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SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Judge
J. Derham Cole, Sr., Circuit Judge

Appellate Case No. 2025-000627

PNC Bank, N.A., successor by
merger to PNC Equipment Finance,
LLC,

Respondent,

v.

S & J Asphalt Paving, LLC, Jose
Luis Guerrero, and Scott Robert
Ronson,

Appellants.

APPELLANTS' MEMORANDUM ADDRESSING APPEALABILITY

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Appellants, pursuant to the Court’s letter dated April 10, 2025, hereby submit the following memorandum addressing the issue of appealability of the Orders appealed from the Court of Common Pleas for Spartanburg County.

FACTUAL AND PROCEDURAL BACKGROUND

Respondent, the Plaintiff in the lower court, initiated this action on April 19, 2024, in the Court of Common Pleas for Spartanburg County. A copy of the initial Summons and Complaint is attached hereto as Appellants’ “**Exhibit A,**”¹ and incorporated herein by reference. Respondent initiated this action seeking to recover from the Appellants on a promissory note and individual guaranties which Appellant had given to VFS US LLC (“VFS”). This promissory note had financed the purchase of a Mauldin 1860 asphalt paver (hereinafter “Paver”) and Appellants further granted VFS a security interest in the Paver. VFS’s security interest was perfected with the filing of a UCC-1 Financing Statement with the South Carolina Secretary of State’s Office. VFS assigned its rights in the promissory note and assigned the guaranties to PNC Equipment Finance, LLC, Respondent’s predecessor by merger, on or about April 8, 2021.

Appellants experienced issues with the Paver and ultimately chose to voluntarily surrender the Paver to VFS as Appellants were unaware of the assignment to PNC Equipment Finance, LLC. The Paver was ultimately sold by SAC Auctions, LLC, in North Carolina for \$23,000. Plaintiff filed its Summons and Complaint on April 19, 2024, under the name PNC Equipment Finance, LLC. *See Ex. A.* Plaintiff further verified its Summons and Complaint by the affidavit of Michael McGinley who swore under oath that he was a vice president of PNC Equipment Finance. A true and accurate copy of the Corporate Verification is attached hereto as Appellants’ “**Exhibit B,**” and

¹ As the Record on Appeal has not been filed Appellants submit these materials pursuant to Rule 240(c)(3), *SCACR*.

is incorporated herein by reference. Appellants filed a Motion for Judgment on the Pleadings on May 24, 2024, pursuant to Rule 12(c), *SCRCP*, based upon the door closing statute in S.C. Code Ann. § 33-44-1008. In its response in opposition to Appellants' motion Respondent produced a certified copy of a certificate of merger from the Delaware Secretary of State showing PNC Equipment Finance, LLC, had merged into PNC Bank, N.A., effective May 1, 2022. A copy of the Certificate of Merger is attached hereto, and incorporated by reference, as Appellants' "**Exhibit C.**" Appellants, who first learned of this merger through Respondent's filing, argued to the trial court that Respondent's action was a nullity as it was brought in the name of a non-existent entity. The Honorable J. Derham Cole, Sr., Circuit Judge, denied Appellants' Motion for Judgment on the Pleadings on November 21, 2024, and further denied Appellants' Motion for Reconsideration on April 8, 2025.

Respondent filed a Motion to Amend on July 30, 2024, seeking to substitute PNC Bank, N.A., as the plaintiff in place of PNC Equipment Finance, LLC. Appellants filed an opposition to the Respondent's motion again on the grounds that the action was a nullity as it was brought in the name of a non-existent plaintiff. The Honorable R. Keith Kelly, Circuit Judge, granted Respondent's Motion to Amend on February 20, 2025, and denied Appellants' Motion to Reconsider on March 31, 2025. Appellants filed their initial Notice of Appeal on April 1, 2025, and an Amended Notice of Appeal (to include Judge Cole's denial of Appellants' Motion to Reconsider) on April 8, 2025.

ARGUMENT

The right of appeal in South Carolina "arises from and is controlled by" statute and a party may generally only appeal after final judgment. *Hagood v. Summerville*, 362 S.C. 191, 194, 607 S.E.2d 707, 708 (2005). In order for a party to take an interlocutory appeal it must fall within one

of the categories set forth in S.C. Code Ann. § 14-3-330. *Baldwin Const. Co., Inc. v. Graham*, 357 S.C. 227, 230, 593 S.E.2d 146, 147 (2004). Appellant acknowledges that, generally, an order granting leave to amend a party's pleadings is interlocutory and may not be appealed until after final judgment. *Collins v. Sigmon*, 299 S.C. 464, 466, 385 S.E.2d 835, 836 (1989). Appellants also acknowledge that the denial of a motion for judgment on the pleadings is likewise interlocutory. *Rose v. Thrash*, 291 S.C. 459, 459-60, 354 S.E.2d 378, 378 (1987). However, whether an order is immediately appealable must be determined on a case-by-case basis. *Morrow v. Fundamental Long-Term Care Holdings, LLC*, 412 S.C. 534, 538, 773 S.E.2d 144, 146 (2015). Additionally, an appellate court is not constrained by how an order is styled but looks instead to the effect of the interlocutory order to determine appealability. *Id.* at 539, 773 S.E.2d at 147 (citing *Thornton v. S.C. Elec. & Gas Corp.*, 391 S.C. 297, 304, 705 S.E.2d 475, 479 (Ct. App. 2011)).

In the present case Judge Kelly's Order granting Respondent leave to amend is immediately appealable as it is an order substituting a party. As set forth above, Judge Kelly's Order allowed Respondent to substitute PNC Bank, N.A., as plaintiff in place of the non-existent PNC Equipment Finance, LLC. While Respondent styled its motion as one seeking leave to amend pursuant to Rule 15, *SCRCP*, it instead sought to substitute the real party in interest pursuant to Rule 17(a), *SCRCP*. See *Bryant v. Waste Mgmt., Inc.*, 342 S.C. 149, 164, 536 S.E.2d 380, 382fn.2 (Ct. App. 2000) (holding that where a transfer of interest occurred prior to the commencement of the action it is governed by Rule 17 as opposed to Rule 25). In *Neeltec Enterprises, Inc. v. Long* the Supreme Court held an "order of substitution is appealable under § 14-3-330(2)(a), and that the failure to take such an immediate appeal would bar consideration of the order in an appeal from final judgment." 397 S.C. 563, 567, 725 S.E.2d 926, 928-29 (2012) (citing *Watts v. Copeland*, 170 S.C. 449, 456-57, 170 S.E. 780, 783 (1933)). Appellant acknowledges that *Neeltec* concerned a case

where the plaintiff in the action was forced to substitute a different defendant from the one originally named and the Court relied, in part, upon a plaintiff's substantial right to choose his or her defendant. 397 S.C. at 566, 725 S.E.2d at 928. However, in *Watts* (cited approvingly in *Neeltec*) the Supreme Court held that the defendant in that case was barred from appealing, after final judgment, an order substituting an individual plaintiff for a corporate plaintiff. 170 S.C. at 456-57, 170 S.E. at 783. Additionally, while not discussing the issue of appealability, this Court has considered an interlocutory appeal from an order denying substitution. *See Bell v. Bentley*, 438 S.C. 619, 623, 885 S.E.2d 409, 412 (Ct. App. 2023) (holding the trial court abused its discretion in denying a motion to substitute).

Appellant would assert in this case that the order of Judge Kelly substituting PNC Bank, N.A. for PNC Equipment Finance, LLC, is immediately appealable pursuant to *Neeltec* and S.C. Code Ann. § 14-3-330(2)(a). Additionally, the substitution order falls within the gambit of S.C. Code Ann. § 14-330(2)(c) as it effectively struck the portion of the Appellants' answer which asserted a defense on the grounds that PNC Equipment Finance, LLC, was not the real party in interest. A copy of Appellants' Answer and Counterclaim is attached hereto, and incorporated by reference, as Appellant's "**Exhibit D.**" The order likewise discontinued Appellants' counterclaims against PNC Equipment Finance, LLC, and thereby effectively determined the action pursuant to S.C. Code Ann. § 14-3-330(2)(a). As such the order of substitution is immediately appealable under *Neeltec*, *Watts*, and § 14-3-330.

It is undisputed that at the time of the commencement of the action PNC Equipment Finance, LLC, no longer existed. Under Delaware law a company which is merged out of existence ceases to legally exist. *MPEG, L.L.C. v. Toshiba Am. Info. Sys.*, No. 15-CV-3997 JMF, 2015 WL 6685523 at *6 (S.D.N.Y. Oct. 29, 2015) (collecting cases that hold under Delaware law a merged

LLC ceases to exist and lacks the capacity to sue or be sued). The same is true under South Carolina law. *Mendenall v. Anderson Hardwood Floors, LLC*, 401 S.C. 558, 561, 738 S.E.2d 251, 252fn.1 (2013). An action brought by, or against, a non-existent party is a nullity in South Carolina. See *McCullar v. Estate of Campbell*, 381 S.C. 205, 207-08, 672 S.E.2d 784, 785 (2009) (holding an action against a non-existent defendant is a nullity) (citing *Comm. & Savings Bank of Lake City v. Ward*, 146 S.C. 77, 143 S.E. 546 (1928)). Indeed, Appellants urged to the trial court that this action is squarely controlled by *Ward* where our Supreme Court held that an action brought “in the name of that which under the *lex fori* has no legal entity, it is as if there was no plaintiff in the record and therefore no action before the Court...” 146 S.C. 77, 143 S.E. at 548². Furthermore, such a defect is inherently fatal and may not be amended. See *Glenn v. E. I. DuPont De Nemours & Co.*, 254 S.C. 128, 134, 174 S.E.2d 155, 158 (1970) (“The action being a nullity there was nothing to amend by. In strictness of principle, if there be no legal entity, there is no foundation upon which to base an amendment.”). Appellants would assert to the Court that such a matter must be immediately appealable as otherwise the Appellants are deprived of the substantial right to only be hailed into court by an actual party.

Appellants agree that there is no basis under § 14-4-330 which allows for an appeal from the denial of its motion for judgment on the pleadings. *Rose*, 291 S.C. at 459, 354 S.E.2d at 378. However, this Court has appellate jurisdiction over orders which are not directly appealable if there is an appealable order before the Court and a ruling on the unappealable issue will avoid unnecessary litigation. *Watson v. Underwood*, 407 S.C. 443, 459, 756 S.E.2d 155, 163-64 (Ct. App.

² Respondent has spilled much ink suggesting the Supreme Court’s decision in *Ward* was abrogated by the adoption of the *South Carolina Rules of Civil Procedure* in 1985. However, Respondent has never been able to elucidate a reason why, if this is the case, the Supreme Court adhered to this rule in *McCullar* in 2009, decades after the adoption of the *South Carolina Rules of Civil Procedure*.

2014). In this case the order substituting PNC Bank, N.A. as plaintiff is immediately appealable. Furthermore, an action where there is a non-existent party plaintiff must be ended by the trial court. *See McCullar*, 381 S.C. at 208, 672 S.E.2d at 785fn.5 (“We hesitate to say ‘dismissed’ as there was ‘no action before the Court...’ to be dismissed”) (citation omitted). To reverse the trial court on the substitution order would simply leave the parties in a legal limbo in that there is a non-existent party, PNC Equipment Finance, LLC, maintaining the action when that is expressly forbidden by *McCullar* and *Ward*. The trial court erred in not immediately ending the suit when this information was brought to its attention. As such this Court would allow the parties to avoid unnecessary litigation by further reversing the trial court’s order denying the Appellants’ Motion for Judgment on the Pleadings.

CONCLUSION

In this case Judge Kelly’s Order allowing the Respondent to substitute PNC Bank, N.A., for PNC Equipment Finance, LLC, is immediately appealable pursuant to our Supreme Court’s decisions in *Neeltec* and *Watts*. Furthermore, Judge Kelly’s Order was an abuse of discretion, in that it was controlled by an error of law, as the action was brought in the name of a non-existent entity and such actions may not be amended under the rules set forth by our Supreme Court in *McCullar* and *Ward*. Under these facts this Court possesses appellate jurisdiction pursuant to S.C. Code Ann. § 14-3-330 even over these interlocutory orders. Furthermore, Appellants have no choice but to immediately appeal or else have the issues considered waived on appeal.

Additionally, while Judge Cole’s Order denying Appellants’ Motion for Judgment on the Pleadings is not immediately appealable this Court possesses appellate jurisdiction as it is coupled with an order which is appealable. Furthermore, this Court’s resolution of that order would avoid

unnecessary litigation between the parties. Accordingly, Appellant would respectfully submit that this Order is properly before the Court on appeal.

Therefore, Appellants would respectfully request that the Court allow this appeal to continue, or alternatively, reserve resolution of the appealability issue for consideration on the merits.

Respectfully submitted,

s/ W.H. McAbee III
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Attorney for the Appellants

Date: April 15, 2025
Greenville, South Carolina

EXHIBIT A

SGB C2300260

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

SPARTANBURG COUNTY

SEVENTH JUDICIAL DISTRICT

FILE NO. :

PNC EQUIPMENT FINANCE, LLC,)
Plaintiff,)

v.)

SUMMONS

S & J ASPHALT PAVING, LLC, JOSE)
LUIS GUERRERO, and SCOTT ROBERT)
RONSON,)
Defendants.)

TO; S & J ASPHALT PAVING, LLC
c/o Scott Ronson, Registered Agent
605 Battleground Road
Chesnee, SC 29323

JOSE LUIS GUERRERO
317 Swindlers Way
Inman, SC 29349

SCOTT ROBERT RONSON
605 Battleground Road
Chesnee, SC 29323

YOU ARE HEREBY SUMMONED and required to answer the Complaint in this action, a copy of which is herewith served upon you, and to serve a copy of your answer to said Complaint on the subscriber at her office at 4601 Six Forks Road, Suite 400, Raleigh, NC 27609, within thirty (30) days after service hereof, exclusive of the day of service hereof. AND IF YOU FAIL to answer the Complaint within the time aforesaid, the Plaintiff in this action will apply to the Court for the relief demanded in the Complaint.

SMITH DEBNAM NARRON DRAKE
SAINTSING & MYERS, LLP

s/ Rachel E. Rogers
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Rachel E. Rogers, SC Bar No. 106048
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ATTORNEYS FOR PLAINTIFF

Raleigh, North Carolina

EXHIBIT A

SGB C2300260

STATE OF SOUTH CAROLINA
SPARTANBURG COUNTY

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL DISTRICT
FILE NO.

PNC EQUIPMENT FINANCE, LLC,)
Plaintiff,)
v.)
S & J ASPHALT PAVING, LLC, JOSE)
LUIS GUERRERO, and SCOTT ROBERT)
RONSON,)
Defendants.)

COMPLAINT

COMES NOW Plaintiff and files this Complaint complaining of the Defendants and alleges and says:

1. Plaintiff PNC Equipment Finance, LLC (“plaintiff”) is a Delaware limited liability company doing business in Spartanburg County, South Carolina.
2. Upon information and belief, Defendant S & J Asphalt Paving, LLC (“Defendant LLC”) is a South Carolina limited liability company with a registered office and place of business in Chesnee, Spartanburg County, South Carolina.
3. Upon information and belief, Defendant Jose Luis Guerrero and Scott Robert Ronson (collectively referred to as “Defendant Guarantors”) are citizens and residents of Spartanburg County, South Carolina with Mr. Guerrero residing in Inman and Mr. Ronson residing in Chesnee. Defendant Guarantors are neither in the state of infancy nor incompetent.

**COUNT ONE
BREACH OF EQUIPMENT FINANCE AGREEMENT
AND SECURED PROMISSORY NOTE**

4. The allegations set forth in the paragraphs above, including all exhibits, are incorporated herein by reference and realleged.
5. On or about February 5, 2021, Defendant LLC and Volvo Financial Services, Inc., a division of VFS US LLC (“VFS”) entered into Agreement No. 7805791-001 (“the Agreement”) for VFS to provide financing to Defendant LLC for the purchase of a 2019 Mauldin 1860 Paver, VIN/Serial 5Y203874 (“the Equipment”). A true and accurate copy of the Agreement is attached hereto as **Exhibit A** and incorporated by reference.
6. Defendant LLC also signed a Secured Promissory Note (“the Note”) with VFS to document that the agreement between the parties that Plaintiff would loan Defendant

EXHIBIT A

- LLC the sum of \$145,495.00 plus interest and costs, for a full obligation amount of \$165,902.40. A true and accurate copy of the Note is attached hereto as **Exhibit B** and incorporated herein by reference.
7. The Agreement and Note were assigned to PNC as assignee of VFS and PNC is the rightful owner.
 8. Pursuant to the Agreement and the Note, Defendant LLC agreed to make sixty (60) monthly payments of \$2,765.04 to Plaintiff beginning on March 5, 2021.
 9. Plaintiff perfected its security interest in the Equipment by filing a UCC-1 Financing Statement on February 5, 2021 with the South Carolina Secretary of State. A true and accurate copy of the UCC-1 is attached hereto as **Exhibit C** and incorporated herein by reference.
 10. Defendant LLC defaulted on the Agreement and the Note by failing to make the monthly payments required under their terms.
 11. Following the default and pursuant to the terms of the Agreement and the Note, Plaintiff accelerated the remaining payments due under the Agreement. The total accelerated amount due to Plaintiff under the terms of the Agreement is \$105,670.87 as of January 10, 2023 as shown in the Demand for Payment attached hereto as **Exhibit D** and incorporated herein by reference.
 12. Defendant LLC voluntarily surrendered the Equipment to Plaintiff. Pursuant to the terms of the Agreement and the Note, Plaintiff sold the Equipment in a commercially reasonable manner and credited the sum of \$23,000.00 in net proceeds from such sale to the balance due. The above-referenced balance of \$105,670.87 is due after the application of said net proceeds to the account.
 13. The Agreement and the Note provide for interest to be recovered at the rate of 18% per annum on all amounts past due.
 14. The Agreement provides for the collection of reasonable attorney's fees and Defendant LLC is hereby given notice by Plaintiff of its intention to collect reasonable attorney's fees.

COUNT TWO BREACH OF CONTINUING GUARANTY

15. The allegations set forth in the paragraphs above, including all exhibits, are incorporated herein by reference and realleged.
16. On the same date that Defendant LLC and VFS entered into the Agreement and the Note, Defendant Guarantors each signed a Continuing Guaranty ("the Guaranty") for the purpose of inducing Plaintiff to provide financing to Defendant LLC for the purchase of

EXHIBIT A

the Equipment. A true and accurate copy of the Guaranty is attached hereto as **Exhibit E** and incorporated herein by reference.

17. The Guaranty, together with the Agreement and Note, was assigned to PNC as assignee of VFS and PNC is the rightful owner.
18. The Guaranty guaranteed payment by Defendant LLC to Plaintiff for all amounts due under the Agreement and the Note previously referenced.
19. Plaintiff fully complied with all terms and conditions of the Agreement, the Note, and the Guaranty.
20. Defendant LLC defaulted on the Agreement and the Note by failing to make the monthly payments to Plaintiff as required under the Agreement.
21. Following the default and pursuant to the terms of the Agreement and the Note, Plaintiff accelerated the remaining payments due under the Agreement and the Note. The total accelerated amount due to Plaintiff under the terms of the Agreement and the Note is \$105,670.87 as of January 10, 2023 as shown in the Demand for Payment attached hereto as **Exhibit D** and incorporated herein by reference.
22. Defendant LLC voluntarily surrendered the Equipment to Plaintiff. Pursuant to the terms of the Agreement and the Note, Plaintiff sold the Equipment in a commercially reasonable manner and credited the sum of \$23,000.00 in net proceeds from such sale to the balance due. The above-referenced balance of \$105,670.87 is due after the application of said net proceeds to the account.
23. The Agreement, and thus the Guaranty, provides for interest to be recovered at the rate of 18% per annum on all amounts past due.
24. The Agreement, and thus the Guaranty, provides for the collection of reasonable attorney's fees and Defendant Guarantors are hereby given notice by Plaintiff of its intention to collect reasonable attorney's fees.

WHEREFORE, the Plaintiff prays:

1. That it have and recover Judgment on Counts One and Two against Defendants S & J Asphalt Paving, LLC, Jose Luis Guerrero, and Scott Robert Ronson, jointly and severally, in the amount of \$105,670.87 plus interest accruing at 18% per annum from January 10, 2023 until the date of judgment and interest thereafter at the rate of 12.5% per annum until paid in full, reasonable attorney's fees, and the costs of this action;
2. For such other and further relief as this Court deems appropriate.

EXHIBIT A

SMITH DEBNAM NARRON DRAKE
SAINTSING & MYERS, LLP

s/ Rachel E. Rogers

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ATTORNEYS FOR PLAINTIFF

Raleigh, North Carolina

EXHIBIT A

Volvo Financial Services

**Agreement
(Secured Promissory Note)**

NAME AND ADDRESS OF BORROWER		
Legal Name: S & J ASPHALT PAVING, LLC		
Street Address: 605 Battleground Road		
CHESNEE	SOUTH CAROLINA	29323
CUSTOMER NO. 7805791	SCHEDULE NO. 001	

The undersigned Dealer ("Dealer") in order to induce Volvo Financial Services, a division of VFS US LLC (the "Company"), to enter into that certain Secured Promissory Note (the "Contract") and to which this Secured Promissory Note Agreement (the "Agreement") has been affixed, with the above referenced customer ("Customer"), hereby represents, warrants and covenants that each of the following will be true and accurate as of the funding date of the Contract:

- (a) The Contract arose from the sale or lease of the Equipment described in the Contract and said description of the Equipment is in all respects true, correct and complete;
- (b) The Customer named on the Contract is a bona fide purchaser of the Equipment described therein and, to the best knowledge of the Dealer has legal capacity to make and enter into such Contract;
- (c) The amounts stated in the Contract to be due are true and correct and will not be subject to any defenses, offsets or claims arising from the Dealer;
- (d) The representations contained in the Contract or otherwise made by Dealer and, to the best knowledge of Dealer, by the Customer in connection with the sale of the Equipment described therein are in all respects true and correct;
- (e) The statements contained in the Contract and all other written information given to Company regarding the Equipment described in the Contract, any trade-in Equipment, or any component part of any Equipment or trade-in Equipment, including, without limitation, any statements as to trade-in value or the presence or value of component parts, are in all respects true and correct.
- (f) Company will have a valid first-priority perfected first security interest in the Equipment described in and covered by the Contract free and clear of all liens and encumbrances, and Dealer has complied with all provisions of this Agreement relating to perfection, or in the alternative, Company is the sole and lawful owner of the Equipment subject to no other liens or encumbrances of any kind;
- (g) Except as otherwise indicated to Company in writing prior to financing or leasing of the Equipment, Dealer had title to the Equipment at time of sale to Customer or Company, as the case may be, free of any liens, except liens in favor of Dealer's existing floor plan lender, which liens were released at the time of sale;
- (h) All disclosures required by law to be made by Dealer were properly made to the Customer in a timely manner and Dealer has complied with all applicable federal, state and local laws, rules and regulations in connection with the execution of the Contract;
- (i) To the best of Dealer's knowledge and belief, the credit application and all other information furnished to Company regarding Customer is accurate;
- (j) All insurance documentation to be delivered by Dealer will be delivered to the Customer within the time required by law and all insurance requirements imposed by this Agreement or otherwise required by Company have been met; and
- (k) The cash down payment received by Dealer is a bona fide down payment, has been made in cash, is exactly as stated in the Contract, and was not advanced by Dealer to Customer.

Dealer acknowledges that each of the preceding warranties and representations is material to the Company's decision to accept the Contract and that the Company would not accept the Contract without the above representations and warranties.

Dealer further agrees that

1. Repurchase Obligations. Upon the occurrence of any of the following events:

- (a) the breach by Dealer of any of the representations, warranties or covenants set forth above;
- (b) if the Customer otherwise asserts any claim or defense against Company, which claim or defense arises out of the actions or omissions by Dealer, the physical condition of the Equipment when accepted from Dealer by Customer, or the breach of any representation or warranty by Dealer; Dealer shall repurchase the Contract and pay the Company, upon demand, the Repurchase Price.
- (c) if the Contract is rescinded, declared unenforceable, or voided as a result of an act or omission of Dealer, Dealer shall pay Company the full amount Company paid for the Contract, plus accrued interest, and all costs and expenses, including reasonable attorneys fees, paid or incurred with respect thereto, less any amounts previously paid by Customer that are retained by Company and that have been irrevocably paid to Company and are not subject to set aside or refund.

2. Reimbursement and Indemnity

Dealer hereby agrees to indemnify, defend, and hold Company harmless from, against and in respect of, and shall, on demand, reimburse Company for all losses, expenses, damages, deficiencies, defenses, setoffs, claims, and demands of

EXHIBIT A

whatsoever kind and nature :

- (a) asserted by the Customer arising out of any act or omission on the part of Dealer with respect to the Equipment;
- (b) arising out of the breach of or noncompliance by Dealer with this Agreement,
- (c) arising out of or related to the breach by Dealer or noncompliance by Dealer with any applicable law (including any rule, regulation, code, plan, injunction, judgments, order, decree, ruling or charge thereunder) of federal, state, and local governments (and all agencies thereof);
- (d) all actions, suits, proceedings, demands, assessments, judgments, costs and expenses, including reasonable attorney's fees and costs of court, incident to any of the foregoing.
- (e) Dealer shall be liable for the indemnities set forth herein even if Customer is released or discharged from its obligations under the Contract as a result of waiver, compromise, settlement, bankruptcy or receivership.

3. Covenants of Dealer

- (a) The Company may renew, extend, or rearrange the time or amount of payment due under the Contract, refinance the Contract, and compromise or adjust claims on the Contract without notice to or consent of Dealer and without affecting Dealer's liability hereunder. Dealer waives any right to require Company to proceed against the Customer or any other party or to proceed against or apply any security held by Company, and waives any rights to require Company to pursue any other remedy, except as specifically provided herein.
- (b) Dealer will maintain complete and accurate books of account and records relating to this Agreement, and its principal books of account and records, including all records concerning the Contract, will be kept and maintained at the address indicated on the first page of this Agreement.
- (c) Dealer will promptly notify Company in writing of any change in its place of business, including the establishment of new places of business and the closing of existing places of business and of any change in its name, corporate or other business structure, including changes in key personnel.

4. **Perfection of Security Interests.** Dealer shall be responsible for taking all actions necessary to grant to Company a first priority fully-perfected purchase money security interest in, or alternatively, title free and clear of all liens and encumbrances, in the Equipment. Such actions shall include completing the necessary forms and documents at the time of sale in order to perfect the security interest or titling of the Equipment and forwarding them together with the appropriate fees to the agency responsible for titling and registration.

5. Miscellaneous

In the event of any dispute between the parties, the successful party shall be entitled to recover from the other the costs, expenses and fees (including reasonable attorney's fees and expenses) incurred in connection with such dispute. This Agreement will be binding upon and inure to the benefit of the parties hereto and their respective successors and assigns; provided, however, that Dealer may not assign its rights or obligations hereunder without the prior written consent of Company. Dealer hereby waives acceptance, demand, presentment, protest, notice of dishonor, notice of non-payment, suit against any party, diligence in collection, and all other requirements necessary to charge or hold Dealer liable on any obligations hereunder. Any notice or demand which is required by any provision of this Agreement will be deemed to have been sufficiently given or served for all purposes by being mailed, hand-delivered, or sent by overnight courier, to the parties hereto at their respective addresses set forth herein or if any other address shall be at any time designated by any party in writing, to such other address. This Agreement will be governed by and construed in accordance with the internal laws of the State of North Carolina (without reference to choice-of-laws provisions). To the extent permitted by applicable law the Company and Dealer hereby voluntarily and intentionally waive the right either may have to trial by jury in respect to any litigation in connection with this Agreement, any other lease or loan documents, or actions or statements (whether verbal or written) of any party. If any provision of this Agreement shall be determined by any court to be invalid, illegal, or unenforceable, the provision shall be automatically be revised by the court to the minimum extent necessary to make such provision valid, legal, or enforceable and shall not affect any other provision of this Agreement.

Dealer acknowledges that the commission paid in connection with this Agreement is \$0.00 ("Commission"). If a Contract is prepaid at any time during the first six months following the funding of such Contract by the Company, regardless of the reason, Dealer shall repay in full the Commission received in connection with such Contract. In connection with the payment to Dealer of Commissions under this Agreement, payment of the full Commission shall be calculated by use of the net present value method. All terms regarding the repayment of Commissions by Dealer under this Agreement shall apply as outlined in the Recourse options below.

<u>Year</u>	<u>Make</u>	<u>Model</u>	<u>VIN/Serial</u>	<u>Attachments/Description</u>
2019	Mauldin	1860 Paver	5Y203874	

Additional Equipment (if any) listed in Exhibit A-1

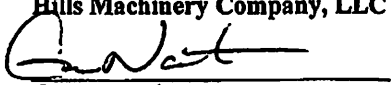
This Agreement is made: (Check One)

- Without Recourse, except as to Dealer's covenants, representations and warranties contained in the Agreement and to the extent of Commission or finance participation rate, as applicable, and other compensation received by Dealer.

EXHIBIT A

- [] **With Full Recourse.** (Full guaranty of Dealer.) In addition to its representations and warranties contained in the Agreement, after the occurrence of an Event of Default under the Contract, Dealer unconditionally guarantees and promises to pay upon demand the full amount of Total Obligation (as defined in the Contract) remaining unpaid, including all legal and repossession costs incurred by Company, regardless of whether Company has repossessed the Equipment described in said Contract. Further obligations of the undersigned are set forth in the Agreement.
- [] **With Limited Recourse.** In addition to its covenants, representations and warranties contained in the Agreement and the Commission or finance participation rate, as applicable, Dealer is responsible for payment of an amount equal to 0 percent of the Total Obligation due under the Contract as of the date of the occurrence of the Event of Default.
- [] **With Other Recourse.** In addition to its covenants, representations and warranties contained in the Agreement and the Commission or finance participation rate, as applicable, Dealer is responsible for \$0.

THIS AGREEMENT is made by Dealer as 02/05/2021.

Dealer: Hills Machinery Company, LLC
Signature: 
Print/Type Name: GARY NATIONS
Title: CRS Manager
Address: 11 Dixie Circle
GREENVILLE, SOUTH CAROLINA
29605

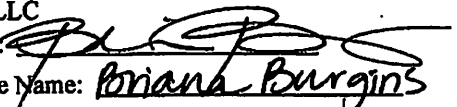
Accepted by: Volvo Financial Services, a division of
VFS US LLC
Signature: 
Print/Type Name: Briana Burgins
Address: 7025 Albert Pick Rd. Suite 105
Greensboro, NC 27409

EXHIBIT A

VOLVO FINANCIAL SERVICES

Secured Promissory Note

Customer Name: S & J ASPHALT PAVING, LLC	Customer No.: 7805791	Dated as of: 2/5/2021
------------------------------------------	-----------------------	-----------------------

Description of Equipment Financed (The "Equipment")

Year	Make	Model	VIN/Serial Number*	Attachment/Body
2019	Mauldin	1860 Paver	5Y203874	

*Last 4 numeric characters of serial number for construction equipment.

Address where Equipment will be located:
605 Battleground Road, CHESNEE, SC 29323

Total Trade Value: 0.00
Total Trade Liens: 0.00
Interest Rate on Amount Financed: 5.29

Trade in Description:

1.	Equipment Cash Sales Price	170,000.00		Borrower agrees to pay the "Total Obligation" (Item 15) in accordance with the following schedule (and any additional page(s) of schedule attached or see Payment Addendum for irregular payments):								
2.	Net Trade-in Allowance (Net Value – Total Liens)	0.00		<table border="1" style="width: 100%; border-collapse: collapse;"> <thead> <tr> <th style="text-align: center;">No. of Installments</th> <th style="text-align: center;">Start/Due Date</th> <th style="text-align: center;">Payment Amt.</th> <th style="text-align: center;">Total</th> </tr> </thead> <tbody> <tr> <td style="text-align: center;">60</td> <td style="text-align: center;">03/05/2021</td> <td style="text-align: right;">\$2,765.04</td> <td style="text-align: right;">165,902.40</td> </tr> </tbody> </table>	No. of Installments	Start/Due Date	Payment Amt.	Total	60	03/05/2021	\$2,765.04	165,902.40
No. of Installments	Start/Due Date	Payment Amt.	Total									
60	03/05/2021	\$2,765.04	165,902.40									
3.	Subtotal (1-2)	170,000.00										
4.	Sales Tax	500.00		<p>6. Financed Insurance. If a dollar amount is shown in Item 6, Borrower has elected to finance certain insurance policies through this Secured Promissory Note (this "Note"). The terms of the insurance policies are contained in separate agreement(s) and Borrower agrees that such agreements are not part of this Note.</p> <p>Delivery Date: 2/5/2021</p> <p>Borrower represents to Lender that on the Delivery Date set forth above Borrower: accepted delivery of and inspected each item of Equipment; determined that each item of Equipment contains all of the major components and accessories as agreed; each item of Equipment is in good working order and condition; and that each item of Equipment is fit for immediate and continued use and conforms to Borrower's requirements without exception.</p>								
5.	Federal Excise Tax (% of 1)	0.00										
6.	Financed Insurance	0.00										
7.	Guaranteed Auto Protection (GAP) and/or Debt Waiver	0.00										
8.	Origination Fees	495.00										
9.	Registration/Title Fees	0.00										
10.	Other Charges:											
	Other	0.00										
	Applied Funds	-0.00										
	FL Doc Stamp	0.00										
	TN Record Tax	0.00										
11.	Total Itemized Charges (4 through 10)	995.00										
12.	Cash Down Payment	25,500.00										
13.	Amount Financed (3+11-12)	145,495.00										
14.	Interest Charge	20,407.40										
15.	Total Obligation (13+14)	165,902.40										

Borrower: S & J ASPHALT PAVING, LLC		Co-Borrower (if applicable):	
Signature: (SEAL)		Signature: _____ (SEAL)	
Printed Name: Scott Ronson		Printed Name: _____	
Title: Manager		Title: _____	

Borrower(s) Name & Address:

Legal Name(s): S & J ASPHALT PAVING, LLC
Street Address (Place of Business): 605 Battleground Road, CHESNEE, SC, 29323
Mailing Address: 605 Battleground Road, CHESNEE, SC, 29323
State of Formation: SC or State of Residence: SC

Telephone: 864-327-7489 Fax: _____
Federal ID # or SSN #: _____ Co-Borrower:
County: SPARTANBURG
Email: scottspaving@gmail.com

See the following pages for additional terms.

EXHIBIT A

Lender's Name & Address:

Name: Volvo Financial Services, a division of VFS US LLC
Street Address: 7025 Albert Pick Rd. Suite 105, Greensboro, NC 27409
Mailing Address: PO Box 26131, Greensboro, NC 27402-6131

Promise to Pay. The above-signed Borrower (the "Borrower"), and if more than one, jointly and severally, the "Borrower") unconditionally promises to pay in full to Volvo Financial Services, a division of VFS US LLC, a Delaware limited liability company, (together with its successors and assigns, the "Lender"), at 7025 Albert Pick Road, Suite 105, P.O. Box 26131, Greensboro, North Carolina, 27402-6131, or at such other place as Lender designates in writing, in lawful money of the United States of America, the principal amount borrowed with interest, the "Total Obligation", as set forth in Item 15 above. In addition to the Total Obligation, Borrower agrees, under seal, to pay all other amounts owed to Lender under this Note (collectively, the "Indebtedness") when due. Principal shall bear interest at the Interest Rate set forth above from the date of disbursement until the applicable due date, whether due by acceleration or otherwise. Any payment due on a date which is a date when banking institutions are not open to the public in the State of North Carolina shall be due on the next succeeding date on which such institutions are open. Any Indebtedness not paid when due shall bear interest from the due date or the judgment date, as applicable, until paid at a rate (the "Default Rate") which is the lesser of (i) eighteen percent (18%) per annum or (ii) the maximum rate permitted under applicable law. All interest due under the Loan Documents shall be computed on the basis of a 360-day year and accrue on a daily basis for the actual number of calendar days elapsed. Borrower agrees to pay an effective rate of interest that is the sum of (i) the Interest Rate and (ii) the additional rate of interest resulting from any other charges or fees paid or to be paid in connection with the Loan Documents that are determined to be interest or in the nature of interest.

Receipt and Application of Payments. Payments shall not be deemed received by Lender until good funds are actually received by Lender. At the option of Lender, payments shall be applied to principal, interest, and other Indebtedness in such order as Lender shall determine.

Prepayment. Borrower may prepay the outstanding principal balance of this Note, in whole or in part, at any time, provided that as express conditions precedent to Lender's acceptance of any prepayment, Borrower must: (i) give Lender at least 30 calendar days prior written notice of its intent to make such prepayment; and (ii) pay to Lender a prepayment premium equal to 0% of the amount of the unpaid balance of the Total Obligation being prepaid (minus unearned Finance Charges), and (iii) pay to Lender the amount of the unpaid balance of the Amount Financed being prepaid on such Installment Due Date, the installment due on such Installment Due Date, and all other amounts of the Indebtedness then due and remaining unpaid under the Note. At the option of Lender, any prepayment of principal shall be applied to payments coming due under this Note in the inverse order of their due dates. In the event of a default and collection of any amounts subsequent to default, whether or not a payment default has been declared by written notice to Borrower, Borrower shall also be liable for the prepayment fee and unpaid balance as described above.

Late Charges. If any payment of principal and interest or any other Indebtedness is not received in full by Lender within 15 calendar days after its due date, then in addition to all other rights and remedies of Lender, a late charge of five percent (5%) of the amount due and unpaid will be charged to Borrower. Such late charge shall be immediately due and payable upon receipt of written notice from Lender and shall be an "Indebtedness" under this Note.

No Counterclaims, Deductions, or Offsets. All payments and obligations of Borrower under the Loan Documents will be made and performed without counterclaim, deduction, defense, deferment, set-off, or reduction.

Security Interest. In order to secure (i) payment of the Indebtedness, all other debts and obligations at any time owed by Borrower to Lender or its affiliates, and (ii) complete and full performance of any Loan Party's obligations to Lender under the Loan Documents, now existing or at any time entered into, Borrower hereby grants to Lender a security interest in and to the equipment described above (the "Equipment"), together with all present and future attachments, accessions, replacements, parts, proceeds (including insurance proceeds), income, earnings, accounts, rights to payment (including monetary obligations, whether or not earned by performance), secondary obligations incurred or to be incurred, chattel paper, electronic chattel paper, general intangibles, payment intangibles, warranties, service contracts, documents, and records now or hereafter arising from the Equipment (collectively, the "Collateral"). Borrower agrees that Lender may file UCC financing statements or any other documents necessary to perfect or continue Lender's security interest in the Collateral in any applicable jurisdiction. Borrower further agrees to take all actions, execute all documents and provide all additional information that Lender deems necessary to perfect or continue its security interest in the Collateral. The security interest shall remain in full effect, without waiver or surrender of any of Lender's rights hereunder, notwithstanding any one or more of the following: (i) extension of the time of payment of the whole or any part of this Note; (ii) any change in the terms and conditions of this Note; (iii) substitution of any other evidence of Indebtedness for this Note; (iv) surrender, release, exchange, or alteration of any Collateral or other security, either in whole or in part; or (v) release, settlement, discharge, compromise, change, or amendment, in whole or in part, of any claim of Lender against any Loan Party.

Insurance and Risk of Loss. All risk of loss, damage or destruction of the Equipment will at all times be on Borrower. Borrower agrees to maintain, at Borrower's expense: (a) Special Form property insurance, or other insurance acceptable to Lender, protecting the Equipment from loss or damage by fire, theft and other customary risks for the greater of the Equipment's replacement cost or the Indebtedness with a deductible not to exceed \$2,500 per item of Equipment, naming Lender as a loss payee on a "Lender's Loss Payable" endorsement; and (b) liability insurance in an amount not less than \$1,000,000 per occurrence, naming Lender as an additional insured (collectively, "Required Insurance"). Borrower must provide Lender satisfactory written evidence of Required Insurance within 30 calendar days of the commencement date of this Note, the cancellation or expiration of such Required Insurance, or of any subsequent written request from Lender. If Borrower does not do so, Lender may obtain insurance from an insurer of Lender's choosing in such forms and amounts as Lender deems reasonable to protect Lender's interests (collectively, "Lender's Insurance"). Lender's Insurance will cover the Equipment and the Lender; it will not name Borrower as an insured and may not cover all of the Borrower's interest in the Equipment. Borrower agrees to pay Lender periodic charges for Lender's Insurance (collectively, "Insurance Charges") that include: a premium that may be higher than if the Borrower maintained the Required Insurance separately; a finance charge of up to 1.5% per month on any advances made by Lender or Lender's agents; and commissions, and billing and processing fees; any or all of which may generate a profit to Lender and Lender's agents. If Borrower fails to provide satisfactory evidence of Required Insurance by the due date, Lender may pay Insurance Charges by debiting Borrower's account under any previously authorized automatic payment. Lender shall discontinue billing or debiting Insurance Charges upon receipt of satisfactory evidence of Required Insurance. Borrower shall immediately notify Lender in writing of any damage, theft or loss to Equipment which makes any item of Equipment unfit for continued or repairable use. Borrower hereby irrevocably appoints Lender as Borrower's attorney-in-fact to execute and endorse all checks or drafts in Borrower's name to collect under any insurance covering the Equipment. Lender may apply insurance proceeds to the Indebtedness or any other obligation of Borrower to Lender as Lender deems appropriate.

Borrower's Representations, Warranties and Agreements. Borrower represents, warrants, and agrees: (a) that except for the security interest granted to Lender, the Equipment will remain free from all liens and security interests; (b) that all information supplied by Borrower in any financial, credit, or accounting statement to Lender is and will be complete true, correct and genuine, and Borrower consents to the ongoing review of Borrower's credit reports during the term of this Note; (c) that the Equipment is to be used only for business purposes; (d) that Borrower has full authority to enter into this Note and in so doing it is not violating any law, regulation or agreement and has taken all necessary and appropriate actions to make this Note binding and enforceable against Borrower; (e) to defend at its own cost any action, or claim affecting the Equipment; (f) to maintain the Equipment in good operating condition, repair, and appearance, all in conformity with all governmental regulations, insurance policies, and any warranties; (g) to promptly pay all taxes, assessments, license fees and other public or private charges when levied against the Equipment or this Note; (h) to obtain a certificate of title on each item of Equipment showing Lender's first priority security interest and to preserve and perfect Lender's security interest by authorizing Lender to file financing statements and also execute any required financing statements; (i) to not misuse, secrete, sell, rent, lend, encumber or transfer any item of Equipment nor permit it to be operated by or be in the possession of any other party; (j) that Lender may enter any premises at any reasonable times to inspect the Equipment; (k) to not assign or encumber any of its rights or obligations under this Note; (l) to provide Lender with quarterly and annual financial statements upon request of Lender; (m) to reimburse Lender immediately after written notice for any expenses incurred by Lender to perform any of the obligations of Borrower, and Borrower agrees not to change its principal place of business, state of formation, or legal name without 30 calendar days prior written notice to Lender; (n) to use or permit the use of each item of Equipment only in the United States (and, solely in the case of titled Equipment, in Canada for not more than 60 calendar days during any rolling twelve (12) calendar month period to be determined individually for each item of Equipment) in the ordinary course of its business and in compliance with all applicable laws and regulations and insurance policies; (o) that the Equipment will not be used to transport environmentally hazardous materials, contaminants, or waste products, except in compliance with all applicable laws, regulations, and insurance policies; and (p) if Borrower is an individual, Borrower's legal

EXHIBIT A

ELECTRONICALLY FILED - 2024 Apr 19 10:41 AM - SPARTANBURG - COMMON PLEAS - CASE#2024CP4201645

name set forth above is identical to the name appearing on Borrower's most recent, unexpired driver's license issued by the state of his/her principal residence and Borrower will provide Lender with written notice within 30 calendar days of any change in Borrower's legal name as shown on any licenses issued by the state of his/her principal residence subsequent to the date of this Note; (q) that neither the Borrower nor any of its direct or indirect owners is directly or indirectly controlled by any sanctioned person or entity, as described in any regulation, order, or guidance issued by the U.S. Department of Treasury's Office of Foreign Assets Control or any other U.S. government entity. Borrower acknowledges that Lender, in compliance with federal law, will be verifying certain information about Borrower. Borrower also certifies that neither it nor any of its direct or indirect owners engages in any transactions prohibited by any U.S. laws; and (r) it will not interfere with the operation of any telematics system in any Equipment and that Lender may monitor or access the Equipment utilization, location and other information or reports contained in or generated by any such telematics system to ensure compliance with this Note, or for any other lawful purpose, and may use any telematics system or information generated by the telematics system to locate the Equipment in the event of default under this Note.

Events of Default. Each of the following shall constitute an "Event of Default" which will allow Lender to exercise all of its rights under this Note and applicable law: (a) any Loan Party (each such other person that from time to time is obligated to Lender under any of the Loan Documents and/or executes any guaranty, surety, or any or all of the obligations pursuant to the Loan Documents, or any endorser for the Borrower, together with Borrower, the "Loan Parties" and individually a "Loan Party"), fails to make any payment in full when due under any Loan Document; (b) the occurrence of an Event of Default under any Loan Document or the default by any Loan Party of any obligation or liability to Lender; (c) the failure by any Loan Party to perform any obligation not involving the payment of money, or to comply with any other term, condition, provision, covenant, or warranty applicable to such Loan Party under any of the Loan Documents and such obligation, term, condition, provision, covenant, or warranty remains unsatisfied after 10 calendar days' written notice to such Loan Party; (d) any representation or warranty made by any Loan Party in any of the Loan Documents or otherwise or any information delivered by any Loan Party in obtaining or hereafter in connection with the credit evidenced by any Loan Document is materially incomplete, incorrect, or misleading as of the date made or delivered; (e) any Loan Party becomes insolvent, is unable or admits in writing its inability to pay its monetary obligations as they become due, makes a general assignment for the benefit of creditors, or applies for or acquiesces in the appointment of a trustee, receiver, or other custodian for such party or any of its assets or property, or a trustee, receiver, or other custodian is appointed for any Loan Party or any of its assets or property; (f) commencement of any case under the Bankruptcy Code (Title 11 of the United States Code) or any similar proceeding under any federal, state, or foreign law by or against any Loan Party; (g) the death, incompetence, dissolution, or liquidation of any Loan Party, the consolidation or merger of any Loan Party with any person or entity, or the taking of any action by any Loan Party toward any dissolution, liquidation, consolidation, or merger (regardless of whether such actions occur voluntarily or by operation of law); (h) any Loan Party ceases to do business in the ordinary course or suffers a material adverse change in its management or ownership; (i) the sale, assignment, or transfer of all or substantially all of its assets by any Loan Party (regardless of whether such action occurs voluntarily or by operation of law) without the consent of Lender; (j) any Loan Party, or any other person acting on behalf of such Loan Party, claims that any Loan Document or any lien or security interest is not legal, valid, binding, or enforceable against any Loan Party, or that the priority of any lien or security interest securing any of the indebtedness is different than the priority represented and warranted in the Loan Documents; (k) any Loan Party shall be in default with respect to any agreement with or obligation to any other party for the payment of borrowed money, contractual obligation, or rent, in excess of \$1,000,000; or (l) the occurrence of any condition or event that is a default or is designated as a default, event of default, or Event of Default in any other agreement, contract, or indebtedness of any Loan Party to Lender or to any affiliate of Lender.

Rights and Remedies of Lender. Whenever an Event of Default has occurred under this Note and at any time thereafter, Lender will have all the rights and remedies provided by this Note, the Uniform Commercial Code ("UCC"), and other applicable law. At the option of Lender, with or without notice, any or all of the indebtedness then owing under this Note will be immediately due and payable in full, together with all costs and expenses, including attorneys' fees, incurred by Lender in the enforcement of its rights and remedies under this Note. Borrower acknowledges that this Note is a "business contract" as that term is used under N.C.G.S. § 6-21.6 or any successor thereto. Lender may, without notice or demand or legal process, take possession of the Collateral wherever found and, for this purpose, may enter upon the locked or unlocked property occupied or under the control of Borrower. Lender may require Borrower to assemble the Collateral and make it available to Lender at a place to be designated by Lender. Lender, at the expense of Borrower, may make repairs deemed necessary or desirable to the Collateral. Lender shall not be responsible for any injury or loss to the Collateral unless caused by the willful wrongful acts or omission of Lender while the items of Collateral are in Lender's possession. Lender may, with or without obtaining possession of the Collateral or any part thereof, sell the same at a public or private sale in the wholesale or retail market, lease, or otherwise dispose of any or all of the Collateral with or without notice to the Borrower. Borrower agrees that the items of Equipment are of a type customarily sold in recognized markets within the meaning of the UCC. Lender may also advertise and sell the Equipment through internet websites through which equipment similar to the Equipment is sold, and such disposition shall be deemed in conformity with reasonable commercial practice among dealers of the type of property that was the subject of the disposition. At any sale or disposition, Lender may accept a trade of property for all or any portion of the sales price. As permitted by applicable law, Lender may, at any sale, public or private, of the Collateral, purchase any or all of the Collateral offered at such sale. The proceeds of any sale or sales, after deducting all expenses of Lender in taking, storing, repairing, and selling the Collateral (including reasonable attorneys' fees and legal expenses) shall be applied to the payment of any part or all of the indebtedness and any other indebtedness or liability of Borrower to Lender, and any surplus thereafter remaining shall be paid to Borrower or to any other person that may be legally entitled to such surplus. Lender shall be under no duty to select any items of Collateral over any other items or to sell the items of Collateral pro rata or in any order but may select and sell such items as Lender may determine. Lender may, at its option, and without any obligation to do so, pay, perform, and discharge any and all amounts, costs, expenses, and liabilities herein agreed to be paid or performed by Borrower, and all amounts so expended by Lender shall become part of the indebtedness secured by the Collateral and shall be immediately due and payable by Borrower upon demand and shall bear interest at the Default Rate. Lender may pursue any legal remedy available to collect all indebtedness and to enforce its rights in the Collateral. Lender may exercise any or all other rights and remedies concurrently or consecutively in such order as Lender elects without diminishing Lender's rights to later pursue remedies on any of Borrower's other obligations. Such rights and remedies shall be cumulative and non-exclusive and shall inure to the benefit of Lender and its successors and assigns. Neither the action nor failure of Lender to take any of the actions or exercise any of the rights or remedies granted to Lender in this Note shall be construed to be a waiver of any of the rights or remedies of Lender. In Lender's exercise of the powers granted by Borrower under this Note, no liability shall be asserted or enforced against Lender except for Lender's willful wrongful acts, and Borrower expressly waives and releases Lender from all other such claims or liabilities. To the extent permitted by law, Borrower waives all other remedies, including specific performance, the right to deduct damages from current amounts due, and all indirect, consequential, punitive, and incidental damages.

Binding Effect. This Note shall be binding upon Borrower and its permitted successors and assigns and inure to the benefit of Lender and its successors and assigns. Lender may from time to time assign or transfer its rights and/or delegate its obligations under the Loan Documents in whole or in part and without notice to or the consent of any Loan Party. Borrower may not assign or transfer its rights or delegate its obligations under this Note, in whole or in part, unless it obtains Lender's prior written consent to such assignment, transfer or delegation; provided that such consent shall be in the Lender's sole discretion. In addition and as permitted under applicable law, NO LOAN PARTY SHALL ASSERT AGAINST ANY ASSIGNEE OR TRANSFEREE OF LENDER ANY CLAIMS OR DEFENSES SUCH LOAN PARTY MAY HAVE AGAINST LENDER.

Costs, Expenses, and Fees. Borrower agrees to pay on demand all reasonable external and internal costs, expenses, and fees (including reasonable attorneys' fees and expenses) of Lender in enforcing the Loan Documents and the rights and remedies of Lender regardless of whether any legal action or proceeding is instigated. Borrower agrees that any origination fees may be shared with or rebated to the selling dealer. Such costs, expenses, and fees shall constitute an "indebtedness" under the Loan Documents.

Successors and Assigns. All of the terms and provisions of this Note shall apply to, bind and inure to the benefit of the successors and assigns of Borrower (but this shall not permit any assignment prohibited hereby) and Lender. In the event Borrower is composed of more than one party, the obligations, covenants, agreements, and warranties contained herein as well as the obligations arising therefrom are and shall be joint and several as to each such party.

Severability. If any provision of this Note is unenforceable, such provision shall be modified to the minimum extent possible to make such provision enforceable, and the enforceability of the other provisions of this Note shall not be affected.

Choice of Law. This Note shall be effective only when accepted by Lender and shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to any conflict of law or similar provisions. This Note is intended to be effective as a contract or instrument executed under seal.

Notices and Demands. All demands or notices under this Note shall be in writing (including, without limitation, facsimile - receipt confirmed) and mailed, emailed, faxed, or delivered to the address specified in this Note or in writing by the party to which such notice is given. Any demand or notice mailed shall be

EXHIBIT A

mailed first-class mail, post-prepaid, return-receipt requested. Demands or notices shall be effective the earlier of (i) actual receipt by the addressee, or (ii) the date shown on the return receipt, fax confirmation, or delivery receipt.

Rescission or Return of Payments. If at any time or from time to time, whether before or after payment of the indebtedness and performance of the obligations in full, all or any part of any amount received by the Lender as payment of an indebtedness, must or is claimed to be subject to avoidance, rescission, or return to Borrower or any other party for any reason whatsoever, such indebtedness and any liens, security interests, and other encumbrances that secured such indebtedness at the time such avoidance, rescission, or returned payment was received by Lender shall be deemed to have continued in existence or shall be reinstated, as the case may be, all as though such payment had not been received.

Waivers. Borrower waives, to the fullest extent permitted under applicable law, the right to assert any statutes of limitations as a defense to any of its indebtedness or obligations. Borrower waives, to the fullest extent permitted by law, presentment, notice of dishonor, protest, notice of protest, notice of intent to accelerate, notice of acceleration, and all other notices or demands of any kind (except notices specifically provided for in the Loan Documents), and (ii) agrees that Lender may enforce this Note and any other Loan Documents against Borrower without first having sought enforcement against any other Loan Party or any collateral securing the indebtedness.

Electronic Signatures. At Lender's election, this Note and the Loan Documents may be executed by use of an electronic signature under the Electronic Signatures in Global and National Commerce Act, any version of the Uniform Electronic Transactions Act or any other statute governing electronic transactions ("Electronic Signature"). Electronic Signature shall include Loan Documents executed and delivered by photocopy, facsimile or electronic or digital signature (including emailed .pdf files), any of which shall be treated as an original and deemed fully binding on the parties to the same extent as original signatures. Multiple signatures to this Note delivered separately shall constitute one original Note. By submitting an Electronic Signature on any Loan Document, Borrower agrees (a) that Borrower consents to the use of Electronic Signatures in these Loan Documents; (b) that any of these Loan Documents in electronic form or executed with an Electronic Signature are (i) fully enforceable and (ii) fully admissible in any legal proceeding; (c) that Borrower's Electronic Signature is intended to authenticate this writing and have the same force and effect as Borrower's handwritten signature and (d) that reference to "signatures" in the Loan Documents shall refer to any form of signature, whether handwritten or electronic. Lender may rely on the electronic mail address provided for each Borrower as being conclusively controlled by and accessible to that Borrower for the purpose of delivering, receiving and executing the Loan Documents with Electronic Signatures. Borrower agrees that no certification or other third-party verification is necessary to validate any Electronic Signature of Borrower and that the lack of such certification or third-party verification will not in any way impact the enforceability of any Electronic Signatures or any resulting agreement between Borrower and Lender. Borrower agrees that this Note and any other Loan Documents, if/when manually countersigned by Lender or attached to Lender's original signature counterpart and/or in Lender's possession, shall constitute the sole original chattel paper as defined in the UCC for all purposes and will be admissible as legal evidence thereof. Lender may designate, at its discretion, one authoritative copy of the Loan Documents, which may be held in electronic or physical form in the ordinary course of business ("Authoritative Copy"). If the Authoritative Copy resides in a document management system designated by Lender for the storage of authoritative copies of electronic records, Lender or its assigns may convert the Authoritative Copy by any means, including but not limited to printing a paper copy which is marked as the original (the "Paper Contract"), in which case Borrower agrees that (a) Borrower's Electronic Signature also constitutes issuance and delivery of such Paper Contract, (b) Borrower's Electronic Signature, when affixed to the Paper Contract, constitutes a legally valid and binding signature on the Paper Contract and (c) subsequent to such conversion, your obligations will be evidenced by the Paper Contract alone.

Power of Attorney. Borrower grants Lender a power of attorney to correct obvious errors and fill in such blanks as serial numbers, date of first payment and similar provisions, and for registering, transferring, titling, or perfecting Lender's interest in the Equipment. Such power of attorney is coupled with an interest and is irrevocable during the term of this Note.

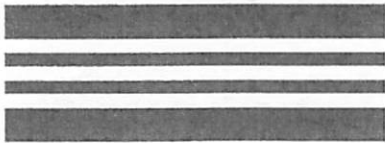
Miscellaneous. This Note and the Loan Documents executed in connection with this Note constitute the entire agreement and understanding of Lender and Borrower and supersede all prior representations, warranties, agreements, understandings, and negotiations regarding the loan evidenced by this Note. No provision of this Note can be amended, waived, discharged, or terminated except in writing executed by the parties thereto. Acceptance of late payments shall not waive the TIME IS OF THE ESSENCE PROVISION, the right of Lender to require that subsequent payments be made when due, or the right of Lender to declare an Event of Default if subsequent payments are not made when due. Any approval, consent, or statement that a matter is acceptable to Lender under this Note must be in writing executed by Lender and shall be construed to apply only to the party and facts specifically set forth in writing. NOTICE TO SOUTH DAKOTA BORROWERS: Any improprieties related to this transaction or the lending practices of Lender may be referred to the South Dakota Division of Banking at 1601 N. Harrison Ave., Suite 1, Pierre, SD 57501; telephone: 605-773-3421. To the extent permitted by applicable law the Borrower hereby voluntarily and intentionally waives the right it may have to trial by jury in respect to any litigation in connection with this Note, any other loan document, or actions or statements (whether verbal or written) of any party. This Note may be executed and delivered by facsimile signature and a facsimile signature shall be treated as an original. Multiple signatures to this Note delivered separately shall constitute one original Note. Borrower agrees that (i) Lender, its affiliates, subsidiaries and its service providers (the "VFS Parties") may disclose information about the Borrower to other lenders, financing sources and credit bureaus and, as permitted by law, to other persons, including entities affiliated and associated with the VFS Parties, and (ii) the VFS Parties may process data and/or information in any country where parties may have a presence. **TIME IS OF THE ESSENCE IN THIS NOTE AND THE OTHER LOAN DOCUMENTS.**

Headings. The headings at the beginning of each section of this Note are solely for convenience and do not modify any section.

Definitions. For purposes of this Note, "Loan Documents" means this Note; all other loans made by, or other obligations of Borrower to Lender or any affiliates of Lender; any guaranty(ies) of any payment or performance of the indebtedness; and all other agreements or documents evidencing, guaranteeing, securing, or otherwise relating to this Note, as any or all of such documents may be executed or amended from time to time. "Loan Party" means Borrower and any other person that from time to time is obligated to Lender under any of the Loan Documents; executes any guaranty of all or any portion of Borrower's obligations under the Loan Documents; or grants any interests in property to secure any or all of the indebtedness.

EXHIBIT A

ELECTRONICALLY FILED - 2024 Apr 19 10:41 AM - SPARTANBURG - COMMON PLEAS - CASE#2024CP4201645



UCC-1

UCC FINANCING STATEMENT

FOLLOW INSTRUCTIONS

A. NAME & PHONE OF CONTACT AT FILER (optional)

B. E-MAIL CONTACT AT FILER (optional)
FilingDept@cscinfo.com

C. SEND ACKNOWLEDGMENT TO: (Name and Address)

Corporation Service Company
801 Adlai Stevenson Dr
Springfield, IL 62703

SC SECRETARY OF STATE

210205-1202086 S

Lapse Date: 02/05/2026

Date: 2/5/2021

Time: 12:02 PM

Page Count: 1 Pg

Debtor Count: 1

Filing Fees: \$8.00

Electronic Records Access: \$8.00

Total: \$16.00

Order ID#

THE ABOVE SPACE IS FOR FILING OFFICE USE ONLY

1. DEBTOR'S NAME: Provide only one Debtor name (1a or 1b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 1b, leave all of item 1 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

1a. ORGANIZATION'S NAME
S & J ASPHALT PAVING, LLC

OR

1b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
---------------------	-------------------------------	--------

1c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY
CHESNEE	SC	29323	USA

2. DEBTOR'S NAME: Provide only one Debtor name (2a or 2b) (use exact, full name; do not omit, modify, or abbreviate any part of the Debtor's name); if any part of the Individual Debtor's name will not fit in line 2b, leave all of item 2 blank, check here and provide the Individual Debtor information in item 10 of the Financing Statement Addendum (Form UCC1Ad)

2a. ORGANIZATION'S NAME

OR

2b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
---------------------	-------------------------------	--------

2c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY
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3. SECURED PARTY'S NAME (or NAME of ASSIGNEE of ASSIGNOR SECURED PARTY): Provide only one Secured Party name (3a or 3b)

3a. ORGANIZATION'S NAME
VFS US LLC

OR

3b. INDIVIDUAL'S SURNAME

FIRST PERSONAL NAME	ADDITIONAL NAME(S)/INITIAL(S)	SUFFIX
---------------------	-------------------------------	--------

3c. MAILING ADDRESS

CITY	STATE	POSTAL CODE	COUNTRY
Greensboro	NC	27402	USA

4. COLLATERAL: This financing statement covers the following collateral:
2019 MAULDIN 1860 PAVER, Serial Number ending in the last (4) numeric digits of 3874 with all the standard attachments; together with all parts, accessories, attachments, substitutions, repairs, improvements and replacements and any and all cash and non-cash proceeds thereof, including, without limitation, insurance proceeds.

The collateral set forth herein is within the scope of Article 9 of the Uniform Commercial Code as enacted in the state of this filing.

5. Check only if applicable and check only one box: Collateral is held in a Trust (see UCC1Ad, item 17 and Instructions) being administered by a Decedent's Personal Representative

6a. Check only if applicable and check only one box:
 Public-Finance Transaction Manufactured-Home Transaction A Debtor is a Transmitting Utility

6b. Check only if applicable and check only one box:
 Agricultural Lien Non-UCC Filing

7. ALTERNATIVE DESIGNATION (if applicable): Lessee/Lessor Consignee/Consignor Seller/Buyer Bailee/Bailor Licensee/Licenser

8. OPTIONAL FILER REFERENCE DATA:
502-7805791-001 [205822575]

EXHIBIT C

EXHIBIT A



January 10, 2023

VIA OVERNIGHT MAIL

S & J ASPHALT PAVING, LLC
605 BATTLEGROUND ROAD
CHESNEE, SC 29323
Attn: JOSE GUERRERO & SCOTT RONSON, Managers

Re: Demand for Payment

Dear Mr. GUERRERO & RONSON:

Please be advised that the Loan identified in Exhibit A attached hereto is in default due to the Borrower's failure to make regular monthly payments when due.

Demand is hereby made upon the Borrower to repay the Loan in full in immediately available funds at PNC Equipment Finance, LLC, 655 Business Center Drive, Suite 250, Horsham, PA 19044, on or before the **20th January, 2023**. The total amount of principal, accrued interest, late charges and reimbursable expenses owed by the Borrower to PNCEF as of January 10, 2023 is set forth on Exhibit A. In addition to the unpaid principal, accrued interest, late charges and reimbursable expenses, the Borrower is also required to pay all of PNCEF's attorneys' fees, collection costs, a pre-payment fee, if provided for in the Note, and all interest and late charges which subsequently accrue in accordance with the terms of the Note and the other applicable loan documentation. Unless timely and full payment is received by the PNCEF, all remedies available to PNCEF under applicable laws will be pursued without further notice to you.

This letter is not intended to be a waiver of any rights, remedies or recourse available to PNCEF, nor an election of remedies arising as a result of the default or of any other default which may now or hereafter exist with respect to the Note. The collection of interest or acceptance of partial payments (that is, less than the total amounts due in accordance with the terms of the Note) by PNCEF shall not constitute a waiver of PNCEF's acceleration of the Loan or of any other rights of PNCEF under the Note or the other loan documentation.

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EXHIBIT D

EXHIBIT A

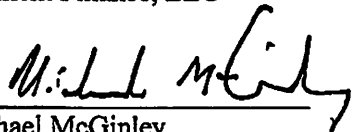
S & J ASPHALT PAVING, LLC
January 10, 2023
Page 2

Please call the undersigned at 267-960-4066 to arrange for payment.

Very truly yours,

PNC Equipment Finance, LLC

By:


Michael McGinley
Vice President - Litigation and Recovery

cc: JOSE L. GUERRERO; Personal Guarantor
SCOTT R. RONSON; Personal Guarantor
Mark A. Gittelman; Esquire

EXHIBIT A

Exhibit A

Loan (the "Loan") evidenced by an Equipment Finance Agreement dated February 5, 2021, (the "Note") made by S & J ASPHALT PAVING, LLC (the "Borrower") to PNC Equipment Finance, LLC, ("PNCEF") as assignee to Volvo Financial Services in the originally stated principal amount of \$131,230.00 [Obligation No. 502-7805791-001].

Remaining Loan Balance: (02/05/22 through 05/05/22 Payments @ \$2,765.04)	\$ 11,060.16
Late Fees:	\$ 553.00
Remaining Principal Balance:	\$ 116,557.71
Repo/Site Visit Fee	\$ 500.00
Less: Equipment Sale	\$ (23,000.00)
Total:	\$ 105,670.87

EXHIBIT A

VOLVO FINANCIAL SERVICES

Continuing Guaranty

Customer No. 7805791

Pursuant to this Guaranty ("Guaranty") and for valuable consideration, each of the undersigned (each a "Guarantor"), jointly and severally, under seal, absolutely, unconditionally and irrevocably guarantees to Volvo Financial Services, a division of VFS US LLC, and its affiliates and subsidiaries (each individually, together with its successors and assigns, a "Creditor") the full, prompt, and complete payment and performance of all obligations of all sums, moneys, notes, loans, indebtedness, leases, or lease payments that shall at any time be due and payable to the Creditor, from S & J ASPHALT PAVING, LLC ("Debtor"), whether now owing or hereafter contracted, absolute or contingent, including all liabilities or obligations that Debtor has incurred or may incur or from other dealings by which the Creditor may become in any manner a creditor of Debtor (collectively the "Obligations").

This Guaranty is a continuing guaranty and shall not be considered wholly or partially satisfied by the payment at any time of any sum or amount, due or hereafter owing upon any Obligation, but shall continue until terminated by written notice actually received by the Creditor and shall then continue, notwithstanding such termination, as to any Obligation created or incurred by Debtor prior to such receipt of termination.

To the extent permitted under applicable law, Guarantor waives: (i) notice of acceptance, all notices and consents of any kind, protest, dishonor, non-payment, and demand for presentment; (ii) until the Obligations are irrevocably paid in full any claim, right, or remedy which Guarantor may now have or hereafter acquire against Debtor including the right of subrogation; and (iii) all exemptions and defenses given to sureties and guarantors (including, without limitation, any right conferred by N.C. Gen. Stat. § 26-7 et seq.) other than the complete fulfillment, performance, and payment of all Obligations.

The liability of each Guarantor is direct and unconditional. Guarantor acknowledges that the Creditor would not have entered into any transaction with Debtor without this Guaranty and that the Obligations are of substantial benefit to Guarantor. This Guaranty is a guaranty of payment and not collection. The Creditor may proceed against each Guarantor without resorting to any other right, remedy, security, or entity. All of the Creditor's remedies for the Obligations or this Guaranty are cumulative. Guarantor agrees that the Creditor may extend any deadline or payment due date, modify any agreement, defer acceleration, postpone the enforcement of any agreement, and release or add any collateral and any party primarily or secondarily liable without affecting the liability of any Guarantor. There are no conditions precedent to this Guaranty. This Guaranty shall continue to be effective or shall be reinstated, as the case may be, if at any time any payment is rescinded, voided, or rendered void or voidable as a preferential transfer, impermissible set-off or fraudulent conveyance or must otherwise be returned or disgorged as if such rescinded, avoided, voided, or voidable payment had not been made.

Guarantor represents and warrants to the Creditor that the parties executing this Guaranty are authorized to do so; and this Guaranty has been duly executed, authorized, and delivered and is enforceable against Guarantor. Guarantor certifies that neither the Guarantor nor any of its direct or indirect owners is directly or indirectly controlled by any sanctioned person or entity, as described in any regulation, order, or guidance issued by the U.S. Department of Treasury's Office of Foreign Assets Control or any other U.S. government entity. Guarantor acknowledges that Creditor, in compliance with Section 326 of the USA Patriot Act, will be verifying certain information about Guarantor. Guarantor also certifies that neither it nor any of its direct or indirect owners engages in any transactions prohibited by any U.S. laws. In the event of any dispute regarding this Guaranty, Guarantor agrees to pay all costs and expenses of the Creditor (including reasonable attorneys' fees and expenses) incurred in connection with such dispute, regardless of whether litigation or other action is instigated. Guarantor acknowledges that this Guaranty is a "business contract" as that term is used under N.C.G.S. § 6-21.6 or any successor thereto.

By signing below, each Guarantor who is an individual provides written authorization to the Creditor (or any successor or assignee) to obtain the Guarantor's personal credit profile from one or more credit bureaus. Such authorization shall extend to obtaining a credit profile in considering this Guaranty and subsequently for the purposes of update, renewal or extension of such credit or additional credit and for reviewing or collecting the resulting account. Guarantor agrees that the Creditor and its service providers (the "VFS Parties") may disclose information about the Guarantor to other creditors and credit bureaus and, as permitted by law, to other persons, including entities affiliated and associated with the VFS Parties.

This Guaranty constitutes the entire agreement of the Guarantor regarding the guaranty of Debtor's Obligations. No amendment, modification, or waiver of any provision of this Guaranty shall be valid unless in writing and executed by an officer of the Creditor. This Guaranty shall extend to and bind the heirs, executors, administrators, successors, and assigns of each of Guarantor and the Creditor. This Guaranty shall remain in full effect, without waiver or surrender of any of Creditor's rights hereunder, notwithstanding any one or more of the following: (a) Extension of the time of payment of the whole or any part of the loan or lease; (b) Any change in the terms and conditions of the loan and/or lease; (c) Substitution of any other loan and/or lease or evidence of indebtedness for the loan and/or lease; (d) Acceptance by Creditor of any collateral or security of any kind for the payment of the loan and/or lease, and any and all extensions or renewals thereof; (e) Surrender, release, exchange, or alteration of any collateral or other security, either in whole or in part; or (f) Release, settlement, discharge, compromise, change, or amendment, in whole or in part, of any claim of Creditor against Guarantor or of any claim against any guarantor or other party secondarily or additionally liable for the payment of the loan or lease.

This Guaranty shall be governed by and construed in accordance with the laws of the State of North Carolina without regard to any conflict of law or similar provisions. This Guaranty is intended to be effective as an instrument executed under seal. Any provisions contrary to, prohibited by, or invalid under applicable laws or regulations shall be revised to the minimum extent necessary to make such provision enforceable, but shall not invalidate the remaining provisions of this Guaranty. To the extent permitted by applicable law the Guarantor hereby voluntarily and intentionally waives the right it may have to trial by jury in respect to any litigation in connection with this Guaranty, any other loan and/or lease document, and/or actions or statements (whether verbal or written) of any party.

If applicable, Guarantor, by submitting an Electronic Signature (which has the meaning assigned to it in the Electronic Signatures in Global and National Commerce Act, 15 U.S.C. 7006(5)) agrees (a) that Guarantor consents to the use of Electronic Signatures; (b) that

EXHIBIT A

ELECTRONICALLY FILED - 2024 Apr 19 10:41 AM - SPARTANBURG - COMMON PLEAS - CASE#2024CP4201645

this Guaranty in electronic form or executed with an Electronic Signature is (i) fully enforceable and (ii) fully admissible in any legal proceeding; (c) that Guarantor's Electronic Signature is intended to authenticate this writing and have the same force and effect as its manual signature and (d) that Creditor is under no obligation to accept documents with Electronic Signatures, and may require manually signed documents. Creditor may rely on the electronic mail address provided for each Guarantor as being conclusively controlled by and accessible to the Guarantor for the purpose of delivering, receiving and executing the Guaranty. Guarantor agrees that no certification or other third-party verification is necessary to validate any Electronic Signature, that the lack of such certification or third-party verification will not in any way impact the enforceability of any electronic signatures and that Creditor may rely on any Electronic Signature appearing on its face to be from Guarantor.

Time is of the essence for this Guaranty.

Signature of Guarantor:

X Jose Guerrero SEAL

Print Name: Jose Luis Guerrero

Title: Manager

Address: 317 Swindlers Way, INMAN, SC 29349

Date: 2/5/2021

Email Address:

Signature of Guarantor:

X Scott Ronson SEAL

Print Name: Scott Ronson

Title: Manager

Address: 605 Battleground Road, CHESNEE, SC 29323

Date: 2/5/2021

Email Address:

Signature of Guarantor:

X _____ SEAL

Print Name:

Title:

Address:

Date: 2/5/2021

Email Address:

Signature of Guarantor:

X _____ SEAL

Print Name:

Title:

Address:

Date: 2/5/2021

Email Address:

Manual Signature(s) of Guarantor(s) Must be Witnessed or Notarized (Witness cannot be Debtor, any Guarantor or any person employed by or related to any affiliate of Debtor or Guarantor). Electronic Signatures are not required to be witnessed or notarized.

Signature of

Witness:

Print Name:

John Larson
John Larson

Address: 11 Dixie Circle Greenville, SC 29602

State of _____ County of _____, I _____, do hereby certify that

personally appeared and executed this Guaranty before me this _____ of _____, _____.

Signature of Notary Public _____ My commission expires: _____ [SEAL]

EXHIBIT B

SGB C2300260

STATE OF SOUTH CAROLINA
SPARTANBURG COUNTY

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL DISTRICT
FILE NO.

PNC EQUIPMENT FINANCE, LLC,)
Plaintiff,)
v.)
S & J ASPHALT PAVING, LLC, JOSE)
LUIS GUERRERO, and SCOTT ROBERT)
RONSON,)
Defendants.)

CORPORATE VERIFICATION

The undersigned, being first duly sworn, deposes and says as follows:

1. My name is MICHAEL MCGINLEY and I am employed by Plaintiff PNC Equipment Finance, LLC in the within case in the capacity of VP - LITIGATION AND RECOVERY for Asset Management.
2. That I have read the foregoing Complaint and that the allegations contained therein are true to the best of my knowledge, except those facts which are based upon information and belief, and as to those facts, I believe them to be true.

This the 17 day of APRIL, 2024.

Michael McGinley
Affiant

STATE OF Pennsylvania
COUNTY OF Montgomery

Sworn to and subscribed before me this the 17th day of April, 2024.

Mary A Morein
Notary Public

My commission expires: 1/7/2025

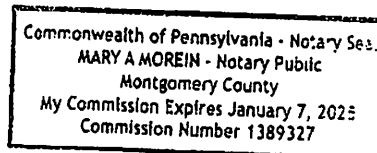


EXHIBIT C

State of Delaware
Secretary of State
Division of Corporations
Delivered 10:13 AM 04/28/2022
FILED 10:13 AM 04/28/2022
SR 20221672620 - File Number 3086200

STATE OF DELAWARE CERTIFICATE OF MERGER DOMESTIC LIMITED LIABILITY COMPANY INTO FOREIGN ENTITY

Pursuant to Title 6, Section 18-209 of the Delaware Limited Liability Company Act, the undersigned foreign entity executed the following Certificate of Merger:

FIRST: The name of the surviving foreign entity is PNC Bank, National Association, a national banking association.

SECOND: The Merger shall be effective on May 1, 2022 at 12:01 A.M.

THIRD: The jurisdiction in which this foreign entity was formed is the United States. It was formed under federal law, not state law.

FOURTH: The name of the limited liability company being merged into the foreign entity is PNC Equipment Finance, LLC, a Delaware limited liability company.

FIFTH: The Agreement of Merger has been approved, adopted and executed by the surviving foreign entity and by the merging limited liability company.

SIXTH: The name of the surviving foreign entity is PNC Bank, National Association.

SEVENTH: The Agreement of Merger is on file at 300 Fifth Avenue, Pittsburgh, PA 15222-2401, the place of business of the surviving foreign entity.

EIGHTH: A copy of the Agreement of Merger will be furnished by the surviving foreign entity upon request, without cost, to any member of any constituent limited liability company or to any person holding an interest in any of the constituent entities.

NINTH: The surviving foreign entity agrees that it may be served with process in the State of Delaware in any action, suit or proceeding for the enforcement of any obligation of the domestic limited liability company which is to merge with and into the surviving foreign entity, irrevocably appointing the Secretary of State as its agent to accept service of process in any such action, suit or proceeding and the address to which a copy of such process shall be mailed to by the Secretary of State is c/o PNC Legal Department, 300 Fifth Avenue, Pittsburgh, PA 15222-2401.

SIGNATURE PAGE FOLLOWS

EXHIBIT 1

EXHIBIT C

IN WITNESS WHEREOF, said foreign entity has caused this Certificate of Merger to be signed by an authorized person this 28th day of April, 2022.

By: /s/ Laura Gleason
Authorized Person

Name: Laura Gleason
Title: Assistant Secretary

EXHIBIT D

STATE OF SOUTH CAROLINA)
COUNTY OF SPARTANBURG)
PNC Equipment Finance, LLC,)
Plaintiff,)
v.)
S & J Asphalt Paving, LLC; Jose)
Luis Guerrero; and Scott Robert)
Ronson,)
Defendants.)

IN THE COURT OF COMMON PLEAS
SEVENTH JUDICIAL CIRUCIT

Civil Action No.: 2024-CP-42-01645

**ANSWER AND
COUNTERCLAIM
(JURY TRIAL DEMANDED)**

NOW COMES THE DEFENDANTS, S & J Asphalt Paving, LLC, Jose Luis Guerrero, and Scott Robert Ronson (hereinafter “Defendants”) answering the Complaint of the Plaintiff herein would respectfully show unto this Honorable Court that:

FOR A FIRST DEFENSE
(GENERAL DENIAL)

1. All matters not specifically admitted, denied, or explained hereinafter are denied and strict proof is demanded thereof.

FOR A SECOND DEFENSE
(SPECIFIC DENIAL)

2. Defendants re-allege all preceding paragraphs as if set forth fully herein.
3. Defendants admit paragraphs 1-3 of Plaintiff’s Complaint.
4. Defendants deny paragraph of Plaintiff’s Complaint.
5. Defendants are without sufficient information to form a belief as to the allegations contained in paragraph 5 of Plaintiff’s complaint and denies the same. Defendants specifically deny the referenced Agreement is signed, references, or in any other matter touches upon any of these Defendants and craves reference to the terms of the Agreement

EXHIBIT D

as contained in Plaintiff's **Exhibit A**. Defendants deny that said **Exhibit A** is a true and accurate copy and demand strict proof thereof.

6. Defendants deny paragraphs 7-11 of Plaintiff's Complaint and demand strict proof thereof. Defendants admit so much as that the UCC-1 Financing Statement is filed in the public records of the South Carolina Secretary of State.
7. Defendants admit so much of paragraph 12 of Plaintiff's Complaint that Defendant S & J Asphalt Paving, LLC (hereinafter "LLC") voluntarily surrendered the collateral to the Plaintiff. The remaining allegations of paragraph 12 are denied, and Defendants demand strict proof thereof.
8. Defendants deny paragraphs 13-21 of Plaintiff's Complaint and demands strict proof thereof. All attached exhibits are denied as true and accurate copies and strict proof thereof is demanded.
9. Defendants admit so much of paragraph 22 of Plaintiff's Complaint that Defendant LLC voluntarily surrendered the collateral to the Plaintiff. The remaining allegations of paragraph 22 are denied, and Defendants demand strict proof thereof.
10. Defendants deny paragraphs 23-24 of Plaintiff's Complaint and demand strict proof thereof.
11. Defendants deny all allegations in Plaintiff's *ad quod damnum* clause, beginning with "WHEREFORE." Defendants specifically deny Plaintiff is entitled to any relief.

FOR A THIRD DEFENSE **(COMMERCIALLY UNREASONABLE)**

12. Defendants re-allege all preceding paragraphs as if set forth fully herein.
13. Defendants deny that Plaintiff's disposition of the collateral was commercially reasonable pursuant to S.C. Code Ann. § 36-9-610(b).

EXHIBIT D

14. Due to Defendant's failure to dispose of the collateral in a commercially reasonable manner Plaintiff is not entitled to any deficiency or any such deficiency must be reduced in accordance with S.C. Code Ann. § 36-9-626.

FOR A FOURTH DEFENSE **(ATTORNEY'S FEES)**

15. Defendants re-allege all preceding paragraphs as if set forth fully herein.
16. Defendants deny that Plaintiff is entitled to attorney's fees.
17. Plaintiff's alleged promissory note states and declares that the same is a "business contract" pursuant to the terms of N.C.G.S. §6-21.6, but aforesaid alleged note fails to adhere to the formalities of the foregoing statute and, therefore, Plaintiff's are barred from recovering attorney's fees.
18. To the extent Plaintiff is entitled to attorney's fees, which fact Defendants strictly deny, Defendants assert said fees are limited in accordance with N.C.G.S. § 6-21.2(4).

FOR A FIFTH DEFENSE **(HOLDER/HOLDER IN DUE COURSE/ENTITLED TO ENFORCE INSTRUMENT)**

19. Defendants re-allege all preceding paragraphs as if set forth fully herein.
20. Defendants deny Plaintiff is a holder of the alleged note as that term is defined in S.C. Code Ann. §36-1-201(b)(21); or a holder in due course as that term is defined in S.C. Code Ann. §36-3-302; or a person entitled to enforce instrument as that term is defined in S.C. Code Ann. §36-3-301.
21. Accordingly, Plaintiff has no right to take action upon the note.

FOR A SIXTH DEFENSE **(STANDING/REAL PARTY IN INTEREST)**

22. Defendants re-allege all preceding paragraphs as if set forth fully herein.

EXHIBIT D

23. Defendants deny Plaintiff has standing to bring this action or, alternatively, that Plaintiff is not the real party in interest.
24. Therefore, this action is subject to dismissal pursuant to Rules 12(b)(1) & 17, *South Carolina Rules of Civil Procedure*.

FOR A SEVENTH DEFENSE **(CAPACITY TO SUE)**

25. Defendants re-allege all preceding paragraphs as if set forth fully herein.
26. Plaintiff is a limited liability company organized and existing under the laws of the State of Delaware.
27. Plaintiff avowed in its complaint that it does business in “Spartanburg County, South Carolina.”
28. Defendant has admitted such paragraph and Plaintiff allegation is therefore conclusively taken as true. *Curry v. Carolina Ins. Grp. Of SC, Inc.*, 428 S.C. 60, 71, 832 S.E.2d 760, 765 (Ct. App. 2019).
29. Plaintiff as a foreign limited liability company doing business in this State is required to possess a Certificate of Authority from the South Carolina Secretary of State.
30. Plaintiff’s Certificate of Authority was cancelled by the Honorable Mark Hammon, Secretary of State, on or about June 28, 2022, and a true and accurate copy of said record is attached hereto as Defendants’ **Exhibit A**.
31. Plaintiff’s failure to possess a Certificate of Authority renders it incapable of filing suit and this action is barred pursuant to S.C. Code Ann. §33-44-1008(a).

FOR AN EIGHTH DEFENSE **(ILLEGAL TERMS)**

32. Defendants re-allege all preceding paragraphs as if set forth fully herein.

EXHIBIT D

33. Multiple provisions of the contract are in violation of, or invariable, under Article 9 of the Uniform Commercial Code.
34. Such illegal terms so pervade the contract as to make them inseverable and render the contract null and void *ab initio*.
35. Alternatively, such terms must be severed from the contract.

FOR A NINTH DEFENSE **(UNCONSCIONABILITY)**

36. Defendants re-allege all preceding paragraphs as if set forth fully herein.
37. The contract sued upon is devoid of meaningful choice and its terms are so oppressive to the Defendants as to make such contract unconscionable.
38. The offending terms are incapable of being severed and, therefore, the entire contract is unenforceable.
39. Alternatively, such offending terms must be severed from the contract.

FOR A TENTH DEFENSE **(WAIVER/ESTOPPEL)**

40. Defendants re-allege all preceding paragraphs as if set forth fully herein.
41. Plaintiff's claims are barred in whole or in part by the doctrines of waiver and/or estoppel.

FOR AN ELEVENTH DEFENSE **(LACHES/UNCLEAN HANDS)**

42. Defendants re-allege all preceding paragraphs as if set forth fully herein.
43. To the extent Plaintiff seeks recovery in equity their claim is barred in whole or in part by the equitable doctrines of laches and/or unclean hands.

FOR A TWELFTH DEFENSE **(FAILURE TO STATE A CLAIM)**

44. Defendants re-allege all preceding paragraphs as if set forth fully herein.

EXHIBIT D

45. Plaintiff has failed to state sufficient facts, or a cause of action, upon which relief may be granted and, therefore, their suit is subject to dismissal under Rule 12(b)(6), *South Carolina Rules of Civil Procedure*.

FOR A THIRTEENTH DEFENSE AND BY WAY OF COUNTERCLAIM **(VIOLATION OF ARTICLE 9, UNIFORM COMMERCIAL CODE)**

46. Defendants re-allege all preceding paragraphs as if set forth fully herein.

47. Plaintiff failed to act in a commercially reasonable manner in the disposition of the collateral.

48. Upon information and belief, Plaintiff has failed to provide all appropriate notices, including pre-disposition notice, post-disposition notice, and an explanation of deficiency.

49. All of the foregoing are violations of Plaintiff's statutory duties under Article 9, Uniform Commercial Code and such violations were committed intentionally, willfully, or recklessly and in total disregard for the rights of the Defendants.

50. As a direct and proximate result thereof, Defendants have been damaged thereby in an amount to be determined at trial.

51. Defendants pray for an award of actual, consequential, punitive, nominal and statutory damages in an amount to be determined by the trier of fact.

WHEREFORE, having fully answered Plaintiff's Complaint Defendants' pray for an Order of the Court:

- a. Dismissing this action and awarding Plaintiff no damages;
- b. Awarding Defendants their costs and attorneys' fees;
- c. Awarding Defendants actual, consequential, punitive, nominal, and statutory damages in an amount to be determined by the trier of fact;

EXHIBIT D

d. All such other and further relief to which Defendants are entitled.

JURY DEMAND

Pursuant to Rule 38, *South Carolina Rules of Civil Procedure* and Article I, Section 14 of the South Carolina Constitution of 1895, Defendants demand trial by jury for all issues so triable.

Respectfully submitted,

/s/W.H. McAbee III

Willie Horton McAbee III (S.C. Bar #103662)

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Attorney for the Defendants

Date: May 21, 2024
Greenville, South Carolina

RECEIVED

Apr 16 2025

SC Court of Appeals

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM SPARTANBURG COUNTY
Court of Common Pleas

R. Keith Kelly, Circuit Judge
J. Derham Cole, Sr., Circuit Judge

Appellate Case No. 2025-000627

PNC Bank, N.A., successor by
merger to PNC Equipment Finance,
LLC,

Respondent,

v.

S & J Asphalt Paving, LLC, Jose
Luis Guerrero, and Scott Robert
Ronson,

Appellants.

PROOF OF SERVICE

I certify that I have served Appellants' Memorandum in Support of Appealability upon the Respondent by sending the same to Respondent's attorneys of record at the e-mail addresses listed for said counsel in the AIS system this 16th day of April 2025, in accordance with *In re Methods of Electronic Filing and Service Under Rule 262 of the South Carolina Appellate Court Rules (As Amended April 24, 2024)* (d)(4), S.C. Sup. Ct. Order filed April 24, 2024. A copy of the e-mail to opposing counsel is attached hereto and incorporated by reference. I further certify that I have caused a copy of the Appellants' Memorandum in Support of Appealability to be sent to counsel for the Respondent by depositing the same in the United States Mail, with sufficient postage attached, addressed as follows: Smith Debnam Narron Drake Saintsing & Myers, LLP, 4601 Six Forks Road, Suite 400, Raleigh, NC 27609.

Respectfully submitted,

s/ W.H. McAbee III

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From: [Willie H. McAbee, III](#)
To: [Rachel Rogers](#)
Cc: [Melissa Tulis Smith](#); [Thomas A. Gray](#); [Byron L. Saintsing](#); [Cara Geloni](#)
Subject: Appealability Memorandum; PNC Bank, N.A. v. S & J Asphalt Paving, LLC, Appellate Case No.: 2025-000627
Date: Wednesday, April 16, 2025 12:08:02 PM
Attachments: [image001.png](#)
[Packet w. Appealability Memorandum to Opposing Counsel.pdf](#)
[Proof of Service for Appealability Memorandum.pdf](#)

Counselors:

Please find attached a copy of Appellants' Memorandum Addressing Appealability as requested by the Court of Appeals. We are also sending a copy of the attached packet to you in the mail. Please also find attached our Proof of Service in accordance with Rule 262(b), SCACR. Please do not hesitate to contact me if you require anything further.

Best regards,

Will McAbee

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Speak with a Greenville personal injury lawyer today. David R. Price, Jr. and his injury attorney team can assist you. Contact us today!

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DAVID R. PRICE, JR., P.A.
ATTORNEYS AT LAW

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