03 (2016) (holding that the implied duty of good faith and fair dealing is a potential defense of a guarantor); *Nat'l Westminster Bank N.J. v. Lomker*, 277 N.J. Super. 491, 500, 649 A.2d 1328, 1333 (App. Div. 1994) (holding that guarantor may "defend against enforcement of lender's rights where the lender has engaged in bad faith, misconduct or the like" in a circumstance where the lender colluded with a third party to back out of contract with borrower and purchase from lender following foreclosure, thereby allowing the lender to take the proceeds of the collateral while not reducing the guaranties by the value of the collateral); *Merrill Lynch Bus. Fin. Servs. Inc. v. Plesco, Inc.*, 859 F. Supp. 818, 828 (E.D. Pa.

1994) (“[Lender’s] motion to dismiss the Guarantors’ setoffs and counterclaims and/or to strike their affirmative defenses will be denied insofar as it is predicated upon the theory that the Guarantors are precluded from asserting [lender’s] alleged bad faith in disposing of [] collateral as either an affirmative defense or as the basis of a counterclaim.”)⁶

C. South Carolina law has been amended in order to protect guarantors from the impairment of collateral by lenders, which must be read into the lender’s implied obligation of good faith.

Many of these cases where the guarantor relied upon a defense that the lender violated the implied obligation of good faith and fair dealing involved a lender who impaired the value of

⁶ For additional authorities, *see also, e.g., Fifth Third Bank (Chicago) v. Stocks*, 720 F. Supp. 2d 1008, 1011–13 (N.D. Ill. 2010) (finding a dispute of fact as to whether bank complied with the obligation of good faith and fair dealing required denial of bank’s motion for summary judgment); *Daystar Const. Mgmt., Inc. v. Mitchell*, No. CIV.A. 04C-05-175JRS, 2006 WL 2053649 (Del. Super. Ct. July 12, 2006) (holding as a matter of first impression that a guarantor could raise the violation of the covenant of good faith and fair dealing as a defense); *Chem. Bank v. Paul*, 244 Ill. App. 3d 772, 780–83, 614 N.E.2d 436, 441–43 (1993) (holding that guarantor could rely on the defense that lender violated the implied covenant of good faith and fair dealing in not reducing the guaranty as agreed); *BA Mortg. & Int’l Realty Corp. v. Am. Nat. Bank & Tr. Co. of Chicago*, 706 F. Supp. 1364, 1376 (N.D. Ill. 1989) (holding that a guarantor could assert as a defense the mortgagee’s breach of covenant of good faith implied in every contract, as implied covenant of good faith reflected strong public policy judgment); *Dorsy v. Maryland Nat. Bank*, 334 So. 2d 273, 274 (Fla. Dist. Ct. App. 1976) (“[T]he law imposes on the creditor an obligation not to deal with the debtor or any security for the debt in such a manner as to harm the interest of the guarantor.” (citing 38 Am. Jur. 2d *Guarantys* 126 (1968))); *see also AAR Aircraft & Engine Grp., Inc. v. Edwards*, 272 F.3d 468, 472-73 (7th Cir. 2001) (holding that guarantor of debtor’s secured debt could not waive right to commercially reasonable disposition of collateral on debtor’s default, where lender foreclosed on collateral and purchased it at a fraction of its value at a commercially unreasonable foreclosure sale, thereby creating an “absurd . . . windfall” to the lender); *Nat’l Westminster Bank N.J. v. Lomker*, 277 N.J. Super. 491, 497, 649 A.2d 1328, 1331 (App. Div. 1994) (“Related to this obligation [of good faith] is the requirement that a lender not ‘unjustifiably impair’ any collateral. . . . [and] the defense of impairment of collateral is available to a guarantor just as much as to the debtor.” (citations omitted)).

collateral to the detriment of the guarantor. South Carolina similarly does not allow a lender to impair collateral so as to result in damage to a guarantor. As provided by statute:

If the obligation of a principal obligor is secured by an interest in collateral, another party to the instrument is a secondary obligor with respect to that obligation, and a **person entitled to enforce the instrument impairs the value of the interest in collateral, the obligation of the secondary obligor is discharged to the extent of the impairment.** The value of an interest in collateral is impaired to the extent the value of the interest is reduced to an amount less than the amount of the recourse of the secondary obligor, or the reduction in value of the interest causes an increase in the amount by which the amount of the recourse exceeds the value of the interest. **For purposes of this subsection, impairing the value of an interest in collateral includes ... failure to comply with applicable law in disposing of or otherwise enforcing the interest in collateral.**

S.C. Code § 36-3-605(d) (emphasis added). Comment 7 to this statute recognizes that “Subsection (d) is based on Restatement of Suretyship and Guaranty Section 42 and deals with the discharge of secondary obligors by impairment of collateral.” *Id.* cmt. 7. In turn, Comment f to Section 42 of the Restatement notes:

If a secured party disposes of collateral in contravention of the mandated procedures, it is likely that the proceeds will be smaller and, therefore, the deficiency owed by the secondary obligor will likely be greater. Accordingly, **disposition of the collateral in a manner inconsistent with governing law constitutes impairment of collateral. In some jurisdictions, improper disposition of the collateral prevents recovery of any deficiency from the principal obligor** even in the absence of demonstrated loss. The effect on the secondary obligation of such a bar on seeking a deficiency from the principal obligor is considered in § 44.

Restatement (Third) of Suretyship & Guaranty § 42 cmt. f (1996) (emphasis added).

Further, in the related context of the application of Section 36-3-605(a), which concerns the discharge of a guarantor when the principal obligor is discharged, our Court of Appeals acknowledged the guarantor’s argument that the revisions to the UCC in South Carolina “indicate our Legislature intended to provide the Restatement protections to guarantors,” which promote “the prevention of opportunistic behavior by the bank and the borrower without regard

to the consequences to the guarantor.” *CoastalStates Bank v. Hanover Homes of S.C., LLC*, 408 S.C. 510, 520, 759 S.E.2d 152, 158 (Ct. App. 2014). In *CoastalStates*, the Court of Appeals reversed the grant of summary judgment in lender’s favor where “the guaranties created an ambiguity” as to the obligations. *Id.* at 524, 759 S.E.2d at 160. The prohibitions in the UCC and Restatement against impairment of collateral must be read into and inform the lender’s implied obligation of good faith and fair dealing in order to prevent self-serving action by the lender that harms a guarantor.

D. The Guaranties at issue contemplated that the Guarantors relied upon the collateral and upon the Trust’s compliance with all bidding procedures at a foreclosure sale in order to produce the highest and best bid at such sale, and as a result the Trust’s violation of the Deficiency Statute was a breach of the Guaranties and the implied obligation of good faith and fair dealing.

The defense offered by the guarantors at trial, which was rejected by the trial court, is that the Trust breached the implied obligation of good faith and fair dealing when it violated the Deficiency Statute, thereby precluding recovery on the guaranty. It is first necessary to understand the operation of the Deficiency Statute and how it impacts the liability on the Guaranties.

1. The Trust violated the Deficiency Statute to the detriment of the Guarantors.

By operation of S.C. Code Ann. § 15-39-760,⁷ S.C. Code § 15-39-720,⁸ (the Deficiency Statute) allows a mortgagee to obtain a deficiency judgment against a borrower **if, and only if**,

⁷ Under Section 15-39-760, the provisions of section 15-39-720 do not apply when the lender “expressly waives” a deficiency judgment against the borrower, in which case the sale is not held open for thirty days, and compliance with the bid must be made immediately. *Id.* § 15-39-760. In this manner, a lender who wants to retain a deficiency judgment against the borrower (*i.e.*, a judgment in the amount that the debt exceeds the high bid at the foreclosure sale) must comply with section 15-39-720 and hold the bidding open for thirty days.

⁸ The statute provides in full:

the mortgagee bids one time on the first day of the foreclosure auction and the bidding is then held open for thirty days to receive upset bids, with a final auction occurring on the thirtieth day. *Id.* § 15-39-720, -760. The Deficiency Statute forbids the mortgagee, or "all persons acting in his behalf," from bidding a second time or offering an upset bid at the final auction. *Id.* § 15-39-720 (emphasis added).

In this way, the Deficiency Statute protects borrowers and guarantors by requiring the mortgagee to make its best and highest bid on the first day of the sale, which in turn minimizes or even eliminates any deficiency. See 27 S.C. Jur. Mortgages § 128 ("This effectively forces the mortgagee to enter his highest and best bid at the initial sale."); see also *Holliday v. McFadden*, 188 S.C. 187, 198 S.E. 392, 394 (1938) ("[T]he policy of the Statute is to prevent

In all judicial sales of real estate for the foreclosure of mortgages and sales in execution the bidding shall not be closed upon the day of sale but shall remain open until the thirtieth day after such sale, exclusive of the day of sale. Within such thirty day period any person other than the highest bidder at the sale or any representative thereof in foreclosure and execution suits may enter a higher bid upon complying with the terms of sale by making any necessary deposit as a guaranty of his good faith, and thereafter within such period any person, other than such highest bidder at the sale or any representative thereof, in foreclosure suits may in like manner raise the last highest bid, and the successful purchaser shall be deemed to be the person who submitted the last highest bid within such period and made the necessary deposit or guaranty. But the mortgagee or his representative shall enter such bid as he desires at the time the sale is made, and he and all persons acting in his behalf shall be precluded from entering any other bid in any amount at any other time except the single or last bid made by him or in his behalf at the sale. If the thirtieth day falls on Sunday the bidding shall be closed on the Monday immediately following.

The bidding shall be reopened by the officer making the sale on the thirtieth day after the sale, exclusive of the day of the sale, at eleven o'clock in the forenoon and the bidding shall be allowed to continue until the property shall be knocked down in the usual custom of auction to the successful highest bidder complying with the terms of sale. The sales officer shall announce the sales about to be closed and shall receive the final bids in such sales in the order determined by him.

property being sold at judicial sales for sacrifice prices.”). Indeed, the Trust admitted in its opening statement that the purpose of this bidding scheme “is to try to encourage the party who is owed the money to put in the highest bid possible.” (Tr. p. 52) (R. p. 145). By forcing the mortgagee to only bid one time at the initial sale, the mortgagee must offer a bid of fair market value or risk that a third party will outbid it at the second sale and thereby in essence take from the mortgagee what the mortgagee could have received in payment for the debt. Because the provisions allowing for a deficiency judgment do not apply when a mortgagee waives the deficiency and competes with other bidders, the mortgagee should not gain the benefit of a deficiency when it (or someone on its behalf) violates those provisions by bidding at the second sale.

The operation of this statutory scheme is best conveyed by way of an example. Assume a property is worth \$1,000,000 and that the lender is owed \$800,000. If the lender were to bid any amount less than the debt of \$800,000, it risks an upset bid, thereby leaving it with some portion of the debt unpaid. For example, if the lender bid \$500,000, then an upset bidder could bid \$500,001 and take the property. The lender then would have \$500,001 and a deficiency judgment of \$299,999. But the scheme seeks to avoid this result by incentivizing the lender to bid the full amount of the debt of \$800,000. In doing so, the lender either will have the high bid and take the property valued at \$1,000,000, which is well in excess of the debt of \$800,000, or a third party will give an upset bid resulting in the full payment of the debt. Either way, the lender is compensated in full for the debt. Thus, the statutory scheme incentivizes the lender to bid the value of the debt (or the fair market value of the property if less than the debt).

This example also reveals how an unscrupulous lender might manipulate the system to its advantage in order to obtain both the property and a deficiency judgment, if it is allowed to do

what Respondent did here. Whereas a scrupulous lender would be incentivized in the above example to bid the full amount of its debt of \$800,000 (which would eliminate any deficiency); an unscrupulous lender who was willing to violate the statute might underbid at the first sale with a bid of \$400,000, knowing that it could send a representative to the second sale to preserve the value of the property by bidding against any upset bidders up to the amount of the debt. Thus, if a third party bid up to \$500,000 at the second sale, then lender's representative could take the property with a high bid of \$500,001 and then assign its bid back to the lender. In this manner, the lender would hold *both* the property (valued at \$1,000,000) *and* a deficiency judgment in the amount of \$299,999. This would result in a windfall valued at \$1,299,999 as compared to a debt of only \$800,000, and the borrower (as well as any guarantors) would continue to be obligated to the lender for the deficiency in the amount of \$299,999 *even though* the lender unquestionably had been paid in full. This example shows one reason why the statutory scheme does not allow the lender to bid at the second sale and requires the lender to make its highest and best bid at the first sale. It also shows the importance of allowing a guarantor who was not sued in the initial foreclosure action to interpose a defense to payment in a subsequent action on the guaranty.

2. ***The Trust's violation of the Deficiency Statute to the detriment of the Guarantors constituted a breach of the implied covenant of good faith and fair dealing in the Guaranties and therefore precluded recovery.***

As a result of the Trust's violation of the Deficiency Statute, the Appellants argued at trial that the Trust breached the implied obligation of good faith and fair dealing in the Guaranties and therefore should not be able to recover under the Guaranties. The trial judge assumed for the purposes of a directed verdict that the Trust in fact sent a representative to the second "upset" auction in violation of the Deficiency Statute, but nonetheless held that such a violation could not be a defense to the Guaranty. This ruling was error under applicable South

Carolina law. As in *CoastalStates*, the Guaranties at issue here create sufficient ambiguity such that a jury could construe them—and the concomitant obligation of good faith and fair dealing imposed by *Nelson*, related case law, and S.C. Code § 36-3-605(d)—to require the lender not to violate the Deficiency Statute, which impaired the benefit of the collateral to the guarantors because it allowed the Trust to avoid presenting its highest and best bid on the first day of the foreclosure sale. As a result, the violation of the Deficiency Statute breached the implied obligation of good faith and precludes recovery.

The Guaranties contain at least three terms reasonably indicating that the Appellants are entitled to the benefit of the collateral securing the underlying debt and of the protections of the Deficiency Statute. (Pl. Exs. 8-9) (R. pp. 276-81). First, the Guaranties provide that Lender may only “compromise” collateral “with reasonable notice to the undersigned,” (*id.* p. 1 (emphasis added)) (R. pp. 276, 279), which demonstrates a reliance upon the collateral by the Appellants as well as a prohibition against the Trust unilaterally compromising the collateral. Second, the Guaranties also provide that the Appellants have a “right of recourse to security for the debts and obligations of the Borrower to Lender” if and when they pay the Borrower’s obligations. (*Id.* p. 2 (emphasis added)) (R. pp. 277-80). This language also demonstrates a reliance upon the collateral by the Appellants and implies that the Trust should not impair the collateral when the Guarantors have right to pay the debt and then seek recourse from the collateral. And, third, perhaps most significantly, the Guaranties include bold language in all capital letter stating that **“THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.”** (*Id.* p. 3) (R. pp. 278, 281). This language expressly focuses on the importance of the high bid at any foreclosure sale, and it follows that the Appellants are relying upon a fair

bidding process in accordance with law in order to produce the highest possible high bid. The clear implication is that the lender must not engage in any behavior that would undermine the high bid.

These several provisions within the Guaranties demonstrate that the parties specifically contemplated that the collateral must be preserved for the benefit of all parties, including the Guarantors. Further, the final statement concerning the application of the high bid at the foreclosure sale shows that the parties contemplated that the bidding procedure at any foreclosure sale will impact the amount of the Appellants' obligation under the Guaranties. It follows that the implied obligation of good faith and fair dealing necessarily would prevent the Respondent from doing anything in the bidding process that might prevent the Appellants from gaining the full benefit of the high bid.

It follows that the violation of the Deficiency Statute worked to the severe detriment of the Appellant in depriving it of the Trust's "high bid." The Trust has conceded that the purpose of the bidding statute "is to try to encourage the party who is owed the money to put in the highest bid possible," (Tr. p. 52) (R. p. 145), yet it virtually admitted that it did **not** make its highest and best bid at the first sale but that it used Mr. George Buchanan—the person who established the Trust, was intimately involved in its operations, and whose children were its sole beneficiaries—to make the high bid at the second sale and then assign this bid back to the Trust.

As admitted in the Trust's opening statement, Mr. Buchanan bid at the upset sale because he **"was concerned that someone else might come in [at the upset sale] and take this property and leave the trust in a bad position, losing some money."** (*Id.* p. 52) (R. p. 145). Of course, the **only reason for Mr. Buchanan to have a concern of the Trust "losing money" would be if the Trust's bid of \$6.6 Million were less than the fair market value of the**

property. Otherwise, it could not lose money. And the value of the property surely did exceed the \$6.6 Million bid, as Appellants valued it at \$30 Million prior to the foreclosure, and the Trust valued it at \$15 Million immediately following the foreclosure. (*Id.* pp. 32, 85) (R. pp. 125, 178).

It can never be known what the Trust would have bid if it had offered its highest and best bid on the first day of the sale in accordance with the requirements of the Deficiency Statute. Given that the property' value exceeded the total debt of \$9.5 Million, a reasonable bid would have been *at least \$9.5 Million*, which would have covered the debt. But instead, as assumed by the trial court for purposes of the directed verdict, the Trust violated the Deficiency Statute and sent Mr. Buchanan to the upset sale to bid a second time for the Trust. Even though the winning bid of \$7.2 Million was more than the Trust's first bid of \$6.6 Million, it nonetheless deprived the Guarantors of the benefit of the Trust being forced to make it highest and best single bid in advance of the upset sale without knowledge of how high the bidding would go at the upset sale. But for this violation, the Guarantors reasonably could have expected the Trust to bid the full amount of the debt and eliminate any deficiency, which in turn would eliminate any liability under the Guaranties.

It is for these reasons that the violation of the Deficiency Statute, which was assumed by the trial court to have occurred, at the very least presents a jury question as to whether the Trust breached the implied covenant of good faith and fair dealing under the principles of *Nelson, CoastalStates Bank*, S.C. Code Ann. § 36-3-605(d), and other authorities cited above. Here, the Trust blatantly violated a statute whose very purpose was to protect the Guarantors, and in so doing eviscerated the Guarantors' ability to rely on the collateral. Such nefarious action is the epitome of bad faith and fair dealing and must not be sanctioned by this Court. South Carolina's

adoption of S.C. Code § 36-3-605(d), and related Restatement principles, coupled with the longstanding precedent of *Nelson* (and similar decisions in other jurisdictions) that a guarantor may defend on the basis of a plaintiff's breach of the implied covenant of good faith and fair dealing, mandates that the Court of Appeals reverse the directed verdict of the trial court.

E. **Alternatively, the Trust's violation of the Deficiency Statute to the detriment of the Guarantors precludes recovery under the Guaranties by operation of the doctrines of unclean hands, estoppel, waiver, and/or unlawful act.**

In the alternative to being precluded from recovery by the breach of the implied covenant of good faith and fair dealing, the doctrines of waiver, unlawful act, or unclean hands should bar the Trust from enforcing the ill-gotten deficiency judgment by way of a separate action against the guarantors.

Because the provisions allowing for a deficiency judgment do not apply when a mortgagee waives the deficiency and competes with other bidders at a single sale, S.C. Code Ann. §§ 15-39-720, -760, the mortgagee should be deemed to have waived the deficiency when it violated these statutory provisions. *See, e.g., Provident Life & Acc. Ins. Co. v. Driver*, 317 S.C. 471, 478, 451 S.E.2d 924, 928–29 (Ct. App. 1994) (“Waiver is the voluntary and intentional relinquishment of a known right. It may be implied from circumstances indicating an intent to waive. **Acts that are inconsistent with the continued assertion of a right may also give rise to a waiver.**” (emphasis added)).

Also, “[i]t is a well founded policy of law that no person be permitted to acquire a right of action from their own unlawful act and one who participates in an unlawful act cannot recover damages for the consequence of that act.” *Jackson v. Bi-Lo Stores, Inc.*, 313 S.C. 272, 276, 437 S.E.2d 168, 170 (Ct. App. 1993); *see also Wachovia Bank, NA v. Coffey*, 389 S.C. 68, 698 S.E.2d 244 (S.C. Ct. App. 2010), *aff'd as modified*, 404 S.C. 421, 746 S.E.2d 35 (2013). This rule

applies at both law and in equity and whether the cause of action is in contract or in tort. *Jackson*, 313 S.C. at 276, 437 S.E.2d at 170. Thus, the unlawful violation of the Deficiency Statute precludes recovery on the Guaranties.

Also, “[t]he doctrine of unclean hands precludes a plaintiff from recovering in equity if he acted unfairly in a matter that is the subject of the litigation to the prejudice of the defendant.” *Coffey*, 389 S.C. at 75, 698 S.E.2d at 247. The original Foreclosure Action against the Borrower was one in equity. See *Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 293, 778 S.E.2d 106, 108 (2015) (noting that a foreclosure action is one in equity and that “[t]he power to render a deficiency judgment is included within the jurisdiction of courts of equity”). If the Guarantors had been named in the original Foreclosure Action, the claims against them also would have been equitable claims. *Id.* As a result of the Trust’s unclean hands within the prior equitable Foreclosure Action, by virtue of violating the Deficiency Statute, the Trust should be precluded from recovery in this separate action against the Guarantors.

II. **A MORTGAGEE'S VIOLATION OF S.C. CODE § 15-39-720 IN A PRIOR FORECLOSURE ACTION CONSTITUTES A DEFENSE AS A MATTER OF LAW IN A SUBSEQUENT ACTION FOR BREACH OF GUARANTY WHEN THE GUARANTOR WAS NOT A PARTY TO THE PRIOR FORECLOSURE ACTION**

For all of the reasons above, the Appellants urge this Court to adopt a rule as a matter of law that a mortgagee that violates the Deficiency Statute by bidding twice (whether itself or through someone acting on its behalf) is precluded from recovering a deficiency judgment.

CONCLUSION

The Court of Appeals should reverse the trial court's directed verdict. Appellants further respectfully request that the Court of Appeals instruct the trial court to direct a verdict in favor of Appellants to the extent that the trial court determines that the Trust violated the Deficiency Statute.

Respectfully submitted,



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Date: February 21, 2019

Attorneys for Appellants

THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

**APPEAL FROM SALUDA COUNTY
COURT OF COMMON PLEAS**

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2018-001388

Stephen Wilkinson, as Trustee of George B. Buchanan, Jr.
Irrevocable Family Trust Dated the 15th day of July, 2001, ... Respondent,

v.

Redd Green Investments, LLC, Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce Green, Herbert Keith Anderson,
and L. Cliff Redd, ... Defendants,

Of which Redd Green Investments, LLC, A. Bruce Green,
and L. Cliff Redd are Appellants.

CERTIFICATE OF COMPLIANCE WITH RULE 211(b)

Appellants hereby certify that the Final Brief of Appellants complies with the requirements of Rule 211(b), SCACR.



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THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM SALUDA COUNTY
Court of Common Pleas
R. Knox McMahon, Circuit Court Judge

Lower Case No. 2015-CP-41-00172

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SC Court of Appeals

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of Whom

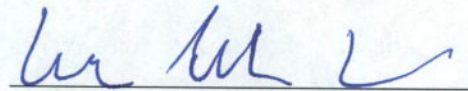
Redd Green Investments, LLC, A. Bruce Green, and L. Cliff Redd
are..... Appellants.

PROOF OF SERVICE

The undersigned certifies that the **FINAL BRIEF OF APPELLANTS** and the **CERTIFICATE OF COMPLIANCE WITH RULE 211(B)** were served upon Respondent by causing a copy of the same to be hand delivered, addressed as follows:

Erik T. Norton, Esq., John T. Moore, Esq., Nicholas Andrew Charles, Esq., A. Mattison Bogan, Esq., Nelson Mullins, 1320 Main Street, 17th Floor, Columbia, South Carolina 29201, as *Attorneys for Stephen Wilkinson, as Trustee of George B. Buchanan, Jr. Irrevocable Family Trust Dated the 15th day of July, 2001*

This 21st day of February, 2019.


William M. Wilson III

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

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Redd Green Investments, LLC, Anderson North Augusta,
LLC, Herbert Anderson, Jr., A. Bruce Green, Herbert
Keith Anderson, and L. Cliff Redd,.....

Defendants,

Of which Redd Green Investments, LLC, A. Bruce
Green, and L. Cliff Redd are.....

Appellants.

FINAL BRIEF OF RESPONDENT

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George B. Buchanan, Jr. Irrevocable Family Trust
Dated the 15th day of July, 2001*

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SC Court of Appeals

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STATEMENT OF ISSUES ON APPEAL

- I. The trial court properly granted directed verdict in favor of the Trust on the ground that the alleged violation of the deficiency statute in a prior foreclosure proceeding is not a defense to the Guarantors' obligations under the guaranty agreements.
- II. The trial court properly determined the Trust did not violate S.C. Code Ann. § 15-39-720.
- III. The Guarantors are barred from challenging the foreclosure judgment in this subsequent action.

STATEMENT OF THE CASE

This appeal arises out of a foreclosure deficiency judgment involving two guaranty agreements. The Trust seeks to enforce the guaranty agreements. In the foreclosure action, the Trustee of the George B. Buchanan, Jr. Irrevocable Family Trust, dated the 15th Day of July, 2001 (the “Trust”),¹ foreclosed on a mortgage securing a loan the Trust made to Springs North Augusta, LLC in 2009. (Foreclosure J., R. 229). At the conclusion of the foreclosure action, the master in equity sold the property in September 2012. (R. 265). Because the property sold for less than the total amount of the debt, the master entered a deficiency judgment against Springs North Augusta. (Deficiency J., R. 251).

The Trust filed this action on March 5, 2013, against Redd Green Investments, LLC; Anderson North Augusta, LLC; Herbert Anderson, Jr.; A. Bruce Green; William Otha Bodie;² Herbert Keith Anderson; and L. Cliff Redd. (Compl. at 1, R. 16). The appellants in this case are Redd Green Investments, LLC; A. Bruce Green; and L. Cliff Redd (the “Guarantors”). In the complaint, the Trust alleged the Guarantors and other defendants breached two guaranty agreements they entered into with the Trust in which they guaranteed the loan that was the subject of the foreclosure action. *See generally* (Compl., R. 16–21). The Guarantors filed counterclaims for civil conspiracy, constructive fraud, and fraud and deceit, alleging the Trust violated South Carolina Code section 15-39-720 (the “bidding statute”)³ when 2nd Avenue Holdings, LLC

¹ When the Trust filed the complaint, the Trustee was Harry P. Sakellaris. (Compl., R. 16). The caption in the case was amended on March 1, 2016, after the current Trustee, Stephen Wilkinson, replaced Sakellaris. (Or. Amending Caption and Substituting Counsel, R. 1).

² William Otha Bodie never answered the complaint and eventually was removed from the caption.

³ Section 15-39-720 provides,

submitted the winning bid at the foreclosure sale because Buchanan is the owner of 2nd Avenue Holdings. *See* (Ans. & Counterclaim at 3–5, R. 89–91).

On April 15, 2014, the Trust moved for summary judgment on its claims and the Guarantors' counterclaims. (Mot. for Summ. J., R. 310). The Trust submitted affidavits from Stephen Wilkinson, Harry Sakellaris, and 2nd Avenue Holdings asserting that Buchanan did not have control over or represent the Trust and, therefore, his winning bid at the foreclosure sale did not violate the bidding statute. (Aff. of Wilkinson, R. 312–14; Aff. of Sakellaris, R. 322–24; Aff. of 2nd Avenue Holdings, R. 325–26). Cliff Redd and Bruce Green submitted affidavits in opposition to the Trust's summary judgment motion on October 19, 2015, asserting that Buchanan controlled the decisions of the Trust and used 2nd Avenue Holdings to bid at the foreclosure sale and circumvent the requirements of the bidding statute. (Aff. of Redd, R. 327–29; Aff. of Green, R. 330–32). The circuit court denied the Trust's summary judgment motion on March 1, 2016,

In all judicial sales of real estate for the foreclosure of mortgages and sales in execution the bidding shall not be closed upon the day of sale but shall remain open until the thirtieth day after such sale, exclusive of the day of sale. Within such thirty day period any person other than the highest bidder at the sale or any representative thereof in foreclosure and execution suits may enter a higher bid upon complying with the terms of sale by making any necessary deposit as a guaranty of his good faith, and thereafter within such period any person, other than such highest bidder at the sale or any representative thereof, in foreclosure suits may in like manner raise the last highest bid, and the successful purchaser shall be deemed to be the person who submitted the last highest bid within such period and made the necessary deposit or guaranty. But the mortgagee or his representative shall enter such bid as he desires at the time the sale is made, and he and all persons acting in his behalf shall be precluded from entering any other bid in any amount at any other time except the single or last bid made by him or in his behalf at the sale.

S.C. Code Ann. § 15-39-720.

and ordered that the issues may be raised at the directed verdict stage. (Mar. 1, 2016 Or. Denying Summ. J., R. 6).

On March 1, 2017, the Trust moved to dismiss the Guarantors' counterclaims for lack of subject matter jurisdiction, arguing the trial court did not have jurisdiction to entertain a collateral attack on the master in equity's order granting a deficiency judgment in the foreclosure action. (Mot. to Dismiss, R. 333; Memo in Supp. of Mot. to Dismiss, R. 335). The trial court denied the Trust's motion on June 2, 2017. (June 2, 2017 Or. Denying Mot. to Dismiss, R. 7–9).

The case proceeded to trial on September 5, 2017. (Trial Tr. 1, R. 94). At the close of all the evidence, the Trust moved for directed verdict on the grounds that the Guarantors cannot collaterally attack the foreclosure orders, that the bidding statute was not violated as a matter of law, and that any violation of the bidding statute was not a material breach of the guaranty agreements because the Guarantors received the benefit of the loan. (Trial Tr. 124–27, R. 217–20). The trial court granted the Trust's motion on the grounds that a violation of the bidding statute is not a defense on a guaranty of a debt and no violation of the bidding statute occurred. (Trial Tr. 132–33, R. 225–26).

The Guarantors moved for a new trial on September 18, 2017, and amended their motion on September 19, 2017. (Mot. for New Trial, R. 291; Am. Mot. for New Trial, R. 294). The other defendants did not challenge the trial court's ruling and are not appellants in this case. The Guarantors submitted a memorandum in support of their motion for a new trial on May 29, 2018. (Memo. in Supp. of Mot. for New Trial, R. 302). The Trust filed a memorandum in opposition, (Plaintiff's Opp. to Mot. for New Trial, R. 297), and the trial court denied the motion in a Form 4 order issued on June 29, 2018, (June 29, 2018 Form 4 Or., R. 12). The Guarantors appealed the order granting directed verdict and the order denying their motion for a new trial.

STATEMENT OF THE FACTS

I. The Underlying Loan

In November 2009, the Trust and Springs North Augusta, LLC executed a promissory note for a \$7,590,000 loan from the Trust to Springs North Augusta. *See* (Promissory Note, R. 266–72). Springs North Augusta was owned by Redd Green Investments, LLC and Anderson North Augusta, LLC. (Promissory Note, R. 266; Trial Tr. 84, R. 177). Those owners formed Springs North Augusta for the purpose of holding title to 1,420 acres of commercial real estate in Aiken County, South Carolina. (Trial Tr. 85, R. 178). The individual appellants in this case, Bruce Green and Cliff Redd, owned Redd Green Investments, LLC, which they formed solely to hold their ownership interest in Springs North Augusta. (Trial Tr. 84, R. 177). The loan was secured by a mortgage on the 1,420 acres of commercial real estate, which the Guarantors intended to sell “and pay the note off and hopefully make some money off it.” (Trial Tr. 85, R. 178).

As consideration for the Trust to loan the money, the Guarantors executed two guaranty agreements—one signed by Redd Green Investments, LLC and Anderson North Augusta, LLC; and the other signed by appellants Bruce Green, Cliff Redd, and the other individual defendants. *See* (Guaranty Agrs., R. 276, 279). The two guaranty agreements contained identical terms. *See* (*id.*). All parties executed another agreement (the “Loan Agreement”) memorializing additional aspects of their relationships. (Loan Agr., R. 22).

In November 2010, the parties amended the Loan Agreement and promissory note. *See* (Nov. 16, 2010 Mod. to Promissory Note, R. 273–75; Trial Tr. 67–68, R. 160–61). The amendments extended the maturity date by one year and added the capitalized interest to the principal, making the new principal amount \$8,728,500. (*Id.*). The guaranty agreements remained unchanged.

II. The Foreclosure Action

After Springs North Augusta defaulted on the loan, the Trust filed an action to foreclose on the mortgage. (Trial Tr. 86–87, R. 179–80). The Trust named Springs North Augusta—the only other party to the mortgage⁴—as the sole defendant in the foreclosure action. *See* (Foreclosure J. at 1, R. 229). Springs North Augusta failed to answer, and the master in equity entered a default judgment in favor of the Trust and ordered the property to be sold at auction with the proceeds to be applied to the debt, which then totaled \$9,450,662.50. (Foreclosure J. at 4, R. 232). The Trust bid \$6,600,000 at the initial foreclosure sale. (Trial Tr. 96, R. 189). Pursuant to section 15-39-720, the master in equity held the sale open for thirty days to receive additional bids (sometimes referred to as “upset” bids). At the close of the thirty days, 2nd Avenue Holdings, LLC submitted a winning bid of \$7,160,000. (Master’s Report on Sale, R. 265). Subsequently, 2nd Avenue Holdings assigned its winning bid to the Trust. (*Id.*). On March 20, 2013, the master issued his report memorializing that 2nd Avenue Holdings assigned its bid to the Trust and that the master conveyed the property to the Trust. (*Id.*) The Guarantors never sought to intervene in the foreclosure action and never objected to the foreclosure sale or the master’s conveyance of the property to the Trust pursuant to the assignment of bid from 2nd Avenue Holdings.

⁴ The mortgage is a public record and can be found as Exhibit D to the complaint in the foreclosure action, Civil Action No. 2012-CP-02-00173 (Aiken County), which was filed on January 20, 2012. The first paragraph of the mortgage reads as follows:

THIS MORTGAGE AND SECURITY AGREEMENT (this “Mortgage”) is made and entered into as of November 18, 2009, by and among SPRINGS NORTH AUGUSTA, LLC, a South Carolina limited liability company (hereinafter referred to as “Mortgagor”) whose address is 133 Joe Bernat Drive, Greenwood, SC 29649 and D. RICHARD CRUMPLER, AS TRUSTEE OF THE GEORGE B. BUCHANAN, JR. IRREVOCABLE FAMILY TRUST, DATED THE 15TH DAY OF JULY, 2001 (hereinafter referred to as “Mortgagee”) whose address is 4728 Jenn Drive, Myrtle Beach, SC 29577.

Because the property sold for less than the amount of the debt, the master entered a deficiency judgment against Springs North Augusta in the amount of \$2,484,163.95, which it later amended to \$2,753,192.70, plus 15% annual interest. (Or. Amending Foreclosure J. and Deficiency J., R. 263–64). At the time of trial on the guaranty agreements and deficiency judgment, the Trust still owned the property and had not received any written offers to purchase the property. (Trial Tr. 78, R. 171). Nor had the Guarantors satisfied the deficiency. (*Id.*).

III. The Guaranty Action

The Trust filed this action to collect the deficiency judgment from the Guarantors. *See generally* (Compl., R. 16–21). The Guarantors asserted they are not obligated to pay the deficiency judgment because 2nd Avenue Holdings is a representative of the Trust and was therefore prohibited from bidding at the upset sale pursuant to South Carolina Code section 15-39-720. *See* (Ans. & Counterclaim at 4, R. 90; Aff. of Redd, R. 327–29; Aff. of Green, R. 330–32). Although the Guarantors initially asserted counterclaims against the Trust, they withdrew those counterclaims at trial “as counterclaims, but not as the factual basis for the defenses.” (Trial Tr. 81, R. 174). However, they maintained that the bidding statute and the implied covenant of good faith and fair dealing required the Trust to submit a bid of at least fair market value for the property at the initial foreclosure sale. *See, e.g.*, (Memo. in Supp. of Mot. for New Trial, R. 303–04).

At trial, the Trustee testified that he is responsible for managing the Trust, which Buchanan established “for the health, education[,] and welfare” of his children. (Trial Tr. 65, R. 158). The trustee testified that Buchanan has contributed all the assets of the Trust but cannot take assets out of the Trust nor receive any disbursements from the Trust. (*Id.*). Finally, the Trustee established the existence of the debt and the guaranty agreements. (Trial Tr. 66–73, R. 159–66).

The Guarantors presented three witnesses: Bruce Green, Cliff Redd, and George Buchanan. (Trial Tr. 62–122, R. 155–215). Bruce Green testified that, pursuant to the loan documents, the Trust advanced approximately \$6,000,000 in cash to Springs North Augusta. (Trial Tr. 86, R. 179); *see also* (Trial Tr. 94, R. 187). The \$7,590,000 figure represented in the promissory note included the \$6,000,000 cash outlay, plus prepaid interest and additional amounts. (*Id.*). Bruce Green also testified that, although he was a guarantor of the loan, he thought “that never seemed to be a problem” because he believed the property was worth several times more than the loan. (Trial Tr. 86, R. 179). Bruce Green further testified as to his knowledge of various events in the foreclosure process, including his assumption that the Trust would not pursue the guaranty agreements because it did not name the Guarantors as defendants in the foreclosure action. (Trial Tr. 87–88, R. 180–81). Finally, Bruce Green acknowledged that he would have been liable for the debt as a guarantor, but he believed he did not have to pay the deficiency judgment because “it was acquired the way it was.” (Trial Tr. 90, R. 183). Cliff Redd testified that his answers would be identical to those offered by Bruce Green. (Trial Tr. 92, R. 185). Neither Bruce Green nor Cliff Redd testified that any other party attempted to bid at the foreclosure sale. The Guarantors presented no evidence that 2nd Avenue Holdings’ participation in the sale thwarted any other party’s attempt to participate.

At the close of all the evidence, the trial court granted a directed verdict in favor of the Trust on the grounds that (1) any violation of the bidding statute is not a defense to the Guarantors’ performance pursuant to the guaranty agreements, and (2) no violation of the bidding statute occurred. (Trial Tr. 132–33, R. 225–26).

STANDARD OF REVIEW

A directed verdict should be granted where the evidence raises no issue for the jury as to the defendant's liability. *Guffey v. Columbia/Colleton Reg'l Hosp., Inc.*, 364 S.C. 158, 163, 612 S.E.2d 695, 697 (2005). In ruling on a motion for directed verdict, the trial court must view the evidence and the inferences which reasonably can be drawn therefrom in the light most favorable to the nonmoving party. *Steinke v. S.C. Dep't of Labor, Licensing & Reg.*, 336 S.C. 373, 386, 520 S.E.2d 142, 148 (1999).

"The grant or denial of [a] new trial motion[] rests within the discretion of the trial judge and his decision will not be disturbed on appeal unless his findings are wholly unsupported by the evidence or the conclusions reached are controlled by error of law." *Stevens v. Allen*, 336 S.C. 439, 446, 520 S.E.2d 625, 628–29 (Ct. App. 1999), *aff'd*, 342 S.C. 47, 536 S.E.2d 663 (2000).

ARGUMENT

The guaranty agreements signed by the Guarantors exist for two reasons—to induce the Trust to make the loan and to insure that the debt to the Trust is paid. In consideration for that assurance, the Trust made the \$7,590,000 loan to Springs North Augusta in 2009. Thus, both sides received a benefit. The Guarantors received the money for their commercial real estate investment, and the Trust received interest on the loan plus a guaranty that it would be repaid regardless of whether the real estate investment succeeded. The Guarantors now ask the courts to rewrite the agreements. They seek a ruling that the agreements included additional benefits for them in the form of an implied covenant that the Guarantors would not suffer any loss because they would either not have to repay the debt or would obtain title to the property—which they believe they could resell for more than the amount of the debt—if Springs North Augusta defaulted on the loan. To avoid paying the debt they guaranteed, the Guarantors ask the court to (1) add new, implied

terms to the guaranty agreements—via the implied covenant of good faith and fair dealing—providing that if the Trust forecloses on the mortgage, the foreclosure sale must obtain either fair market value for the property or the value of the remaining debt; and (2) create a new law that guarantors must be added as defendants to a foreclosure action, or the failure to obtain fair market value through the foreclosure sale will extinguish the guarantors’ obligation.

Nothing in the guaranty agreements contemplates the Guarantors’ desired result. Instead, the plain language of the guaranty agreements provides that the Trust would loan \$7,590,000 to Springs North Augusta, and the debt to the Trust would be repaid in full, regardless of the source or sources of the money. The Trust performed its obligation under the guaranty agreements. The Guarantors have not performed theirs. This court should reject the Guarantors’ arguments and affirm the directed verdict and denial of the Guarantors’ motion for a new trial.

I. The plain language of the guaranty agreements precludes the Guarantors from asserting an alleged prior violation of the deficiency statute as a defense.

The guaranty agreements are contracts subject to standard rules of contract interpretation. *TranSouth Fin. Corp. v. Cochran*, 324 S.C. 290, 294, 478 S.E.2d 63, 65 (Ct. App. 1996) (“A guaranty is a contract and should be construed based on the language used by the parties to express their intention.”). Therefore, the question whether a violation of the bidding statute constitutes a defense to payment on the guaranty agreements is an issue of contract interpretation. When a contract’s language is unambiguous, the court must interpret the contract based on the language alone. *First S. Bank v. Rosenberg*, 418 S.C. 170, 180, 790 S.E.2d 919, 925 (Ct. App. 2016) (citing *Whitlock v. Stewart Title Guar. Co.*, 399 S.C. 610, 615, 732 S.E.2d 626, 628 (2012)). The court must read contractual terms in the context of the whole contract and “may not create an ambiguity by pointing out a single sentence or clause.” *Id.* (quoting *McGill v. Moore*, 381 S.C. 179, 185, 672 S.E.2d 571, 574 (2009)). “This court’s duty is to enforce the contract made by the parties

regardless of the parties' failure to carefully guard their rights." *Id.* The guaranty agreements are unambiguous, and their plain language precludes the Guarantors from asserting a prior violation of the bidding statute as a defense in this case.

The guaranty agreements are personal obligations running directly from the Guarantors to the Trust and were immediately enforceable against the Guarantors upon default of the borrower, if the Trust chose to enforce them. *TranSouth Fin. Corp.*, 324 S.C. at 295, 478 S.E.2d at 66. The Guarantors' rights are determined solely by the terms of the guaranty agreements, and the guaranty agreements do not support their position. *See Citizens & S. Nat. Bank of S.C. v. Lanford*, 313 S.C. 540, 544, 443 S.E.2d 549, 551 (1994) ("We adhere to the principle that the guaranty of payment and the promissory note are two separate contracts. We conclude that [the guarantor] is not a party to the note and cannot avail himself of defenses based on impairment of collateral under S.C. Code Ann. § 36-3-606 (1976)."). The Guarantors ask this court to add implied terms that contradict the plain, express terms of the guaranty agreements. This court cannot rewrite the guaranty agreements.

A. The guaranty agreements are guaranties of payment, and the agreements unambiguously do not include the requirements that the Guarantors are seeking to add.

The guaranty agreements are absolute guaranties or guaranties of *payment*; they are not guaranties of *collection*. *See Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Ret. Grp., Inc.*, 300 S.C. 277, 281, 387 S.E.2d 672, 674 (1989) ("Under an absolute guaranty of payment, the creditor may maintain an action against the guarantor immediately upon default of the debtor. A guaranty of collection conditions liability of the guarantor upon prosecution of the primary debtor without success." (citations omitted)); *see also* (Guaranty Agrs. at 1, R. 276, 279) ("providing the guaranty agreements are guarantees "of payment and not of collection"). As guaranties of payment, the

Trust is not obligated to take any particular action or accomplish any requirement before demanding that the Guarantors pay the debt.

The express terms of the guaranty agreements provide (1) the Trust is not required to foreclose on the mortgage prior to pursuing payment from the Guarantors; (2) the loan is not conditional on the Trust taking *any* particular steps related to the mortgage prior to seeking payment of the remaining debt from the Guarantors; and (3) the Guarantors have no right of subrogation unless and until the borrower's debt is paid in full. (Guaranty Agrs. at 1, R. 276, 279) (providing the Guarantors' obligation is "payable immediately upon demand without recourse having been had by [the Trust] against the Borrower or any other guarantor, person, firm, or corporation, and without first resorting to any property held by [the Trust] as collateral security"). The guaranty agreements clearly provide that the Trust was making a loan in consideration for an unconditional guarantee of payment by the Guarantors. (*Id.*) (providing the guaranty is "an inducement" to the Trust to make the loan and was "in consideration thereof").

i. The Guarantors have no right in the collateral because the debt has not been paid in full.

The Guarantors argue to this court that the Trust was required to obtain a higher sale price at the foreclosure sale and that "the Guarantors have [the] right to pay the debt and then seek recourse from the collateral." (App. Br. 23). The express terms of the guaranty agreements contradict the Guarantors' position. The provision the Guarantors rely upon states,

[T]he undersigned further agrees that none of the undersigned shall have any right of subrogation, reimbursement or indemnity whatsoever, nor any right of recourse to security for the debts and obligations of the Borrower or Lender unless and until all of the debts and obligations of the Borrower to Lender have been paid in full.

(Guaranty Agrs. at 2, R. 277, 280). The guaranty agreements allow the Guarantors recourse only against Springs North Augusta and only after the debt has been fully satisfied. (*Id.*). The Guarantors now seek to cast this provision as an agreement that “the Guarantors have [the] right to pay the debt and then seek recourse from the collateral.” (App. Br. 23). The guaranty agreements grant the Guarantors no such rights. The agreements are simple—if the Trust cannot obtain full satisfaction of the debt, it can demand payment of whatever remains from the Guarantors. It is, as its name plainly indicates, a guarantee that the Trust will receive payment of the debt in full. The agreements do not exist to grant the Guarantors any rights in the collateral, and they expressly do not grant the Guarantors the right to pay the debt and sell off the collateral:

Nothing herein contained is intended or shall be construed to give the undersigned any right of subrogation in or under the Loan Documents or any right to participate in any way therein, or in the right, title or interest of Lender in or to any collateral for the Loan, notwithstanding any payments made by the Guarantor under this Guaranty, until the actual and irrevocable receipt by Lender of payment in full of all the debt owed to it under or in connection with the Loan Documents.

(Guaranty Agrs. at 2, R. 277, 280). After the Guarantors have satisfied the remaining debt, they are subrogated to the rights of the Trust—namely, a deficiency judgment now worth more than \$4,700,000—and may seek to enforce those rights against the borrower, Springs North Augusta. The fact that the Guarantors are the owners of the borrower and may not be able to enforce their subrogated rights against it does not entitle them to new contractual terms—and new law—allowing them to pursue remedies not contemplated by the guaranty agreements. The Guarantors were undoubtedly aware of this potential problem when they agreed to guarantee the debt of a company they owned. *Rosenberg*, 418 S.C. at 180, 790 S.E.2d at 925 (“This court’s duty is to enforce the contract made by the parties regardless of the parties’ failure to carefully guard their

rights.”). The debt has not been paid in full, and the Guarantors are therefore liable for what remains.

ii. The Trust had discretion to foreclose on the property before enforcing the guaranty agreements.

The guaranty agreements allow the Trust discretion to foreclose on the property first and to pursue the Guarantors if the debt still has not been fully satisfied after the foreclosure. The Guarantors cannot escape the plain terms of the guaranty agreements. *See Lanford*, 313 S.C. at 543, 443 S.E.2d at 551 (finding a guaranty agreement imposed no obligation on the lender to pursue or exhaust the collateral and, instead, “unambiguously places all guarantors, jointly and severally, under liability for 100% of the contract debt”). Consequently, they ask this court to rewrite the agreements by adding implied terms that contradict the express terms of the agreements. The implied covenant of good faith and fair dealing cannot require the Trust to comply with the requirements of the bidding statute before enforcing a deficiency judgment against the Guarantors when the Trust is not required to pursue foreclosure or a deficiency judgment at all. *See Adams v. G.J. Creel & Sons, Inc.*, 320 S.C. 274, 277, 465 S.E.2d 84, 85 (1995) (explaining there is no breach of the implied covenant “where a party to a contract has done what provisions of the contract expressly gave him the right to do”).

iii. The Guarantors received the benefit for which they bargained.

The Guarantors have already received the benefit of the guaranty agreements. The first sentence of the agreements provides that the Guarantors “absolutely and unconditionally” guarantee payment of the loan “[a]s an inducement to [the Trust] to extend credit to and to otherwise deal with **SPRINGS NORTH AUGUSTA, LLC** . . . and in consideration thereof.” (Guaranty Agrs. at 1, R. 276, 279). There is no dispute that the Trust extended credit to Springs North Augusta. Thus, the Trust performed under the agreements in 2009, and the Guarantors

received the benefit for which they bargained. The Trust's alleged actions in enforcing its own rights pursuant to the express terms of the guaranty agreements, long after it performed its obligation, cannot be a breach of the implied covenant of good faith and fair dealing. *Adams*, 320 S.C. at 277, 465 S.E.2d at 85 (“[T]here is no breach of an implied covenant of good faith where a party to a contract has done what provisions of the contract expressly gave him the right to do.”); *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 500, 473 S.E.2d 52, 53 (1996) (explaining the implied covenant of good faith and fair dealing prohibits a party from doing anything “to impair the other’s rights to receive benefits under the contract”). Similarly, the Guarantors’ miscalculation of the risk does not excuse them from their contractual obligations. *See* (Trial Tr. 86, R. 179) (explaining the Guarantors thought they would never have to pay under the guaranty agreements because they believed the property was worth more than the amount of the loan); *see also Rosenberg*, 418 S.C. at 180, 790 S.E.2d at 925.

B. The terms in the guaranty agreements relied upon by the Guarantors do not support their position.

The Guarantors rely on several provisions of the guaranty agreements in support of their arguments. *See* (App. Br. 23). However, those provisions do not entitle them to relief. First, their argument that the Trust may only “‘compromise’ collateral ‘with reasonable notice to the undersigned’” is unpreserved. The Guarantors never argued to the trial court that the Trust violated that term by failing to notify them it would seek recourse against the collateral. Therefore, this argument is not preserved for appellate review. *See Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998). Nonetheless, the Guarantors are the owners of Springs North Augusta, and they cannot reasonably deny receiving notice of the foreclosure action. *See* (Trial Tr. 87–89, R. 180–82) (describing the Guarantors’ knowledge of the foreclosure proceedings while those proceedings occurred).

Second, as explained above, the Guarantors' argument that they have a "right of recourse to security for the debts and obligations of the Borrower to Lender' if and when they pay the Borrower's obligations" is a misreading of the plain language of the guaranty agreements. *See* (App. Br. 23); *see also* (Guaranty Agrs. at 2, R. 277, 280). That clause provides that the Guarantors have no right of subrogation or recourse against the collateral until all debts and obligations have been paid in full. The debt has not been paid.

Finally, the Guarantors rely on part of a clause at the end of the agreements to argue that the agreements "focus[] on the importance of the high bid at any foreclosure sale" and that the Guarantors were "relying upon a fair bidding process in accordance with law in order to produce the highest possible high bid." (App. Br. 24). That provision states, in full,

Waiver of Appraisal Rights. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. **TO THE FULLEST EXTENT PERMITTED BY LAW AND AS A MATERIAL INDUCEMENT FOR LENDER TO MAKE THE LOAN, GUARANTOR HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.**

(Guaranty Agrs. at 3, R. 278, 281). The Guarantors ask this court to interpret that provision as an agreement that the Trust will insure the highest possible bid at a foreclosure sale. To the contrary, the provision—read in context—expressly provides that, as an inducement for the Trust to make the loan, the winning bid at any foreclosure sale is final and the Guarantors do not have the right to assert that the bid should be higher. Regardless, as explained below in Part II.B, the Guarantors

presented no evidence to support a finding that the high bid at the foreclosure sale was not the highest possible bid.

The plain language of the guaranty agreements does not include any requirement that the property sell for the full amount of the debt at a foreclosure sale or for fair market value before the Trust may pursue recovery from the Guarantors. The Guarantors ask this court to create new law and add new, implied terms to the guaranty agreements providing them with greater rights than those for which they contracted. Courts cannot rewrite contracts to change the parties' agreement, and this court should affirm the directed verdict and denial of the motion for a new trial.

C. No law supports the relief sought by the Guarantors.

The Guarantors have not cited any law supporting their requested relief. The primary case they rely upon is inapplicable to this issue. *See Commercial Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 147 S.E.2d 481 (1966). To the extent the contract at issue in *Nelson Motors* was a guaranty, it was a guaranty of collection. The court considered the contractual relationship between two parties—"including the relationship of the parties and their past dealings"—and found Commercial Credit Corporation was required to pursue collection of certain accounts before demanding payment from Nelson Motors. *Id.* at 369, 147 S.E.2d at 485. Importantly, the contract contained no provision addressing the issue. *Id.* at 369, 147 S.E.2d at 485. However, the parties' relationship preexisted the contract at issue, and Commercial Credit had always sought to collect with diligence before demanding payment from Nelson Motors. *Id.* at 364–65, 147 S.E.2d at 482–83. Therefore, the court found an implied obligation to collect. *Id.* In contrast, the Trust and the Guarantors had no prior contractual relationship related to the guaranty agreements, and the guaranty agreements expressly provide that they are *not* guaranties of collection and that the Trust

is *not* required to attempt collection before pursuing the Guarantors. (Guaranty Agrs. at 1–2, R. 276–77, 279–80).

The Guarantors also assert that the prohibitions on impairment of collateral in Article 3 of the Uniform Commercial Code (“UCC”), *see* S.C. Code Ann. § 36-3-605, and the Restatement (Third) of Suretyship & Guaranty apply to this case. (App. Br. 17–19). The Guarantors misinterpret South Carolina law.

First, Article 3 of the UCC does not apply to this case. The UCC rules apply to negotiable instruments, but the Guarantors are not parties to a negotiable instrument. *See Sunrise Sav. & Loan Ass’n v. Mariner’s Cay Dev. Corp.*, 295 S.C. 208, 210–11, 367 S.E.2d 696, 697–98 (1988); *see also* (Promissory Note, R. 266). In fact, the comments to section 36-3-605—which the Guarantors rely upon—plainly state that it does not apply to the guaranty agreements at issue in this case. *See* S.C. Code Ann. § 36-3-605 cmt. 2 (explaining there are three ways to consummate a guaranty agreement, one of which “is that the Borrower would use an instrument governed by this Article to evidence its repayment obligation, but Backer’s [i.e., the guarantor’s] obligation would be created in some way other than by becoming party to that instrument. In that case Backer’s rights are determined by suretyship and guaranty law rather than by this Article”). The Guarantors are not parties to the promissory note; they are parties only to the separate guaranty agreements. (Promissory Note at 1, R. 266; Guaranty Agrs., R. 276, 279). Thus, Article 3 of the UCC—including section 36-3-605—does not apply to this case. *Id.*; *see also Sunrise Sav. & Loan Ass’n*, 295 S.C. at 210–11, 367 S.E.2d at 697–98 (finding a contract of guaranty “does not satisfy the requirements of a negotiable instrument. Accordingly, [the guarantor] is not a ‘party to the instrument’ and cannot assert an impairment of collateral defense” provided by the UCC); *see also Tri-S. Mortg. Inv’rs v. Fountain*, 266 S.C. 141, 145, 221 S.E.2d 861, 863 (1976) (finding the

incorporation of a guaranty into a note and other loan documents did not alter the obvious intent that the guaranty agreement be absolute as a guaranty of payment rather than collection), *overruled on other grounds by SCN Mortg. Corp. v. White*, 312 S.C. 384, 440 S.E.2d 868 (1994).

Second, contrary to the Guarantors' assertions, this court did not apply Restatement (Third) of Suretyship & Guaranty protections in *CoastalStates Bank v. Hanover Homes of South Carolina, LLC*, 408 S.C. 510, 759 S.E.2d 152 (Ct. App. 2014). The "acknowledgement" of the guarantor's argument cited by the Guarantors was simply the court's recitation of the parties' arguments in that case. *See id.* at 519–20, 759 S.E.2d at 157–58. The court never indicated its agreement with those arguments, and it did not adopt the Restatement's "impairment of collateral" defense as the law in South Carolina. *See generally id.* at 518–23, 759 S.E.2d at 157–59 (reciting the parties' arguments in extensive detail). To the contrary, the court decided the case based on the terms of the agreements between the parties. *Id.* at 523, 759 S.E.2d at 159 ("Under our reading of the relevant authorities, we must review the terms of the guaranty and the Agreement to determine if Cosman was released from liability with the release of Borrower."). The court reversed the granting of summary judgment because it found the guaranties at issue could "reasonably be read" to support the appellant's position. *Id.* at 524, 759 S.E.2d at 160. Thus, *CoastalStates* does not support the Guarantors' argument that this court must add an implied term to the guaranty agreements that extinguishes the debt if the Trust is found to have impaired the collateral.

Unlike the guaranties in *CoastalStates*, the guaranty agreements in this case are unambiguous and cannot be "reasonably read" to require the Trust to bid fair market value or comply with the bidding statute in a prior foreclosure action before it may enforce the guaranty agreements. The Guarantors are liable for the amount of the deficiency judgment.

Although the Trust disputes the allegation that it violated the bidding statute, any violation is irrelevant to whether the Guarantors are obligated to pay the remaining debt. The Guarantors' argument would convert the guaranty agreements into guaranties of *collection*, not of *payment*, and would alter the express language of the guaranty agreements. Contrary to their arguments, there is no requirement that the Trust must bid the fair market value of the property. The guaranty agreements are *absolute* guaranties, and the Guarantors are liable for whatever the borrower failed to pay.

II. The trial court properly determined the Trust did not violate section 15-39-720.

A. No violation of the deficiency statute occurred.

This court should affirm the trial court's finding that no violation of the bidding statute occurred. Although the trial court stated that it assumed for purposes of its directed verdict ruling that a violation of the statute occurred, it also found that 2nd Avenue Holdings is not a representative of the Trust. If 2nd Avenue Holdings is not a representative of the Trust, no violation of the statute occurred, and if no violation of the statute occurred, the Guarantors have no defense to payment of the deficiency judgment.

Section 15-39-720 provides that a foreclosure sale shall remain open for thirty days after the initial sale. S.C. Code Ann. § 15-39-720. Within that thirty-day period,

any person other than the highest bidder at the sale or any representative thereof in foreclosure and execution suits may enter a higher bid . . . , and thereafter within such period any person, other than such highest bidder at the sale or any representative thereof, in foreclosure suits may in like manner raise the last highest bid, and the successful purchaser shall be deemed to be the person who submitted the last highest bid within such period and made the necessary deposit or guaranty. But the mortgagee or his representative shall enter such bid as he desires at the time the sale is made, and he and all persons acting in his behalf shall be precluded from entering any other bid in any amount at any other

time except the single or last bid made by him or in his behalf at the sale.

S.C. Code Ann. § 15-39-720. To prove a violation of the statute, the Guarantors must prove that the winning bid of \$7,160,000 was entered by a representative of the Trust. The winning bid at the upset sale was submitted by 2nd Avenue Holdings, LLC. (Trial Tr. 69, R. 162). The Trust does not dispute that Buchanan is the sole owner of 2nd Avenue Holdings. However, there is no legal relationship between 2nd Avenue Holdings and the Trust. Moreover, the Trust is an irrevocable trust set up for the benefit of Buchanan's children, and Buchanan has no legal right to make decisions for the Trust. (Trial Tr. 65–66, 76–78, R. 158–59, 169–71). The \$7,160,000 bid came from 2nd Avenue Holdings, which is not a representative of the Trust as a matter of law. Therefore, no violation of the statute occurred, and the Guarantors are obligated to pay the deficiency judgment.

B. There is no evidence that the Guarantors suffered any prejudice from Buchanan's or 2nd Avenue Holdings' actions at the foreclosure sale.

The Guarantors cannot prove that they were harmed. The Guarantors can only be relieved of their obligation to perform under the guaranty agreements if they can show that the sale price would have been higher but for Buchanan's actions. They failed to do so. The fact that the winning bid was \$7,160,000 definitively proves that no party was willing to bid more than \$7,160,000, and the Guarantors suffered no prejudice from 2nd Avenue Holdings' purchase because they would be in no better position if a third party had purchased the property. *See Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Ret. Grp., Inc.*, 302 S.C. 223, 233 & n.1, 394 S.E.2d 849, 855 & n.1 (Ct. App. 1990) (Cureton, J., concurring) (“[T]he developers here are not prejudiced by allowing the lender the discount because they would have been in no better position if a third party had purchased the property at the judicial sale. . . . *Indeed, it is assumed that because a third party did*

not buy the property at the foreclosure sale no one else was interested in purchasing the property at the price paid by the lender.” (emphasis added)). The Guarantors instead ask the courts to extinguish their debt on the purely hypothetical ground that a third party would have bid either the full amount of the debt or fair market value—or that the Guarantors would have done so—if 2nd Avenue Holdings had not bid. No provision of South Carolina law supports such a remedy, and no evidence presented at trial supports the Guarantors’ hypothetical. Moreover, the Guarantors benefitted from the Trust’s use of the foreclosure process. They are liable for approximately \$4,700,000, instead of the total debt of approximately \$9,600,000.

As to the propriety of the amount obtained at the foreclosure sale, the \$7,160,000 sale price was 94% of the original loan amount. The South Carolina Supreme Court has noted that although a foreclosure sale may be set aside if the inadequacy of the sale price “is so gross as to shock the conscience,” a sale price of 47% of the original amount of the mortgage did not meet that test. *Am. Gen. Fin. Servs., Inc. v. Brown*, 376 S.C. 580, 584 n.2, 658 S.E.2d 99, 101 n.2 (2008). If a sale price of 47% of the original debt is not sufficiently inadequate to set aside a foreclosure sale, the Guarantors’ argument that the foreclosure sale must obtain the amount of the debt or the fair market value of the property is invalid.

III. The Guarantors cannot challenge the deficiency judgment in a subsequent action to enforce the guaranty agreements.

This case is not the proper vehicle for the Guarantors to challenge the foreclosure proceedings. The Guarantors have repeated throughout trial and their brief that the Trust did not name them as defendants in the foreclosure action. The implication of the Guarantors’ argument is that the Trust’s decision not to name them as defendants was unlawful or inequitable. To the contrary, as the Guarantors’ counsel conceded in his closing argument, (Trial Tr. 128, R. 221) (“They certainly didn’t have to and that’s their decision . . .”), the Trust was not required to name

the Guarantors as defendants in the foreclosure action. *See* S.C. Code Ann. § 29-3-660 (providing “if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor the plaintiff *may* make such person a party to the action” (emphasis added)); *Carolina First Bank v. BADD, L.L.C.*, 414 S.C. 289, 292–93, 778 S.E.2d 106, 108 (2015) (referring to a lender’s “statutory right to join a guarantor as a party to a foreclosure action”); *see also* 27 S.C. Jur. *Mortgages* § 108 (“Guarantors or persons obligated on a note other than the mortgagor *can* be made parties and a judgment obtained against them for the unsatisfied debt.” (emphasis added)). The Trust had the right to name the Guarantors as defendants in the foreclosure obligation, but it was not obligated to do so by either law or contract.

A. The Guarantors’ defense is barred by res judicata.

The Guarantors’ attempt to challenge the amount of the deficiency judgment is barred by the res judicata doctrine. Res judicata “defines the effect a valid judgment may have on subsequent litigation between the same parties *and their privies*.” *Duckett v. Goforth*, 374 S.C. 446, 464–65, 649 S.E.2d 72, 81–82 (Ct. App. 2007) (emphasis added). It “ends litigation, promotes judicial economy and avoids the harassment of relitigation of the same issues.” *Id.* The party seeking to establish res judicata must prove three elements: (1) identity of the parties, (2) identity of the subject matter, and (3) adjudication of the issue in the former suit. *Plum Creek Dev. Co. v. City of Conway*, 334 S.C. 30, 34, 512 S.E.2d 106, 108–09 (1999).

Res judicata bars subsequent actions by the same parties or their privies “when the claims arise out of the same transaction or occurrence that was the subject of a prior action between those parties.” *Id.* (citing *Sub-Zero Freezer Co. v. R.J. Clarkson Co.*, 308 S.C. 188, 417 S.E.2d 569 (1992)). Under the res judicata doctrine, “[a] litigant is barred from raising any issues which were adjudicated in the former suit *and any issues which might have been raised in the former suit*.” *Id.*

(emphasis added) (quoting *Hilton Head Center of S.C., Inc. v. Pub. Serv. Comm'n of S.C.*, 294 S.C. 9, 11, 362 S.E.2d 176, 177 (1987)).

All three elements of res judicata are present in this case, and the Guarantors' defense is therefore barred. First, the subject matter of the foreclosure action and this action—Springs North Augusta's debt to the Trust and the foreclosure sale—are the same. The Guarantors' obligation to pay Springs North Augusta's debt, along with their alleged contractual defenses, arose out of the same transaction as the debt itself and the mortgage on which the Trust foreclosed. *See* (Guaranty Agrs., R. 276, 279; Loan Agr., R. 22).

Second, the Guarantors are privies with Springs North Augusta. For purposes of res judicata, privity depends not on the relationship between the parties asserting it but instead on each party's relationship to the subject matter of the litigation. *Yelsen Land Co. v. State*, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012). The Guarantors and Springs North Augusta had an identical interest in obtaining a smaller deficiency judgment because the Guarantors were obligated to pay the deficiency judgment if Springs North Augusta could not do so.

Finally, the master in equity adjudicated the amount of Springs North Augusta's remaining debt to the Trust when he entered the deficiency judgment. The master also was aware of 2nd Avenue Holdings' assignment to the Trust, and he approved of that assignment when he conveyed the property to the Trust. (Assignment of Bid, R. 285–86; Master's Report on Sale, R. 265). It cannot be disputed that the Guarantors are required by contract to pay Springs North Augusta's debt to the Trust. Rather than perform their contractual obligation, they argue the amount of the debt should be lower based on the actions of 2nd Avenue Holdings at the foreclosure sale. The amount of the remaining debt (i.e., the deficiency judgment) was adjudicated by the master in equity. The Guarantors cannot assert that the deficiency judgment should have been smaller in

this subsequent action. They could have asserted their rights in the foreclosure action and raised the issue of 2nd Avenue Holdings' participation in the sale, but they chose not to do so. Their defense is now barred by res judicata.

B. The Guarantors waived their defense by failing to protect their rights prior to the master in equity's entry of the deficiency judgment.

The Guarantors also waived their defenses by failing to assert them in the foreclosure action. If the Guarantors wished to participate in the foreclosure action or the public sale at the conclusion of the foreclosure action, they could have done so. The Guarantors are all direct or indirect owners of the borrower, Springs North Augusta. As the owners of Springs North Augusta, the Guarantors had notice of the foreclosure action. *See* (Trial Tr. 87–89, R. 180–82) (explaining the Guarantors' knowledge and assumptions at various points in the foreclosure process). Springs North Augusta could have appeared and defended the foreclosure action. Its owners, the Guarantors, chose not to do so. Instead, they decided to default. They cannot be awarded a second chance. The Guarantors could have also requested to intervene in the foreclosure action to protect their rights. *See* Rule 24, SCRCF (providing criteria for intervention). Moreover, the sale in this case was publicly noticed. *See* (Master's Report on Sale, R. 265). If the Guarantors wished to purchase the property, they were free to bid.

Rather than defend the foreclosure, intervene, or object to the conduct of the sale when the master in equity could have resolved any alleged issues in the sale process, the Guarantors chose not to participate in the foreclosure proceedings and launched a collateral attack when the Trust attempted to collect the deficiency judgment. Although the Guarantors carefully avoid describing their defense as a collateral attack on the deficiency judgment, there is no other description for the defense. If the deficiency judgment is valid, it is enforceable by the Trust against the Guarantors. The Guarantors unreasonably delayed in objecting to the conduct of the foreclosure sale and now

seek to use that delay to the prejudice of the Trust by avoiding their obligations under the guaranty agreements. The Guarantors waived their defenses. *See Lawrimore v. Am. Health & Life Ins. Co.*, 276 S.C. 112, 114, 276 S.E.2d 296, 297 (1981) (“Waiver is defined as an intentional relinquishment of a known right.”). This court should affirm the trial court’s directed verdict and denial of the Guarantors’ motion for a new trial.

CONCLUSION

This court should not create new law and add implied terms to a contract based on the Guarantors’ hypothetical—and illogical—assertion that their debt would have been extinguished if 2nd Avenue Holdings did not bid at the upset sale. The terms of the guaranty agreements are plain and unambiguous: the Guarantors are required to pay the deficiency judgment. Accordingly, this court should affirm the directed verdict and denial of the Guarantors’ motion for a new trial.

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Columbia, South Carolina

March 12, 2019

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM SALUDA COUNTY
Court of Common Pleas

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2018-001388

Stephen Wilkinson, as Trustee of George B. Buchanan,
Jr. Irrevocable Family Trust Dated the 15th day of July,
2001, ...

Respondent,

v.

Redd Green Investments, LLC, Anderson North Augusta,
LLC, Herbert Anderson, Jr., A. Bruce Green, Herbert
Keith Anderson, and L. Cliff Redd, ...

Defendants,

Of which Redd Green Investments, LLC, A. Bruce
Green, and L. Cliff Redd are

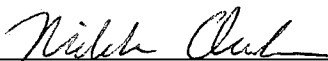
Appellants.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief of Respondent complies with Rule
211(b), SCACR.

(Signatures on Next Page)

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COURT OF COMMON PLEAS

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Of which Redd Green Investments, LLC, A. Bruce Green,
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ARGUMENT

This entire appeal is premised upon the fact—accepted by the Circuit Court for purposes of its ruling on directed verdict—that the Trust violated S.C. Code § 15-39-720 (the “Deficiency Statute”) when it sent a representative to place an illegal bid at the upset sale. This blatant violation of law allowed the Trust not only to obtain a deficiency judgment (to which it was not entitled unless it complied with the Deficiency Statute), it also allowed it to place a lower initial bid on the real property subject to foreclosure sale than if it had not violated the statute, thereby artificially reducing the credit applied to the debt and artificially inflating the resulting deficiency. The Trust now unashamedly claims that this illegal act should have no impact on its ability to recover the inflated deficiency against the Guarantors, even though there may have been no deficiency whatsoever if the Trust had complied with the law and made only one bid, which necessarily would have been its highest and best bid.

In essence, the Trust contends that it can impair the collateral with impunity through an admitted violation of South Carolina law and that the Guarantors must pay the price for this violation through liability for a trumped up deficiency judgment. But the Trust’s arguments must fail because they ignore decades of common law that a guaranty must be interpreted by its own terms and inherently includes an implied obligation of good faith and fair dealing, as with any other contract. Under the circumstances present here, the Trust had an obligation of good faith to comply with the law during the course of the foreclosure proceedings—and specifically to comply with the Deficiency Statute—by bidding only one time with its highest and best bid at the foreclosure sale. Its failure to do so, by sending a representative to bid at the upset sale, allowed it offer a minimal bid at the first sale, safe with the knowledge that its representative could protect the low bid at the upset sale.

In this manner, the Guarantors were deprived of a true high bid from the Trust at the foreclosure sale, and as a result deprived of having the debt fully satisfied by the collateral. The resulting deficiency, which sprang into existence when there never should have been one, is the result of a blatant violation of South Carolina law. As between the Trust, who carried out this violation, and the Guarantors, who were innocent of this wrongdoing and not even named in the underlying foreclosure suit, the cost of the wrongdoing should be borne by the Trust as the culpable party.

The Trust's violation must be deemed to preclude recovery on the guaranties, either as a matter of law or at the very least as an issue of fact to be determined by the jury.¹ In arguing otherwise, the Trust's Brief repeatedly misapprehends and misstates the arguments of the Guarantors, consistently focuses on irrelevant issues that are not germane to the appeal, and fails to point to any legal precedent that supports the grant of a directed verdict or that overcomes the Guarantors' position. Each of these faulty arguments is addressed in turn below.

I. The language of the guaranties supports the assertion of the defense that the Trust violated the Deficiency Statute.

The Trust's first argument is that the plain language of the guaranty precludes the assertion of a prior violation of the Deficiency Statute as a defense, (Resp. Br. 10 Part I), and that "[t]he Guarantors ask this court to add implied terms that contradict the plain, express terms of the guaranty agreement," (Resp. Br. 11). This argument is demonstrably incorrect. The essence of the implied covenant of good faith is that the Trust cannot take any action that would "impair the other's rights to receive benefits under the contract." *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 500, 473 S.E.2d 52, 53 (1996) (internal quotations omitted). And so the question becomes whether one of the benefits the Guarantors had a right to receive under the

¹ Whether by breach of the implied covenant of good faith and fair dealing or the doctrines of unclean hands, waiver, or not being able to gain from an illegal act.

guaranty agreements was compliance with South Carolina law governing foreclosure procedure, and particularly compliance with the Deficiency Statute that forbid the Trust from bidding a second time at the upset sale.

The position of the Trust is that it could act with impunity and blatantly violate the law at the foreclosure sale, even to the detriment of the Guarantors, because to require it to comply with the Deficiency Statute would be “add[ing] implied terms that contradict the plan, express terms of the guaranty agreement.” (Resp. Br. 11.) As a general matter, without reference to the terms of the guaranty agreements, it is an outrageous proposition that compliance with South Carolina law is contradictory to the terms of those agreements. And when reference is made to the actual terms of the agreements, the proposition absolutely fails. In fact, the guaranty agreements make express reference to the bidding procedure at the foreclosure sale and manifestly indicate that the Guarantors were relying upon the high bid at any foreclosure sale to operate as an offset to the debt.

Specifically, the guaranties, in all caps and bold, state that **“THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.”** (Pl. Exs. 8-9 at 3) (R. pp. 278, 281). The import of this provision is that Guarantors bargained for the high bid at the foreclosure sale to be applied to the debt and to reduce any obligation under the guaranty. This reliance upon the high bid is even more pronounced because it is included within a provision whereby the Guarantors waived the additional protection of statutory appraisal rights.² And certainly it is a fair implication from this express provision in the guaranty that the Trust

² In a foreclosure proceeding, a borrower or guarantor has the right to have the appraised value substituted for the high bid and applied to the debt if the appraised value is higher, S.C. Code Ann. § 29-3-740. This protection can be waived. *Id.* § 29-3-680(b).

would comply with South Carolina law at any judicial foreclosure sale and that it would not take any action to undermine the high bid that would be applied against the debt amount. It is pure arrogance for the Trust to conclude not only that it was entitled to violate South Carolina law but also that any requirement for it to comply with the law would contradict the language in the guaranty agreement.

The Court must reject this argument of the Trust. The guaranty agreements expressly contemplate that the Guarantors will have the benefit of "the high bid." There could be no more direct assault on this benefit by the Trust than its illegal violation of the Deficiency Statute, which allowed it to avoid placing its highest and best bid. In so doing, the Trust breached its implied obligation of good faith and fair dealing that it would not do anything that would impair the Guarantors' rights to a high bid under South Carolina law. The reliance of the guarantors upon "the high bid" implies a reliance upon nothing less than a high bid in compliance with the law, not a counterfeit high bid that violates the law in order to manipulate the system and avoid making a true high bid.

A. The fact that the guaranty agreements are guarantees of payment, and not guaranties of collection, is irrelevant.

The Trust fails to point to any language in the guaranty agreements that supports its primary argument that the plain language of the guaranty agreements precludes the Guarantors from asserting an alleged violation of the Deficiency Statute as a defense. Instead, the Trust makes a number of subordinate arguments that fail to prove its point. The first such argument is set forth at Part I.A of the Trust's brief and contends that the guaranty agreements are guaranties of payment, not guaranties of collection. This distinction is correct, but it is a distinction without a difference.

As correctly cited by the Trust, the difference between these types of guaranties is that a creditor may maintain an action immediately against a guarantor on an absolute guaranty of payment and does not require prosecution against the debtor first; whereas with a guaranty of collection, the lender must pursue the debtor and collateral first. *See Peoples Fed. Sav. & Loan Ass'n v. Myrtle Beach Ret. Grp., Inc.*, 300 S.C. 277, 281, 387 S.E.2d 672, 674 (1989). Here, the Trust chose to bring an action against the borrower and collateral first, and so it is irrelevant whether or not it could have pursued the Guarantors first.

Furthermore, nothing in the *Peoples* case or in the guaranty agreements suggests that the fact that the Trust could have brought an action against the Guarantors first in any way indicates that it has the unfettered right to impair the collateral by blatantly violating the Deficiency Statute. In fact, the absolute guaranty of payment at issue in *Peoples* was quoted by the court and contained an express recognition that if the bank chose to pursue a foreclosure first, then the proceeds must be applied to reduce the debt. *See id.* at 280, 387 S.E. 2d at 674 (quoting the guaranty of payment as providing: "If the Note is partially paid through foreclosure of the Mortgage, . . . or if the Note is otherwise partially paid, the undersigned shall remain liable for the balance thereof.").

Moreover, the *Peoples* case relied upon *Southern Bank & Trust Company v. Harley*, also involving an absolute guaranty of payment. However, in *Harley* the court expressly acknowledged that a guarantor under an absolute guaranty of payment is entitled to the benefit of the collateral if the lender pursues a foreclosure action first: "[A] guarantor of a secured debt is entitled to have the proceeds of the collateral applied to the liquidation of the debt if the creditor forecloses the security before proceeding on the guaranty. The purpose of this rule is to avoid a double recovery by the creditor". *S. Bank & Tr. Co. v. Harley*, 292 S.C. 340, 341-43, 356

S.E.2d 410, 410–11 (Ct. App. 1987) (citation omitted), *aff'd as modified*, 295 S.C. 423, 368 S.E.2d 908 (1988).

Thus, the Trust's distinction between a guaranty of payment and a guaranty of collection is to no avail. To the contrary, the case law demonstrates that one who makes a guaranty of payment is entitled to the benefit of the collateral if the lender pursues the collateral first. It necessarily follows that the lender cannot undermine or impair this benefit by violating the statutes governing bidding at the foreclosure sale, as the Trust did here. Accordingly, the Trust's violation of the Deficiency Statute was a breach of the Trust's implied covenant of good faith and fair dealing under the guaranty agreement.

B. The Trust's argument that the Guarantors have no right in the collateral because the debt has not been paid in full is irrelevant.

The Trust's next argument, that the Guarantors have no right in the collateral because the debt has not been paid in full, (Resp. Br. 12 Part I.A.i), is equally unavailing. The Guarantors of course do not contend that they have paid the debt and therefore have a right to the collateral. Rather, the Guarantors' position is that the guaranties indicate reliance upon the collateral and proper bidding at the foreclosure sale, and therefore there is an implied covenant of good faith and fair dealing not to violate the Deficiency Statute or otherwise impair the collateral.

C. The Trust's discretion to pursue the collateral first does not authorize it to violate the Deficiency Statute.

The Trust's next argument is that it had discretion to foreclose on the property prior to pursuing the Guarantors. (Resp. Br. 12 Part I.A.ii.) The Guarantors agree that the Trust had this discretion. As noted above, however, the Guarantors are entitled under South Carolina law to the benefit of the collateral if the lender chooses to pursue it before it pursues the Guarantors. And it follows that the Trust must not violate the foreclosure procedures to the detriment of the Guarantors in this process.

The Trust also relies upon the legal principle that a party does not breach the implied covenant of good faith and fair dealing when it has done what the contract expressly allows. This argument obviously assumes its own conclusion. As discussed above and further below, the contract does not allow the Trust to violate South Carolina's bidding statutes at the foreclosure sale. Nor does the fact that the contract allows the Trust to pursue the collateral first lead to the conclusion that it can violate the bidding statutes.

D. The Guarantors did not receive the full benefit of their bargain..

The Trust's next argument is that the Guarantors received the benefit of their bargain when their guaranties induced the Trust to loan money to the borrower and that the implied covenant of good faith and fair dealing could not be breached long after it performed this obligation of lending money. (Resp. Br. 14 Part I.A.iii.) But this argument begs the question of what the benefits of the bargain were and what the obligations of the Trust were. The Trust acknowledges that the implied covenant of good faith and fair dealing prohibits it from doing anything "to impair the [Guarantors'] rights to receive benefits under the contract," *Tadlock Painting Co. v. Maryland Cas. Co.*, 322 S.C. 498, 500, 473 S.E.2d 52, 53 (1996), and as discussed above, the Trust's violation of the Deficiency Statute was a direct impairment of one of the benefits to which the Guarantor was entitled, namely that the high bid at the foreclosure sale would be in accordance with South Carolina law. Thus, the Guarantors did not receive the full benefit of their bargain.

E. The terms in the guaranty agreements do support the Guarantors' position that the Trust had an implied obligation not to violate the Deficiency Statute.

The Trust's next argument is that the terms of the guaranty agreements concerning recourse to the collateral do not support the Guarantors' position. (Resp. Br. 15 Part I.B.) This argument misstates the position of the Guarantors and misconstrues the guaranties. The

Guarantors have not contended that the Trust breached the guaranty agreement by failing to give notice that it sought recourse to the collateral, and so there is no preservation issue. Nor have the Guarantors contended that they paid the debt and therefore have a right of recourse to the collateral. That is not the point. Instead, the Guarantors' position is that the guaranty agreements impose an implied obligation of good faith and fair dealing upon the Trust not to violate the statutory bidding procedures during the foreclosure sale, and that this implied obligation arises from express terms in the agreement. The Guarantors' position of an implied obligation is based upon two categories of express terms in the guaranty agreements, and each category independently supports the Guarantors' position.

The first category is that the guaranty agreements make express reference to the high bid during the foreclosure bidding process and therefore imply that the Trust had an obligation to act in good faith during the foreclosure bidding process and not make an illegal bid at the upset sale. How this implied obligation arises from the express language is discussed above and need not be repeated here. The Trust mistakenly contends that the "Guarantors ask this court to interpret that provision as an agreement that the Trust will insure the highest possible bid at a foreclosure sale," (Resp. Br. 16), and that the "plain language of the guaranty agreements does not include any requirement that the property sell for the full amount of the debt at a foreclosure sale or for fair market value before the Trust may pursue recovery from the Guarantor," (*id.* 17). But it is not the Guarantors' position that the Trust had an obligation to ensure the highest possible bid or that the property must sell for fair market value or for the amount of the debt. Such a position would be unreasonable. Instead, the Guarantors' position is that the Trust was obligated to comply with the Deficiency Statute and related bidding procedures that were designed to incentivize the Trust to make its highest and best bid.

As detailed in the Guarantors' Initial Brief, these bidding procedures place a very heavy burden and incentive upon a mortgagee to make its highest and best bid at the opening foreclosure sale, because it is only allowed to bid one time and then its bid is subjected to an upset sale thirty days later where any third party has an opportunity to outbid the mortgagee. If a mortgagee could appear at the upset sale and bid again, then this incentive is destroyed, and the mortgagee is free to make a low bid at the first sale because it would know that it could bid again at the upset sale. Thus, if the Trust had complied with the bidding procedures and the Deficiency Statute, it effectively would have been forced to make a single bid that was its highest and best bid. But because it violated those statutory procedures, it avoided the entire intent of the statute. Accordingly, it breached the implied obligation of good faith and fair dealing³ by violating South Carolina law and thereby avoiding the pressure of being forced to make its highest bid.

The second category of express terms in the guaranty agreements is that the guaranty agreements make express reference to the Guarantors' reliance upon the collateral, including the ability to have recourse to the collateral under certain circumstances. Therefore, the Trust has an implied obligation to act in good faith with respect to the collateral during the judicial foreclosure bidding process and not make an illegal bid at the upset sale. These express provisions include that the Trust must give notice to the Guarantors before it "may surrender, compromise, exchange, and release" any collateral; that the Guarantors have a "right of subrogation, reimbursement or indemnity" and a "right of recourse to security for the debts" once the Trust has been paid in full; and that the Guarantors have "a right of subrogation in or under the Loan Documents" and a "right to participate . . . in the right, title or interest of [the

³ Alternatively, it is precluded from recovery on the guaranties by the doctrines of unclean hands, waiver, or not being able to gain from an illegal act.

Trust] in or to any collateral for the Loan” once the Trust has been paid in full. (Pl. Exs. 8-9 at 1, 2) (R. pp. 276-77, 279-80).

The Trust’s brief contends that a statement in the Guarantor’s Initial Brief that the Guarantors have a “right of recourse to security for the debts and obligations of the Borrower to the Lender’ if and when they pay the Borrower’s obligations” is not supported by the language of the guaranties, (Resp. Br. 16), but this argument is belied by the express language cited above. And because this express language contemplates a reliance upon the collateral, even if said reliance is contingent upon full payment that has not yet been made, it is fair to imply a good faith obligation upon the Trust that it will not act to impair the potential of the collateral to benefit the Guarantors.

F. There is ample law supporting the relief sought by the Guarantors.

The Trust’s next argument is that no law supports the relief the Guarantors seek. (Resp. Br. 17 Part I.C.) The Trust first contends that *Commercial Credit Corp. v. Nelson Motors, Inc.*, 247 S.C. 360, 362–70, 147 S.E.2d 481, 481–85 (1966), does not support the Guarantors’ position because it involved a guaranty of collection rather than a guaranty of payment. But as noted above, this distinction is irrelevant because it only impacts whether the Trust must pursue the borrower and collateral first. Moreover, a guaranty of payment nonetheless entitles the guarantor “to have the proceeds of the collateral applied to the liquidation of the debt if the creditor forecloses the security before proceeding on the guaranty.” *Harley*, 292 S.C. at 340, 342, 356 S.E.2d 411. Thus, the Trust’s attempt to distinguish *Nelson Motors* is ineffectual.

In addition, *Nelson Motors* directly supports the relief sought by the Guarantors because it held that breach of the implied covenant of good faith and fair dealing is a valid defense to a guaranty agreement. *Id.* The Guarantors’ Initial Brief also cites to ten cases from other jurisdictions holding that a guarantor may defend against an action on the guaranty on the basis

that the lender breached the implied obligation of good faith and fair dealing as a result of the lender's impairment of the collateral or other wrongdoing. (App. Br. 16-17 & n.6.) Accordingly, the Trust's contention that no law supports the Guarantors' position is incorrect.

The Trust next contends that the UCC prohibitions on impairment of collateral do not apply because the guaranties here are not negotiable instruments and therefore S.C. Code Ann. § 36-3-605 is not controlling. The Guarantors do not contend that the guaranties are negotiable instruments controlled by the UCC, but as noted in Comment 2, the Guarantors' rights are governed by the general law of suretyship and guaranty as set forth in the Restatement (Third) of Suretyship and Guaranty (1996) sections 39-44. S.C. Code Ann. § 36-3-605 cmt. 2. And in turn the rules set forth in section 36-3-605 "essentially parallel modern interpretations of the law of suretyship and guaranty that apply when a secondary obligor is not a party to an instrument [as set forth in the Restatement]. *Id.* cmt. 1. Indeed, section 36-3-605(d) is based upon section 42 of the Restatement. *Id.* cmt. 7. So, even though S.C. Code Ann. § 36-3-605 may not be controlling *per se*, it is based upon principles of law that are controlling.

And those principles mandate that a lender not impair the collateral by its "failure to comply with applicable law in disposing of collateral." Restatement (Third) of Suretyship & Guaranty § 42(2)(d) (1996). As further noted in comment f, the reason that noncompliance with the law constitutes impairment of the collateral is because "it is likely that the proceeds will be smaller and, therefore, the deficiency owed by the secondary obligor will likely be greater." *Id.* cmt. f. This is exactly the situation in the instant case, where the Trust's failure to comply with South Carolina law deprived the Guarantors of an opportunity for the deficiency to be eliminated entirely or at least reduced dramatically.

These principles, which apply generally as set forth in the Restatement and which have been adopted by statute in South Carolina with respect to negotiable instruments, are persuasive with respect to whether the Trust breached its implied covenant of good faith and fair dealing when it failed to comply with the Deficiency Statute during the foreclosure process. In addition, although the Trust disputes that the court in *CoastalStates Bank v. Hanover Homes of S.C., LLC*, 408 S.C. 510, 520, 759 S.E.2d 152, 158 (Ct. App. 2014), agreed with the guarantors' arguments in that case that the principles of the UCC and Restatement apply to guarantors in South Carolina, the *CoastalStates* court did rule in accordance with the guarantors' position in that case. Accordingly, the case is fairly read as supporting the application of those principles to the guaranties at issue here to find that the Guarantors are not precluded as a matter of law from defending against the enforcement of the guaranties (whether by application of the implied covenant of good faith and fair dealing or by the doctrines of unclean hands, waiver, or not being able to gain from an illegal act).

II. The trial judge assumed that the Trust violated the Deficiency Statute for the purposes of granting a directed verdict, and in any event there is ample evidence of a violation such that it would be error if the Court's ruling was premised upon there being no violation of the Deficiency Statute.

A. The trial court's granting of a directed verdict assumed that the Trust violated the Deficiency Statute.

The Trust next argues that the trial court should be affirmed in its finding that there was no violation of the Deficiency Statute. (Resp. Br. 20 Part II.A). This argument is confounding, as the Court plainly stated that it assumed there was a violation of section 15-39-720 for purposes of its ruling:

If we're looking at the evidence in the light most favorable to the Defendants, there was a violation of Section 15-39-720, upset bid within thirty days on foreclosure or execution sale. That's an inference that can be drawn. To this Court that makes not a whit of difference. Not a whit of difference. I look at Plaintiff's Exhibit Number 8, Plaintiff's Exhibit Number 9, which [are] the guaranty agreements that are the documents upon which this lawsuit has been brought. I do not think a violation of the statute that I just cited is a defense on a guaranty of a debt.

(Tr. 132) (R. p. 225).

Although the judge did state that he did not think the Trust violated the statute, he was clear that "there is more than one inference that can be drawn from parts of the testimony" but that "following the standard of directed verdict," he was "drawing that inference . . . in the light most favorable to the Defendant." (*Id.* 132-33) (R. pp. 225-26). When asked for clarification for the record concerning the ruling, the judge clarified: "I assume there was a violation of the statute for purposes of my ruling." (*Id.* 133 (emphasis added)) (R. p. 226). This statement could not be clearer, and so the Trust is incorrect that the Court also ruled that Second Avenue Holdings is not a representative of the Trust.

The confusion apparently arises from the trial judge's remarks that he did not think that Second Avenue Holdings was the same as the Trust and that they were distinct entities, as well

as a reference to a “ruling” that there wasn’t a violation. (*Id.*) (R. p. 226). But the overall context of the judge’s statements demonstrate that the granting of the directed verdict was not based upon any determination that the Deficiency Statute was not violated, particularly given that the judge’s final statement is that he assumed a violation for purposes of his ruling:

And I understand and I cited the statute. As I say, I don’t want to weigh the evidence and say it’s -- based on my ruling that there wasn’t a violation; I assume there was a violation of the statute for purposes of my ruling.

(*Id.*) (R. p. 226).

B. The trial court erred in granting a directed verdict because there is evidence in the record from which a jury could find that the Trust violated the Deficiency Statute.

Alternatively, any ruling that the Trust did not violate the Deficiency Statute would plainly violate the standard for granting a directed verdict, where the trial court is concerned only with the existence of evidence, not its weight, and where “the trial court should view the evidence and all reasonable inferences in the light most favorable to the non-moving party.” *S.C. Fed. Credit Union v. Higgins*, 394 S.C. 189, 193-94, 714 S.E.2d 550, 552 (2011). “If more than one reasonable inference can be drawn ... the case should be submitted to the jury.” *Id.* at 194, 714 S.E.2d at 552 (internal quotations omitted). There is ample evidence in the Record that supports a reasonable inference in favor of the Guarantors’ position that there was a violation of the Deficiency Statute based upon Second Avenue Holdings acting on behalf of the Trust. If and to the extent the Circuit Court made such a ruling, the Court of Appeals would be compelled to reverse it.

The Deficiency Statute, Section 15-39-720, prohibits a mortgagee or his “representative” or “all persons acting in his behalf” from entering any kind of bid in any amount at any other time except at the initial foreclosure sale. *Id.* (emphasis added). Thus, the trial court’s focus on Second Avenue Holdings being a distinct legal entity from the Trust is completely irrelevant.

The relevant inquiry under the provisions of the statute is whether Mr. Buchanan, acting through his wholly owned company Second Avenue Holdings, was acting as a representative of the Trust or acting on behalf of the Trust.

In the instant case, there is ample evidence that Mr. Buchanan and/or his wholly owned subsidiary Second Avenue Holdings was acting as a representative of the Trust (or otherwise acting on behalf of the Trust) when they made their bid at the second sale on October 4, 2012:

- Mr. Buchanan was the sole owner of Second Avenue Holdings. (*Id.* p. 111) (R. p. 204). Mr. Buchanan, acting on behalf of his wholly owned Second Avenue Holdings, “went to the second sale and there were other bidders there and multiple bids were put in” and “[i]n the end, Second Avenue Holdings, LLC, won the bid and held the property.” (*Id.* p. 52) (R. p. 145). *Given that this was a single member LLC solely owned and controlled by Mr. Buchanan, Second Avenue Holdings should not be viewed as having interests distinct from Mr. Buchanan’s interests. Thus, to the extent he was operating as a representative of the Trust, so was Second Avenue Holdings.*
- Mr. Buchanan falsely testified that Second Avenue Holdings was created three or four years prior to the foreclosure sale, when the Articles of Organization revealed that they were signed on September 4, 2012, and filed on September 6, 2012,⁴ only a few days following the first sale. (Tr. p. 97 & Green Ex. 1) (R. pp. 190, 283-84). *A reasonable inference from the creation of the entity immediately following the first sale indicates that it was created to be used as an instrumentality in carrying out the unlawful violation of the bidding statute. His false testimony impeaches any testimony he may have given contrary to the Guarantors’ position.*
- Both the Trustee, Stephen Wilkinson, and Mr. Buchanan testified concerning Mr. Buchanan’s keen interest and active role as a participant and advisor with respect to the Trust. Mr. Wilkinson testified that all of the assets held by the Trust have “all been put in there by Mr. Buchanan” for the benefit of “Mr. Buchanan’s children.” (*Id.* pp. 65-66) (R. pp. 158-59). He further explained that as Trustee he makes “distributions for the health, education and welfare” of the children and that the establishment of the Trust allows Mr. Buchanan to avoid estate taxes. (*Id.* pp. 65, 74) (R. pp. 158, 167). *This testimony shows that Mr. Buchanan often acted on behalf of the Trust, playing an active role as a participant and advisor with respect to the business of the Trust. This is evidence that he acted at the upset sale as a representative.*
- Additionally, Mr. Buchanan testified that he set up the Trust and funded it out of his own assets, (Tr. pp. 93-94) (R. pp. 186-87); that he holds the title of “financial advisor” in the

⁴ “Unless a delayed effective date is specified, the existence of a limited liability company begins when the articles of organization are filed.” S.C. Code Ann. § 33-44-202(b).

current structure of the Trust, (*Id.* p. 111) (R. p. 204); and that he routinely identifies properties to be put into the trust, (*id.* p. 110) (R. p. 203). He further conceded that he was the one who identified the loan opportunity at issue in this action and met with the Appellants on behalf of the Trust, without the Trustee, to initiate the transaction. (*Id.* p. 110) (R. p. 203). The Trustee also obtained Mr. Buchanan's consent before proceeding with the foreclosure action. (*Id.* p. 95) (R. p. 188). *This testimony shows that Mr. Buchanan often acted on behalf of the Trust, playing an active role as a participant and advisor with respect to the business of the Trust.*

- The Trustee, Mr. Wilkinson, agreed that Mr. Buchanan gives financial advice as needed, (*id.* p. 76) (R. p. 169), and that Mr. Buchanan makes recommendations about either buying property or selling property and brings most of the Trust's investments to the table. (*Id.* p. 78) (R. p. 171). Mr. Wilkinson agreed that he listens to Mr. Buchanan's advice and has never turned down one of his recommendations. (*Id.* p. 79) (R. p. 172). He testified that the genesis of the loan at issue was when "Mr. Buchanan was contacted by someone . . . [who] told him there was an opportunity" and that "if he wanted to loan some money, you know, there was an opportunity to make some money and we had done this on -- or they had done this on a previous property in Wyoming and it worked out well." (*Id.* pp. 66-67 (emphasis added)) (R. pp. 159-60). *This testimony shows that Mr. Buchanan often acted on behalf of the trust, playing an active role as a participant and advisor with respect to the business of the Trust. And the Trust's own Trustee referred to Mr. Buchanan himself loaning the money that was being loaned by the Trust.*
- In the opening statement, the Trust's counsel noted that the Trust bid \$6.6 Million at the first sale but that afterwards Mr. Buchanan "was concerned that someone else might come in and take this property and leave the trust in a bad position, losing some money." (Tr. p. 52) (R. p. 145). *Mr. Buchanan's concern for the Trust losing money indicates that he was operating on its behalf in connection with the bidding.*
- Mr. Buchanan "decided that it would be better for one of his companies to own it rather than the -- rather than somebody other than the trust." (*Id.*) (R. p. 145). *This statement implicitly acknowledges that the interests of Mr. Buchanan and Second Avenue Holdings effectively were the same as the Trust and that they were operating for the benefit of the Trust in the bidding; and it further acknowledges that Second Avenue Holdings did not fall into the category of "somebody other than the trust."*
- Second Avenue Holdings assigned the bid to the Trust because "Mr. Buchanan after consulting with some others and the trustee decided that it would be better from a tax perspective and from his children's perspective for the trust to hold onto that property rather than Second Avenue Holdings, LLC." (*Id.* p. 53) (R. p. 146). *Mr. Buchanan's concern for taxes and for his children's interests demonstrates that he was acting on behalf of the Trust, which was established to avoid estate taxes and to benefit his children. Mr. Buchanan need not be acting for his own personal benefit in order to be a representative of the Trust.*

- Second Avenue Holdings deposited \$500,000 toward its bid and, on October 24, 2012, assigned its bid to the Trust, with the deposit to be returned less the Master in Equity's commission and other court costs. (*Id.* p. 100 & Green Ex. 2) (R. pp. 193, 285). There was no consideration for the assignment other than a reimbursement of costs. (*Id.* p. 101) (R. p. 194). *An arm's length transaction necessarily would require substantial consideration for such a transaction, and the lack of consideration indicates that Mr. Buchanan was operating on behalf of the Trust.*
- The property was deeded from the Master in Equity to the Trust following Second Avenue Holdings' assignment of bid back to the Trust, and the Trust claimed an exemption from the deed recording fee on the basis that the mortgagee obtained the property pursuant to foreclosure proceedings. (Tr. pp. 71-72 & Pl. Ex. 3) (R. pp. 164-65, 252-62). *The fact that Second Avenue Holdings assigned its bid to the Trust is irrefutable evidence that it acted on behalf of the Trust. Further, the Trust could only claim the exemption if Second Avenue Holdings were deemed to be acting on its behalf.*
- An order in the foreclosure proceeding amending the interest amount of the Deficiency Judgment to 15% noted that Second Avenue Holdings "paid interest on its bid at the rate of \$3,587.05 per day through the compliance date." (Tr. p. 72 & Pl. Ex. 4) (R. pp. 165, 263-64). *Second Avenue Holdings paid interest on a bid that it ultimately assigned to the Trust, and this payment of interest benefitted only the Trust, which indicates that Second Avenue Holdings was acting on behalf of the Trust.*

Under the standard for a directed verdict, the question is whether there was the existence of *any* evidence and/or inferences that a jury might reasonably construe as establishing that Mr. Buchanan, through his wholly owned Second Avenue Holdings, acted on behalf of the Trust at the upset sale. The evidence recited above establishes that there was ample proof for a jury to conclude that he acted on behalf of the Trust at the upset sale. Indeed, given that the bid was assigned the Trust without consideration, the court could have so concluded as a matter of law. Accordingly, this Court must reverse the ruling of the trial court granting the directed verdict and remand for a new trial or entry of judgment for Appellants.

C. The Guarantors were prejudiced by the Trust's violation of the Deficiency Statute.

The Trust next argues that the Guarantors cannot show prejudice from the Trust's violation of the Deficiency Statute. (Resp. Br. 21 Part B.) This argument demonstrates that the

Trust does not understand the design and purpose of the Deficiency Statute. As detailed in the Guarantor's Initial Brief and above, the bidding procedure is designed to incentivize the mortgagee to give its highest and best bid because, in order to claim a deficiency to pursue against the borrower and Guarantors, the Deficiency Statute mandates that the mortgagee may bid only at the opening sale and not bid again (either on its own or through a representative) at the upset sale. Instead, at the upset sale the public may outbid the mortgagee and take the property, applying the highest bid to the debt. In this manner, the mortgagee has every reason to make its best and highest bid at the first sale so as not to risk a third party taking property at the second "upset sale" that has a value above the mortgagee's bid at first sale. This statutory structure is completely undermined if the mortgagee could bid at the upset sale (and indeed there would be no need for an upset sale) because it would no longer have an incentive to make its best bid.

Accordingly, the Guarantors have been deprived of the Trust's best bid. It is this deprivation that violated the implied covenant of good faith and fair dealing and now precludes the Trust from pursuing its Guaranty because it is in material breach of the contract. Alternatively, the Trust is precluded from recovery by the doctrine of unclean hands, the doctrine that it cannot benefit from its illegal act, and/or the doctrine of waiver, namely that it waived its right to pursue the deficiency against the Guarantors because a mortgagee is only allowed to obtain a deficiency if it complies with the Deficiency Statute.

The Trust also contends that the Guarantors have the burden to establish that the sale price would have been higher but for the violation of the Deficiency Statute. But the Trust was the party who violated South Carolina law at the foreclosure sale, not the Guarantors, and so the Trust should bear any burden, not the innocent Guarantors. The Trust does not cite to any legal

authority for its position other than a footnote in a concurring opinion in a matter involving appraisal rights. This opinion has no application here, nor does the footnote, because it involved the lack of third party bidders at an upset sale. This situation is distinguishable from the instant case, where there were bidders at the upset sale, (Tr. p. 52) (R. p. 145), demonstrating that the Trust's initial bid was below fair value. And it is a reasonable inference that the Trust would have bid the amount of the debt if it had made only a single bid and not sent its representative to the upset sale to protect it from losing the property. It also is a reasonable inference that Mr. Buchanan's presence had a chilling impact upon other bidders, and the Guarantors indeed understood that it in fact had a chilling impact upon the bidding. (Affidavits of Cliff Redd and Bruce Green in Opposition to Plaintiff's Motion for Summary Judgment pp. 1-2) (R. pp. 327-28, 330-31). Indeed, the Trust's counsel admitted at trial that the sale amount was below the value of the property: "[T]he property is worth an awful lot more than what was paid at the foreclosure sale. I think we all know it was. It's not a big secret." (Tr. p. 33 (emphasis added)) (R. p. 126).

Further, there is evidence in the record that the value of the property far exceeded the amount of the debt of \$9.5 Million. The Guarantors testified that it had a value of \$30 Million when they acquired it. (Tr. p. 85) (R. p. 178). The Guarantors also testified that the value of the property was "several times" the amount of the loan. (*Id.* p. 86) (R. p. 179). There also is evidence that the Trust valued the Property immediately following foreclosure at \$15 Million and that the property maintained a \$15 Million value thereafter. (*Id.* p. 32) (R. p. 125). At a value of \$15 Million, it is reasonable to conclude that the Trust would have bid the full debt amount of \$9.5 Million if it had acted in compliance with the Deficiency Statute and bid only one time rather than circumventing the statute to bid again at the upset sale.

Finally, the Trust argues that the Guarantors “ask the courts to extinguish their debt on the purely hypothetical ground that a third party would have bid either the full amount of the debt or fair market value—or that the Guarantors would have done so—if 2nd Avenue Holdings had not bid.” (Resp. Br. 22.)⁵ This contention completely misstates the Guarantors’ position. Appellants never have argued that third parties or the Guarantors would have bid the debt amount at the upset sale but for Second Avenue Holdings. Instead, the Guarantors have argued that if the Trust had complied with the Deficiency Statute, then it would have had every incentive to bid the full debt amount of \$9.5 Million at the first sale. But instead it made a low bid at that sale, safe with the knowledge that its representative could bid higher later. And this violation resulted in the Trust never being forced to make its highest and best bid at the first sale.

III. The Guarantors are not precluded from arguing that the violation of the Deficiency Statute in the prior foreclosure action may serve as a defense in this subsequent action on the guaranties.

The Trust next argues that this case is not a proper vehicle for challenging the foreclosure proceedings. (Resp. Br. p. 22 Part III.) The Trust contends that the implication of the Guarantors’ argument that they were not named in the foreclosure action is that the Trust’s decision not to name them was unlawful or inequitable. This contention simply misapprehends the Guarantors’ position. The Guarantors fully recognize and agree that the Trust had the right to pursue the borrower and the collateral first and not to include the Guarantors in the foreclosure action. The reason that the Guarantors stressed in their Initial Brief that they were not included in the foreclosure action, and even included this fact in the Statement of Issues on Appeal, is that if the Guarantors had been named in the foreclosure action, then they could have addressed the issues raised in this appeal at that time. But they were not involved in the action, and the Trust

⁵ The Trust makes one additional argument that the foreclosure sale price could not be set aside on the basis that it would shock the conscience, but the standard for shocking the conscience is a different standard that is not relevant to any of the issues on appeal.

obtained a judgment for foreclosure by default. But because the Trust violated the Deficiency Statute during the bidding process, the Guarantors are entitled to raise that violation as a defense in this separate action, now that they have been named as parties.

A. The Guarantors are not barred by *res judicata*.

The Trust next argues that the Guarantors are barred by *res judicata* from challenging the amount of the deficiency judgment in a subsequent suit. (Resp. Br. p. 23 Part III.A). The Trust's argument is based upon a faulty premise, as the Guarantors do not seek to challenge the amount of the judgment in the foreclosure suit. This judgment was entered against the Borrower, and the Guarantors are not seeking to undo it. Instead, the Guarantors are contending that they have a defense to the Trust's enforcement of the guaranties because the Trust violated South Carolina law when it obtained the deficiency.

The Trust cites to *Duckett v. Goforth*, which notes that “[t]he doctrine flows from the principle that public interest requires an end to litigation and no one should be sued twice for the same cause of action.” 374 S.C. 446, 465, 649 S.E.2d 72, 82 (Ct. App. 2007). Similarly, the doctrine of *res judicata* potentially “bars a second suit,” and not the assertion of an affirmative defense, because its “fundamental purpose is “to ensure that no one should be twice sued for the same cause of action.” *Yelsen Land Co. v. State*, 397 S.C. 15, 22, 723 S.E.2d 592, 596 (2012) (emphasis added; internal quotations omitted). Here, no one has been sued twice, and so the fundamental principle underlying the doctrine is inapplicable. The Guarantors have not asserted any claims against the Trust but only seek to interpose affirmative defenses. The Trust cites to no authority holding that a guarantor is precluded from asserting an affirmative defense on the basis of *res judicata*. The Trust is asking this Court to adopt a novel theory with no prior basis in the case law.

As for the elements of *res judicata*, there must be “(1) identity of the parties; (2) identity of the subject matter; and (3) adjudication of the issue on the merits in the former suit by a court of competent jurisdiction.” *Id.* None of these elements exist here, just as they did not exist in

Duckett:

Res judicata does not bar the present litigation. The parties to the Australian litigation were Duckett and Greenhough; Goforth and Duckett are parties in the present litigation. The subject of the Australian proceeding was adjudication of custody, child support, visitation, and other related issues between Duckett and Greenhough. The action here is for determination of paternity, an award of custody, and child support between Duckett and Goforth. The issues of custody and child support have never been litigated between Duckett and Goforth. Moreover, the issue of paternity was not fully and finally adjudicated by the Australian tribunal.

Id.

The same is true here. First, there is no identity of parties, as the Guarantors were not included in the foreclosure action. The Trust contends that the Guarantors and borrower are privies but cite to no legal authority establishing that a guarantor and borrower are privies. As a result, the first element is not met.

Second, the subject matter is different, as the foreclosure was brought on the loan documents against the borrower, whereas the instant action is brought on the guaranty agreements against the Guarantors. “The general rule in South Carolina . . . is that a guaranty of payment is an obligation separate and distinct from the original note,” and “the responsibilities which are imposed by the contract of guaranty differ from those which are created by the contract to which the guaranty is collateral.” *CoastalStates Bank v. Hanover Homes of S.C., LLC*, 408 S.C. 510, 519, 759 S.E.2d 152, 157 (Ct. App. 2014) (quoting *Citizens & S. Nat’l Bank of S.C. v. Lanford*, 313 S.C. 540, 544, 443 S.E.2d 549, 551 (1994), and quoting 38 Am.Jur.2d Guaranty § 4). As a result, the second element is not satisfied.

And third, there was no adjudication on the merits in the foreclosure action with respect to the issue of whether the Trust breached the Deficiency Statute. This issue was not litigated because the Trust was proceeding against a party in default, and so there was no opposition to the Trust's illegal second bid. The Trust contends that the Master was aware of and approved the assignment of the bid from Second Avenue Holdings to the Trust, but there is no evidence that the Master had any knowledge or approval of the violation of the Deficiency Statute. As a result, the third element is not satisfied.

B. The Guarantors did not waive their affirmative defenses by not voluntarily appearing in the foreclosure action.

The Trust's final argument is that the Guarantors' waived their defenses by not voluntarily appearing in the foreclosure action. The Trust cites to no authority for this argument other than the generic proposition that waiver is the intentional relinquishment of a known right. But it defies logic to contend that the Guarantors intentionally relinquished their rights to defend against enforcement of the guaranties by not appearing in a lawsuit in which they were not named. The argument should be rejected out of hand.

CONCLUSION

In the Trust's conclusory paragraph, it contends that the Guarantors are illogical to assert that the debt would have been extinguished if Second Avenue Holdings did not bid at the upset sale. Again, this is not what the Guarantors contend. The Guarantors' focus is not upon whether or not Second Avenue Holdings bid at the upset sale but upon whether the Trust complied with South Carolina's carefully crafted statutory scheme that the Trust admitted is designed "to encourage the party who is owed the money to put in the highest bid possible." (Tr. p. 52) (R. p. 145). But if the party who is owed the money, in this case the Trust, were allowed to bid at the second sale, then this encouragement to make the highest bid possible at the first sale evaporates.

If a mortgagee could gain a deficiency by violating the very statute that gives it a right to the deficiency, then the statute is meaningless. The Guarantors had every right to believe that the Trust would comply with the law when it entered the bidding process, and the guaranty agreement specifically noted their reliance upon the high bid at the foreclosure sale.

The violation of the Deficiency Statute is presumed for the purpose of this appeal, and at the very least the jury should be able to determine whether this violation constituted either (1) a breach of the Trust's implied covenant of good faith and fair dealing not to impair the Guarantors' benefits under the guaranty agreements, (2) a waiver of its right to enforce a deficiency when a deficiency could be lawfully obtained only through compliance with the Deficiency Statute, (3) an illegal act through which the Trust cannot benefit, and/or (4) evidence of unclean hands precluding recovery.

In conclusion, the Court of Appeals should reverse the trial court's directed verdict and at the very least allow these factual issues to be determined by a jury. In the alternative, the Court of Appeals, for purposes of efficiency, should recognize that the Guarantors' affirmative defenses are established as a matter of law and that the violation of the Deficiency Statute is established as a matter of law and therefore instruct the trial court to enter judgment in favor of the Guarantors.

Respectfully submitted,



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Date: February 21, 2019

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THE STATE OF SOUTH CAROLINA

IN THE COURT OF APPEALS

**APPEAL FROM SALUDA COUNTY
COURT OF COMMON PLEAS**

R. Knox McMahon, Circuit Court Judge

Appellate Case No. 2018-001388

Stephen Wilkinson, as Trustee of George B. Buchanan, Jr.
Irrevocable Family Trust Dated the 15th day of July, 2001, ...Respondent,

v.

Redd Green Investments, LLC, Anderson North Augusta, LLC,
Herbert Anderson, Jr., A. Bruce Green, Herbert Keith Anderson,
and L. Cliff Redd, ... Defendants,

Of which Redd Green Investments, LLC, A. Bruce Green,
and L. Cliff Redd are Appellants.

CERTIFICATE OF COMPLIANCE WITH RULE 211(b)

Appellants hereby certify that the Final Reply Brief of Appellants complies with the requirements of Rule 211(b), SCACR.



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APPEAL FROM SALUDA COUNTY
Court of Common Pleas
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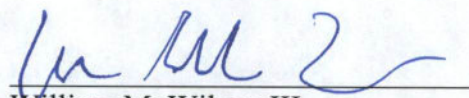
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PROOF OF SERVICE

The undersigned certifies that the **FINAL REPLY BRIEF OF APPELLANTS** and the **CERTIFICATE OF COMPLIANCE WITH RULE 211(B)** were served upon Respondent by causing a copy of the same to be hand delivered, addressed as follows:

Erik T. Norton, Esq., John T. Moore, Esq., Nicholas Andrew Charles, Esq., A. Mattison Bogan, Esq., Nelson Mullins, 1320 Main Street, 17th Floor, Columbia, South Carolina 29201, as *Attorneys for Stephen Wilkinson, as Trustee of George B. Buchanan, Jr. Irrevocable Family Trust Dated the 15th day of July, 2001*

This 21st day of February, 2019.


William M. Wilson III