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S.C. Supreme Court

THE STATE OF SOUTH CAROLINA
In The Supreme Court

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2008-CP-10-2513

Regions Bank,

Respondent,

V.

Stonebridge Development Group, LLC; Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company; Carolina Federal Savings Bank; Plantation Isle Equity Partners General Partnership; Michael Aiello; Frank M. Harvey aka Francis M. Harvey; Brandon Advertising, Inc; Rubeling & Associates, Inc.; Carolina Custom Docks, LLC; J. Mark Caldwell, individually; Carolina Clearing & Grading, Inc.,

Defendants,

Of Whom Frank M. Harvey aka Francis M. Harvey is the

Petitioner.

APPENDIX TO PETITION FOR A WRIT OF CERTIORARI OF
FRANK M. HARVEY

J. Rutledge Young, III
Seth W. Whitaker
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
843-720-2044 – phone
ryoung@duffyandyoung.com
swhitaker@duffyandyoung.com

Lawrence J. Gebhardt, (*pro hac vice* pending)
GEBHARDT & SMITH LLP
One South Street, Suite 2200
Baltimore, Maryland 21202
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lgebh@gebsmith.com

Attorneys for Frank M. Harvey

Other Counsel of Record:
Stanley H. McGuffin
Louise M. Johnson
Sarah P. Spruill
HAYNSWORTH SINKLER BOYD, P.A.
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Columbia, S.C. 29201

Attorneys for Regions Bank

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THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Mikell R. Scarborough, Master-in-Equity

Case No. 2008-CP-10-2513

Regions Bank,

Respondent.

v.

Stonebridge Development Group, LLC; Plantation Isle Equity Group, LLC; Carolina Federal Savings Bank; Plantation Isle Equity Partners General Partnership; Michael Aiello; Frank M. Harvey a/k/a Francis M. Harvey; Brandon Advertising, Inc.; Rubeling & Associates, Inc.; Carolina Custom Docks, LLC; J. Mark Caldwell; Carolina Clearing & Grading, Inc.,
Defendants,

Of whom Frank M. Harvey a/k/a Francis M. Harvey is the

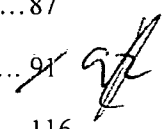
Appellant.

RECORD ON APPEAL

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Duffy & Young, LLC
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Charleston, South Carolina 29401
(843)-720-2044 (phone)
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Attorneys for Appellant

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Order of Default and
Consent Order of
Reference (Feb. 24,
2010)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
Case No. 2008-CP-10-2513

Regions Bank,

Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.,

Defendants.

ORDER OF DEFAULT

(As to Plantation Isle Equity Group, LLC, a Maryland
Limited Liability Company, Plantation Isle Equity
Partners General Partnership, Michael Aiello, Frank M.
Harvey aka Francis M. Harvey, Carolina Custom Docks,
LLC, and Carolina Clearing & Grading, Inc.)

and

CONSENT ORDER OF REFERENCE

FILED
FEB 24 AM 9:33
JULIE J. ARMSTRONG
CLERK OF COURT

IT APPEARING that the within matter is one for the foreclosure of a real estate Mortgage and is property within the equity jurisdiction of this Court; and IT FURTHER APPEARING from the annexed Affidavit of Louise M. Johnson, Attorney for the Plaintiff herein, that the defendants Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company, Plantation Isle Equity Partners General Partnership, Michael Aiello, Frank M. Harvey aka Francis M. Harvey, Carolina Custom Docks, LLC, and Carolina Clearing & Grading, Inc. are in default; it is hereby,

IT FURTHER APPEARING that Defendants Stonebridge Development Group, LLC, Carolina Federal Savings Bank, and J. Mark Caldwell, individually have consented to the Order of Reference; it is hereby,

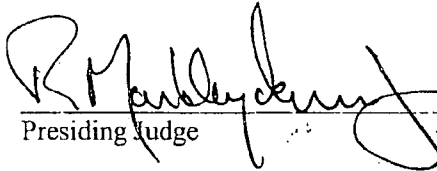
ORDERED, ADJUDGED AND DECREED, that the Defendants Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company, Plantation Isle Equity Partners General Partnership, Michael Aiello, Frank M. Harvey aka Francis M. Harvey, Carolina Custom Docks, LLC, and Carolina Clearing & Grading, Inc. are and are hereby declared to be in default. It is further,

RMDJ/1

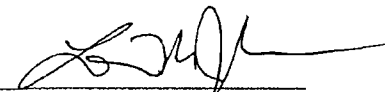
ORDERED, ADJUDGED AND DECREED, that the within action be referred to Mikell R. Scarborough, Master in Equity for Charleston County, for the purpose of making appropriate findings of facts and conclusions of law with the authority to enter a final judgment in this case. Any appeal from any order or judgment issued by the master or special referee shall be to the Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. Any judicial sale of the property subject of this action may be held on a day other than the regular judicial day.

AND IT IS SO ORDERED.

February 18, 2010

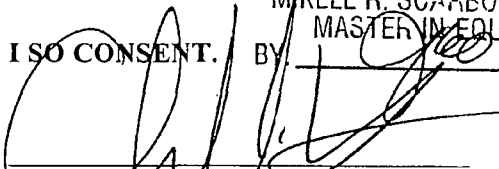

Presiding Judge

I SO MOVE.


Louise M. Johnson
Haynsworth Sinkler Boyd, P.A.
PO Box 11889
Columbia, SC 29211-1889
803:779.3080

Attorney for Plaintiff

I SO CONSENT.


Charles S. Altman, Esq.
Altman & Coker, LLC
PO Box 265
Charleston, SC 29402

Attorneys for Defendants Stonebridge
Development Group, LLC and J. Mark
Caldwell, individually

PAID
DATE 2-10-2010
AMOUNT 125.00
MIKELL R. SCARBOROUGH
MASTER IN EQUITY

RMDJ/2

Regions Bank v. Stonebridge Development Group, LLC et al.
2008-CP-10-2513

I SO CONSENT.



Mark W. McKnight, Esq.
PO Box 1255
Charleston, SC 29402

Attorneys for Defendant Carolina Federal Savings
Bank

Master in Equity's
Order and Judgment of
Foreclosure and Sale
(with all attachments)
(May 18, 2010)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-10-2513

Regions Bank,

Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.,

Defendants.

**MASTER IN EQUITY'S ORDER AND
JUDGMENT OF FORECLOSURE AND
SALE**

(Deficiency Demanded as to Stonebridge
Development Group, LLC, J. Mark Caldwell,
individually, Michael Aiello, and Frank M.
Harvey aka Francis M. Harvey.)

2010 MAY 18 PM 3:41
JULIE J. ARMSTRONG
CLERK OF COURT

FILED

I, the undersigned, Master in Equity for Charleston County, hereby find that pursuant to the Order of Default and Consent Order of Reference granted in the above entitled case, a hearing was held on May 11, 2010, attended by Louise M. Johnson of Haynsworth Sinkler Boyd, P.A., attorneys for Regions Bank ("Plaintiff"). Testimony was proffered, which is herewith reported, and from the testimony and evidence, I find and conclude as follows:

FINDINGS OF FACT

1. The Lis Pendens was filed on February 13, 2008. The Second Lis Pendens was filed on March 5, 2008. The Second Lis Pendens was filed on April 13, 2008. The Third Lis Pendens was filed on April 21, 2008. The Fourth Lis Pendens was filed on May 7, 2008.

2. The Civil Action Coversheet, Certificate of Exemption from ADR, Summons and Complaint with Exhibits were filed on May 7, 2008.

3. The Civil Action Coversheet, Certificate of Exemption from ADR, Summons, and Complaint with Exhibits will hereinafter be collectively referred to as "Pleadings".

Record on Appeal, Page 7

APX8

4. Said Pleadings were served upon Stonebridge Development Group, LLC via service on its registered agent, National Registered Agents, Inc., on May 14, 2008, as evidenced by the Affidavit of Service item that is of record herein.

5. Said pleadings were served upon Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company via service on its registered agent, Sam G. Stathos, on May 19, 2008, evidenced by the Affidavit of Service item that is of record here.

6. Said pleadings were served upon Carolina Federal Savings Bank via service on its attorney, Mark W. McKnight, on July 8, 2008, evidenced by the Affidavit of Service item that is of record here.

7. Said pleadings were served upon defendant Plantation Isle Equity Partners General Partnership via certified mail on May 16, 2008, evidenced by the Proof of Service item on file with the Court.

8. Said pleadings were served upon Michael Aiello via personal service on August 16, 2008, evidenced by the Affidavit of Service item that is of record here.

9. Said pleadings were served upon Frank M. Harvey aka Francis M. Harvey via personal service on August 14, 2008, evidenced by the Affidavit of Service item that is of record here.

10. Said pleadings were served upon Carolina Custom Docks, LLC via service on its owner on May 18, 2008, evidenced by the Affidavit of Service item that is of record here.

11. Said pleadings were served upon J. Mark Caldwell, individually via service on his attorney, Charles S. Altman, on June 10, 2008, evidenced by the Affidavit of Service item that is of record here.

12. Said pleadings were served upon Carolina Clearing & Grading, Inc. via service on its president, Jeremy Sanders, on June 24, 2008, evidenced by the Affidavit of Service item that is of record here.

13. On or about May 22, 2008, a Notice of Dismissal was filed with the Charleston County Clerk of Court as to Brandon Advertising, Inc.

14. On or about September 12, 2008, a Notice of Dismissal was filed with the Charleston County Clerk of Court as to Rubeling & Associates, Inc.

15. On or about April 21, 2010, a Notice of Dismissal was filed with the Charleston County Clerk of Court as to Carolina Clearing & Grading, Inc.

16. On our about July 10, 2008, Defendants Stonebridge Development Group, LLC and J. Mark Caldwell, individually filed an answer by and through their attorney Charles S. Altman. On or about July 24, 2008, they filed an Amended Answer.

17. On our about June 27, 2008, Defendant Carolina Federal Savings Bank filed an Answer and Counterclaim by and through their attorney Mark W. McKnight.

18. On or about July 21, 2008, Plaintiff filed a Reply to Defendant Carolina Federal Savings Bank's Answer and Counterclaim.

19. After a period of more than thirty (30) days, no notice, motion, or other pleading was filed by or on behalf of Defendants Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company, Plantation Isle Equity Partners General Partnership, Michael Aiello, Frank M. Harvey aka Francis M. Harvey, Carolina Custom Docks, LLC, and Carolina Clearing & Grading, Inc. Consequently, the Order of Default was signed and on February 24, 2010, it was entered by the Court.

20. Upon information and belief, the defendants are not individuals entitled to protection under the Servicemembers Civil Relief Act, 50 USCS Appx. §§ 501 *et seq.* (2004).

21. Defendants were notified of the time, date, and place of the hearing in this matter.

22. For value received, on or about September 29, 2006, Stonebridge Development Group, LLC made, executed, and delivered unto Plaintiff a Promissory Note in the original principal amount of Five Hundred Ninety Five Thousand and 00/100 (\$595,000.00) Dollars ("Note").

23. To secure the repayment of the Note, and the debt evidenced thereby, Stonebridge Development Group, LLC made, executed, and delivered unto Plaintiff a certain Mortgage dated September 29, 2006 ("Mortgage"), whereby Stonebridge Development Group, LLC mortgaged to Plaintiff the real property described in the Mortgage. The Mortgage was recorded on October 5, 2006, in the Charleston County Register of Deeds Office in Book Z600 at Page 841.

24. The Mortgage constitutes a first priority lien on the subject property.

25. At the time of the Mortgage, Defendant Stonebridge Development Group, LLC was the legal owner of the property.

26. Stonebridge Development Group, LLC sold the subject property to Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company by virtue of a deed executed December 27, 2007, and recorded on December 27, 2007, in the Register of Deeds Office for Charleston County in Book K647 at Page 765.

27. The titleholder of record in and to the subject property as of the filing of the Lis Pendens in this action is Miles Construction Co., LLC aka Miles Construction Company, LLC.

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

29. The amount due and owing on the Note and Mortgage, with interest at the rate provided in the Note, and other costs and expenses of collection, including an attorney's fee, secured by the Note and Mortgage, as of May 11, 2010, are as follows:

Original principal \$595,000.00

(a) Principal Balance	\$	595,000.00
(b) Accrued Interest Due	\$	84,085.06
(c) Late Fees	\$	448.32
(d) Appraisal	\$	285.00

(e) 2008 and 2009 Taxes	\$	<u>36,912.43</u>
Total amount due on Note and Mortgage	\$	716,730.81
(f) Filing, service, motion, and other fees	\$	2,838.85
(g) Referral Fee	\$	<u>125.00</u>
Total Balance on Note and Mortgage	\$	719,694.66
(h) Attorneys' Fees	\$	<u>14,000.00</u>
Total debt secured by the Note and Mortgage, including interest to date shown	\$	733,694.66

Interest continues to accrue on the Note at the rate of 5.75% per annum (which is currently \$61.97917 *per diem*) from May 11, 2010, until judgment and at the Note rate thereafter until paid.

30. Plaintiff is seeking foreclosure of its Mortgage and the right to a personal or deficiency judgment against Stonebridge Development Group, LLC, J. Mark Caldwell, individually, Michael Aiello, and Frank M. Harvey aka Francis M. Harvey, with a credit against the judgment to be given for the net proceeds received by Plaintiff for the sale. However, Plaintiff reserves the right to waive deficiency prior to the sale.

31. Plaintiff complied with the Orders issued by the Supreme Court of South Carolina entered on May 4, 2009 (Temporary Restraining Order) and on May 22, 2009 (Administrative Order), both in reference to Mortgage Foreclosures and the Home Affordable Modification Program (HMP) "preventing the Foreclosure sale of any property arising out of a loan owned or guaranteed by petitioner [Federal National Mortgage Association] or Freddie Mac or held by a servicer who has signed an agreement to participate in the [Home Affordable Modification Program]".

32. Plaintiff served upon Defendants Charles S. Altman, attorney for Stonebridge Development Group, LLC and J. Mark Caldwell, individually; Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company; Mark W. McKnight, attorney for Carolina Federal

Savings Bank; Plantation Isle Equity Partners General Partnership; Michael Aiello; Frank M. Harvey aka Francis M. Harvey; Carolina Custom Docks, LLC; Carolina Clearing & Grading, Inc. and filed with the Charleston County Clerk of Court the Affidavit of Louise M. Johnson wherein she averred that the within subject mortgage in this foreclosure action is not a mortgage owned or guaranteed by petitioner Federal National Mortgage Association or Freddie Mac or held by a servicer who has signed an agreement to participate in the Home Affordable Modification Program and as such, this foreclosure action is not subject to said Administrative Order. Plaintiff has received no notice of "any counter affidavit asserting that the loan is subject to modification under the HMP or that the requirements of the HMP have not been met".

33. The following defendants may claim an interest in the Mortgaged Property:

(a) The defendant Carolina Federal Savings Bank by virtue of a junior Mortgage in the amount of \$2,025,000.00 dated December 27, 2007, and recorded on December 27, 2007, in Book M647 at Page 104 in the Register of Deeds Office for Charleston County and by virtue of its Assignment of Leases and Rents recorded on December 27, 2007, in Book O647 at Page 567 in the Register of Deeds Office for Charleston County.

(b) The defendant Plantation Isle Equity Partners General Partnership by virtue of a junior Mortgage in the amount of \$1,604,000.00 dated January 8, 2008, and recorded January 9, 2008, in Book K648 at Page 272 in the Register of Deeds Office for Charleston County.

(c) The defendants Michael S. Aiello and Frank M. Harvey aka Francis M. Harvey by virtue of a junior Mortgage in the amount of \$561,321.58 dated January 8, 2008, and recorded January 9, 2008, in Book K648 at Page 280 in the Register of Deeds Office for Charleston County.

(d) The defendant Carolina Custom Docks, LLC by virtue of that certain Lis Pendens, Case No. 2007-CP-10-1362, dated April 2, 2007, and filed in the Office of the Clerk of Court for Charleston County.

The above-referenced liens and interests are junior and subordinate to the Mortgage.

34. In the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) SCRPC. Any interest of these defendants is subordinate to Plaintiff's first Mortgage.

CONCLUSIONS OF LAW

I, therefore, conclude that the Mortgage is not subject to modification under the Home Affordable Modification Program, that the Plaintiff should have judgment of foreclosure of its Mortgage and the Mortgaged Property should be ordered sold at public auction after due advertisement, and a personal or deficiency judgment against Stonebridge Development Group, LLC, J. Mark Caldwell, individually, Michael Aiello, and Frank M. Harvey aka Francis M. Harvey, with a credit against the judgment to be given for the net proceeds received by the Plaintiff for the sale, shall be entered upon the judgment rolls for Charleston County.

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED AS FOLLOWS:

1. That the subject mortgage is not a mortgage owned or guaranteed by petitioner Federal National Mortgage Association or Freddie Mac or held by a servicer who has signed an agreement to participate in the Home Affordable Modification Program.

2. That Plaintiff's Mortgage is a first priority lien on the subject property.

3. That there is due to the Plaintiff on the Note and Mortgage set forth in the Complaint the sum \$733,694.66 as of May 11, 2010, and Plaintiff is entitled to judgment for said amount.

4. The amount due in the proceeding paragraph shall constitute the total judgment debt due to the Plaintiff and shall bear interest hereafter until paid on the Note at the rate of 5.75% *per annum* (which is currently \$61.97917 *per diem*) from May 11, 2010, until the entry of judgment and at the Note rate thereafter. Further, to the extent Plaintiff advances money for insurance or other expenses to preserve the property after May 11, 2010, such advances may be added to the total judgment debt.

5. That Stonebridge Development Group, LLC is liable for the aforesaid debt, shall on or before the date of sale of the property hereinafter described, may pay to the Plaintiff's attorneys, the amount of Plaintiff's debt as aforesaid, together with the costs and disbursements of this action.

6. That on default of payment at or before the time herein indicated, the mortgaged premises described in the Complaint and hereafter set forth, be sold by the Charleston Master in Equity or his agent, at public auction, at the Charleston County Courthouse, Charleston, South Carolina, County and State aforesaid, on some convenient sales day hereafter (and should the regular day of judicial sales fall on a legal holiday, then and in such event, the sales day shall be on the day designated by the selling officer succeeding such holiday), on the following terms, that is to say:

The sale shall be for cash, and the highest bidder shall be required to make a cash deposit of five (5%) percent on the bid as earnest money and as evidence of good faith. If the Plaintiff is the successful bidder at the sale, the Plaintiff may, after paying the costs of the sale, apply the debt due upon its Mortgage against its bid in lieu of cash. Should the person making the highest bid at the sale fail to comply with the terms of his bid by depositing the said five (5%) percent in cash, then the property shall be sold at the risk of such bidder on the same sales date or some subsequent date as the selling officer may find convenient and advantageous. Should the last and highest bidder fail to comply with the terms of his bid within thirty (30) days of the final acceptance of his bid, then the selling officer shall re-advertise and resell the property on the same terms on a subsequent date at the risk of such bidder. Persons submitting additional bids after the initial sale shall deposit five (5%) percent of their bids in cash as prescribed above. The Charleston Master in Equity or his designated representative, shall promptly return all deposits except the deposit securing the highest bid. The sale shall be subject to taxes, to existing easements and restrictions, and to homeowners association assessments accruing subsequent to the date of the deed/title issued to the purchaser. Purchaser shall pay all costs of recording the deed.

7. Plaintiff is seeking foreclosure of the Mortgage and does not waive the right to a personal or deficiency judgment. However, Plaintiff reserves the right to waive deficiency prior to the sale.

8. That after advertisement according to law, give notice of the time and place of such sale, and the terms thereof, that the Charleston Master in Equity convey to the purchaser, or

purchasers, a deed to the premises sold; and that the Plaintiff, or any other party to this action, may become a purchaser at such sale, and that if, upon such sale being made, the purchaser or purchasers should fail to comply with the terms thereof, the Court may advertise the said premises of sale on the next, or some other subsequent Sales Day, at the risk of the former highest bidder, and so from time to time thereafter until a compliance shall be secured. The deed will be taken subject to payment by grantee of any taxes or special assessments constituting a lien against the property sold under this Report and hereinafter more fully described. Pursuant to S.C. Code §12-24-40(13), the successful bidder other than Plaintiff shall pay the cost of deed stamps on said deed.

9. That the proceeds of the sale be applied as follows:

FIRST, to payment of the amount of the costs and expenses of this action, including the Master in Equity fee and the costs of advertising the Notice of Sale, and any taxable disbursements by the attorneys in the action;

SECOND, to the payment of the Plaintiff or Plaintiff's attorney, of the amount of Plaintiff's debt and interest, or so much thereof as the purchase money will pay on the same; and

THIRD, any surplus proceeds to be held subject to further order of this Court.

10. That upon the making of the sale of said mortgaged premises, as hereby ordered, and the execution and delivery to the purchaser of a deed to the premises, the said purchaser or purchasers be let into possession of the premises on production of the deed; and the Sheriff of Charleston County shall put the holder of the deed into possession of the premises.

11. That each Defendant named herein and all persons whosoever claiming under him, them or it, be forever barred and foreclosed of all right, title and interest and equity of redemption in the said mortgaged premises so sold, or any part thereof.

12. The undersigned Master in Equity will retain jurisdiction to do all necessary acts incident to this foreclosure including, but not limited to, the issuance of a Writ of Assistance and disposing of any surplus funds pursuant to Rule 71(c) SCRPC.

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

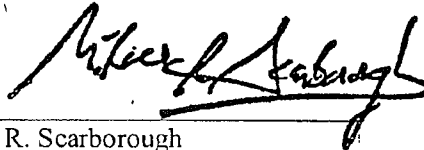
ALL that certain piece, parcel or lot of land, lying and being in the State of South Carolina, County of Charleston, being shown and designated as Lot No. 1 on a plat of Plantation Isle, Sheet 3 of 4 prepared by David & Floyd, Inc. dated September 29, 1998 filed in the RMC Office for Charleston County, S.C. in Plat Book ED, Page 437, reference being made to said plat for a more complete metes and bounds description hereof.

BEING the same property conveyed to Mortgagor herein by Deed of Lewis Bartles dated May 23, 2005 and recorded May 25, 2005 in Book D-538, Page 770, in the Charleston County RMC Office.

For reference see TMS: 410-00-00-067

Property Address: Lot 1 Stoney Poynt Ct @ Plantation Isle, North Charleston, SC
29405

14. If the Plaintiff or the Plaintiff's representative does not appear at the scheduled sale of the above-referenced property, then the sale of the property will be null, void and of no force and effect. In such event, the sale will be rescheduled for the next available sales day.



Mikell R. Scarborough
Charleston County Master in Equity

5/14, 2010

This document was prepared by (name, address, phone):

CARDUNA FEDERAL SAVINGS BANK
1509 HIGHWAY 17 NORTH
MOUNT PLEASANT, SC 29464
(843) 216 1301

BK M 647PG104

_____ State of South Carolina _____ Space Above This Line For Recording Data _____

REAL ESTATE MORTGAGE
(With Future Advance Clause)

1. DATE AND PARTIES. The date of this Mortgage is 12-27-2007 and the parties and their addresses are as follows:

MORTGAGOR: PLANTATION ISLE EQUITY GROUP, LLC
906 COLD BOTTOM ROAD
SPARKS, MD 21152

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors.

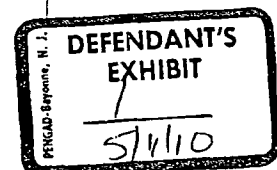
LENDER: CAROLINA FEDERAL SAVINGS BANK
ORGANIZED AND EXISTING UNDER THE LAWS OF THE UNITED STATES OF AMERICA
POST OFFICE BOX 30518
1106 ST ANDREWS BOULEVARD (29407) CHARLESTON, SC 29417

2. MORTGAGE. For good and valuable consideration, the receipt and sufficiency of which is acknowledged, and to secure the Secured Debt (hereafter defined), Mortgagor grants, bargains, conveys and mortgages to Lender the following described property
SEE ATTACHED EXHIBIT A

The property is located in CHARLESTON at +/- 12 ACRES LOCATED ALONG RIVERWALK
(County)
DRIVE & THE ASHLEY RIVER, PLANTATION ISLE SUBDIVISION, NORTH CHARLESTON South Carolina 29405
(Address) (City) (Zip Code)

Together with all rights, easements, appurtenances, royalties, mineral rights, oil and gas rights, crops, timber, all diversion payments or third party payments made to crop producers, and all existing and future improvements, structures, fixtures, and replacements that may now, or at any time in the future, be part of the real estate described above (all referred to as "Property"). The term Property also includes, but is not limited to, any and all water wells, water, ditches, reservoirs, reservoir sites and dams located on the real estate and all riparian and water rights associated with the Property, however established.

SOUTH CAROLINA - AGRICULTURAL/COMMERCIAL REAL ESTATE SECURITY INSTRUMENT (NOT FOR FIMA, FHLBC, FHA OR VA USE, AND NOT FOR CONSUMER PURPOSES) PIEG (page 1 of 8)
Expire © 1994, 2001 Bankers Systems, Inc., St. Cloud, MN Form AGCO-RESI-SC 1/21/2003 MIA



Record on Appeal, Page 17

APX18

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3. **MAXIMUM OBLIGATION LIMIT.** The total principal amount of the Secured Debt (hereafter defined) secured by this Mortgage at any one time shall not exceed \$ 2,025,000.00. This limitation of amount does not include interest, loan charges, commitment fees, brokerage commissions, attorneys' fees and other charges validly made pursuant to this Mortgage and does not apply to advances (or interest accrued on such advances) made under the terms of this Mortgage to protect Lender's security and to perform any of the covenants contained in this Mortgage. Interest under the Note will be deferred, accrued or capitalized; however, Mortgagee shall not be required to defer, accrue or capitalize any interest except as provided in the Note. Future advances are contemplated and, along with other future obligations, are secured by this Mortgage even though all or part may not yet be advanced. Nothing in this Mortgage, however, shall constitute a commitment to make additional or future loans or advances in any amount. Any such commitment would need to be agreed to in a separate writing.
4. **SECURED DEBT DEFINED.** The term "Secured Debt" includes, but is not limited to, the following:
- A. The promissory note(s), contract(s), guaranty(ies) or other evidence of debt described below and all extensions, renewals, modifications or substitutions (Evidence of Debt) (e.g., borrower's name, note amount, interest rate, maturity date):

NOTE IN THE AMOUNT OF \$2,025,000.00.
 - B. All future advances from Lender to Mortgagor or other future obligations of Mortgagor to Lender under any promissory note, contract, guaranty, or other evidence of debt existing now or executed after this Mortgage whether or not this Mortgage is specifically referred to in the evidence of debt.
 - C. All obligations Mortgagor owes to Lender, which now exist or may later arise, to the extent not prohibited by law, including, but not limited to, liabilities for overdrafts relating to any deposit account agreement between Mortgagor and Lender.
 - D. All additional sums advanced and expenses incurred by Lender for insuring, preserving or otherwise protecting the Property and its value and any other sums advanced and expenses incurred by Lender under the terms of this Mortgage, plus interest at the highest rate in effect, from time to time, as provided in the Evidence of Debt.
 - E. Mortgagor's performance under the terms of any instrument evidencing a debt by Mortgagor to Lender and any Mortgage securing, guarantying, or otherwise relating to the debt.
- If more than one person signs this Mortgage as Mortgagor, each Mortgagor agrees that this Mortgage will secure all future advances and future obligations described above that are given to or incurred by any one or more Mortgagor, or any one or more Mortgagor and others. This Mortgage will not secure any other debt if Lender fails, with respect to such other debt, to make any required disclosure about this Mortgage or if Lender fails to give any required notice of the right of rescission.
5. **PAYMENTS.** Mortgagor agrees to make all payments on the Secured Debt when due and in accordance with the terms of the Evidence of Debt or this Mortgage.
6. **WARRANTY OF TITLE.** Mortgagor covenants that Mortgagor is lawfully seized of the estate conveyed by this Mortgage and has the right to grant, bargain, convey, sell, and mortgage the Property and warrants that the Property is unencumbered, except for encumbrances of record.
7. **CLAIMS AGAINST TITLE.** Mortgagor will pay all taxes, assessments, liens, encumbrances, lease payments, ground rents, utilities, and other charges relating to the Property when due. Lender may require Mortgagor to provide to Lender copies of all notices that such amounts are due and the receipts evidencing Mortgagor's payment. Mortgagor will defend title to the Property against any claims that would impair the lien of this Mortgage. Mortgagor agrees to assign to Lender, as requested by Lender, any rights, claims or defenses which Mortgagor may have against parties who supply labor or materials to improve or maintain the Property.
8. **PRIOR SECURITY INTERESTS.** With regard to any other mortgage, deed of trust, security agreement or other lien document that created a prior security interest or encumbrance on the Property and that may have priority over this Mortgage, Mortgagor agrees:
- A. To make all payments when due and to perform or comply with all covenants.
 - B. To promptly deliver to Lender any notices that Mortgagor receives from the holder.
 - C. Not to make or permit any modification or extension of, and not to request or accept any future advances under any note or agreement secured by, the other mortgage, deed of trust or security agreement unless Lender consents in writing.
9. **DUE ON SALE OR ENCUMBRANCE.** Lender may, at its option, declare the entire balance of the Secured Debt to be immediately due and payable upon the creation of any lien, encumbrance, transfer, or sale, or contract for any of those on the Property. However, if the Property includes Mortgagor's residence, this section shall be subject to the restrictions imposed by federal law (12 C.F.R. 591), as applicable. For the purposes of this section, the term "Property" also includes any interest to all or any part of the Property. This covenant shall run with the Property and shall remain in effect until the Secured Debt is paid in full and this Mortgage is released.

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10. **TRANSFER OF AN INTEREST IN THE MORTGAGOR.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Lender may demand immediate payment if (1) a beneficial interest in Mortgagor is sold or transferred; (2) there is a change in either the identity or number of members of a partnership or similar entity; or (3) there is a change in ownership of more than 25 percent of the voting stock of a corporation or similar entity. However, Lender may not demand payment in the above situations if it is prohibited by law as of the date of this Mortgage.

11. **ENTITY WARRANTIES AND REPRESENTATIONS.** If Mortgagor is an entity other than a natural person (such as a corporation or other organization), Mortgagor makes to Lender the following warranties and representations which shall be continuing as long as the Secured Debt remains outstanding:

- A. Mortgagor is an entity which is duly organized and validly existing in the Mortgagor's state of incorporation (or organization). Mortgagor is in good standing in all states in which Mortgagor transacts business. Mortgagor has the power and authority to own the Property and to carry on its business as now being conducted and, as applicable, is qualified to do so in each state in which Mortgagor operates.
- B. The execution, delivery and performance of this Mortgage by Mortgagor and the obligation evidenced by the Evidence of Debt are within the power of Mortgagor, have been duly authorized, have received all necessary governmental approval, and will not violate any provision of law, or order of court or governmental agency.
- C. Other than disclosed in writing Mortgagor has not changed its name within the last ten years and has not used any other trade or fictitious name. Without Lender's prior written consent, Mortgagor does not and will not use any other name and will preserve its existing name, trade names and franchises until the Secured Debt is satisfied.

12. **PROPERTY CONDITION, ALTERATIONS AND INSPECTION.** Mortgagor will keep the Property in good condition and make all repairs that are reasonably necessary. Mortgagor will give Lender prompt notice of any loss or damage to the Property. Mortgagor will keep the Property free of noxious weeds and grasses. Mortgagor will not initiate, join in or consent to any change in any private restrictive covenant, zoning ordinance or other public or private restriction limiting or defining the uses which may be made of the Property or any part of the Property, without Lender's prior written consent. Mortgagor will notify Lender of all demands, proceedings, claims, and actions against Mortgagor or any other owner made under law or regulation regarding use, ownership and occupancy of the Property. Mortgagor will comply with all legal requirements and restrictions, whether public or private, with respect to the use of the Property. Mortgagor also agrees that the nature of the occupancy and use will not change without Lender's prior written consent.

No portion of the Property will be removed, demolished or materially altered without Lender's prior written consent except that Mortgagor has the right to remove items of personal property comprising a part of the Property that become worn or obsolete, provided that such personal property is replaced with other personal property at least equal in value to the replaced personal property, free from any title retention device, security agreement or other encumbrance. Such replacement of personal property will be deemed subject to the security interest created by this Mortgage. Mortgagor shall not partition or subdivide the Property without Lender's prior written consent. Lender or Lender's agents may, at Lender's option, enter the Property at any reasonable time for the purpose of inspecting the Property. Any inspection of the Property shall be entirely for Lender's benefit and Mortgagor will in no way rely on Lender's inspection.

13. **AUTHORITY TO PERFORM.** If Mortgagor fails to perform any of Mortgagor's duties under this Mortgage, or any other mortgage, deed of trust, security agreement or other lien document that has priority over this Mortgage, Lender may, without notice, perform the duties or cause them to be performed. Mortgagor appoints Lender as attorney in fact to sign Mortgagor's name or pay any amount necessary for performance. If any construction on the Property is discontinued or not carried on in a reasonable manner, Lender may do whatever is necessary to protect Lender's security interest in the Property. This may include completing the construction.

Lender's right to perform for Mortgagor shall not create an obligation to perform, and Lender's failure to perform will not preclude Lender from exercising any of Lender's other rights under the law or this Mortgage. Any amounts paid by Lender for insuring, preserving or otherwise protecting the Property and Lender's security interest will be due on demand and will bear interest from the date of the payment until paid in full at the interest rate in effect from time to time according to the terms of the Evidence of Debt.

14. **ASSIGNMENT OF LEASES AND RENTS.** Mortgagor assigns, grants, bargains, conveys and mortgages to Lender as additional security all the right, title and interest in the following (Property):

- A. Existing or future leases, subleases, licenses, guaranties and any other written or verbal agreements for the use and occupancy of the Property, including but not limited to, any extensions, renewals, modifications or replacements (Leases).
- B. Rents, issues and profits, including but not limited to, security deposits, minimum rents, percentage rents, additional rents, common area maintenance charges, parking charges, real estate taxes, other applicable taxes, insurance premium contributions, liquidated damages following default, cancellation premiums, "loss of rents" insurance, guest receipts, revenues, royalties, proceeds, bonuses, accounts, contract rights, general intangibles, and all rights and claims which Mortgagor may have that in any way pertain to or are on account of the use or occupancy of the whole or any part of the Property (Rents).

In the event any item listed as Leases or Rents is determined to be personal property, this Assignment will also be regarded as a security agreement.

Mortgagor will promptly provide Lender with copies of the Leases and will certify these Leases are true and correct copies. The existing Leases will be provided on execution of the Assignment, and all future Leases and any other information with respect to these Leases will be provided immediately after they are executed. Mortgagor may collect, receive, enjoy and use the Rents so long as Mortgagor is not in default. Mortgagor will not collect in advance any Rents due in future lease periods, unless Mortgagor first obtains Lender's written consent. Upon default, Mortgagor will receive

any Rents in trust for Lender and Mortgagor will not commingle the Rents with any other funds. When Lender so directs, Mortgagor will endorse and deliver any payments of Rents from the Property to Lender. Amounts collected will be applied at Lender's discretion to the Secured Debts, the costs of managing, protecting and preserving the Property, and other necessary expenses. Mortgagor agrees that this Security Instrument is immediately effective between Mortgagor and Lender and effective as to third parties on the recording of this Assignment.

As long as this Assignment is in effect, Mortgagor warrants and represents that no default exists under the Leases, and the parties subject to the Leases have not violated any applicable law on leases, licenses and landlords and tenants. Mortgagor, at its sole cost and expense, will keep, observe and perform, and require all other parties to the Leases to comply with the Leases and any applicable law. If Mortgagor or any party to the Lease defaults or fails to observe any applicable law, Mortgagor will promptly notify Lender. If Mortgagor neglects or refuses to enforce compliance with the terms of the Leases, then Lender may, at Lender's option, enforce compliance.

Mortgagor will not sublet, modify, extend, cancel, or otherwise alter the Leases, or accept the surrender of the Property covered by the Leases (unless the Leases so require) without Lender's consent. Mortgagor will not assign, compromise, subordinate or encumber the Leases and Rents without Lender's prior written consent. Lender does not assume or become liable for the Property's maintenance, depreciation, or other losses or damages when Lender acts to manage, protect or preserve the Property, except for losses and damages due to Lender's gross negligence or intentional torts. Otherwise, Mortgagor will indemnify Lender and hold Lender harmless for all liability, loss or damage that Lender may incur when Lender opts to exercise any of its remedies against any party obligated under the Leases.

15. **CONDOMINIUMS; PLANNED UNIT DEVELOPMENTS.** If the Property includes a unit in a condominium or a planned unit development, Mortgagor will perform all of Mortgagor's duties under the covenants, by-laws, or regulations of the condominium or planned unit development.

16. **DEFAULT.** Mortgagor will be in default if any of the following occur:

- A. Any party obligated on the Secured Debt fails to make payment when due;
- B. A breach of any term or covenant in this Mortgage, any prior mortgage or any construction loan agreement, security agreement or any other document evidencing, guarantying, securing or otherwise relating to the Secured Debt;
- C. The making or furnishing of any verbal or written representation, statement or warranty to Lender that is false or incorrect in any material respect by Mortgagor or any person or entity obligated on the Secured Debt;
- D. The death, dissolution, or insolvency of, appointment of a receiver for, or application of any debtor relief law to, Mortgagor or any person or entity obligated on the Secured Debt;
- E. A good faith belief by Lender at any time that Lender is insecure with respect to any person or entity obligated on the Secured Debt or that the prospect of any payment is impaired or the value of the Property is impaired;
- F. A material adverse change in Mortgagor's business including ownership, management, and financial conditions, which Lender in its opinion believes impairs the value of the Property or repayment of the Secured Debt; or
- G. Any loan proceeds are used for a purpose that will contribute to excessive erosion of highly erodible land or to the conversion of wetlands to produce an agricultural commodity, as further explained in 7 C.F.R. Part 1940, Subpart G, Exhibit M.

17. **REMEDIES ON DEFAULT.** In some instances, federal and state law will require Lender to provide Mortgagor with notice of the right to cure, mediation notices or other notices and may establish time schedules for foreclosure actions. Subject to these limitations, if any, Lender may accelerate the Secured Debt and foreclose this Mortgage in a manner provided by law if this Mortgage is in default.

At the option of Lender, all or any part of the agreed fees and charges, accrued interest and principal shall become immediately due and payable, after giving notice if required by law, upon the occurrence of a default or anytime thereafter. In addition, Lender shall be entitled to all the remedies provided by law, the Evidence of Debt, other evidences of debt, this Mortgage and any related documents. All remedies are distinct, cumulative and not exclusive, and the Lender is entitled to all remedies provided at law or equity, whether expressly set forth or not. The acceptance by Lender of any sum in payment or partial payment on the Secured Debt after the balance is due or is accelerated or after foreclosure proceedings are filed shall not constitute a waiver of Lender's right to require full and complete cure of any existing default. By not exercising any remedy on Mortgagor's default, Lender does not waive Lender's right to later consider the event a default if it continues or happens again.

18. **EXPENSES; ADVANCES ON COVENANTS; ATTORNEYS' FEES; COLLECTION COSTS.** Except when prohibited by law, Mortgagor agrees to pay all of Lender's expenses if Mortgagor breaches any covenant in this Mortgage. Mortgagor will also pay on demand all of Lender's expenses incurred in collecting, insuring, preserving or protecting the Property or in any inventories, audits, inspections or other examination by Lender in respect to the Property. Mortgagor agrees to pay all costs and expenses incurred by Lender in enforcing or protecting Lender's rights and remedies under this Mortgage, including, but not limited to, attorneys' fees, court costs, and other legal expenses. Once the Secured Debt is fully and finally paid, Lender agrees to release this Mortgage and Mortgagor agrees to pay for any recordation costs. All such amounts are due on demand and will bear interest from the time of the advance at the highest rate in effect, from time to time, as provided in the Evidence of Debt and as permitted by law.

19. **ENVIRONMENTAL LAWS AND HAZARDOUS SUBSTANCES.** As used in this section, (1) "Environmental Law" means, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (CERCLA, 42 U.S.C. 9601 et seq.), all other federal, state and local laws, regulations, ordinances, court orders, attorney general opinions or interpretive letters concerning the public health, safety, welfare, environment or a hazardous substance; and (2) "Hazardous Substance" means any toxic, radioactive or hazardous material, waste, pollutant or contaminant which has

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characteristics which render the substance dangerous or potentially dangerous to the public health, safety, welfare or environment. The term includes, without limitation, any substances defined as "hazardous material," "toxic substances," "hazardous waste" or "hazardous substance" under any Environmental Law. Mortgagor represents, warrants and agrees that, except as previously disclosed and acknowledged in writing:

- A. No Hazardous Substance has been, is, or will be located, transported, manufactured, treated, refined, or handled by any person on, under or about the Property, except in the ordinary course of business and in strict compliance with all applicable Environmental Law.
 - B. Mortgagor has not and will not cause, contribute to, or permit the release of any Hazardous Substance on the Property.
 - C. Mortgagor will immediately notify Lender if (1) a release or threatened release of Hazardous Substance occurs on, under or about the Property or migrates or threatens to migrate from nearby property; or (2) there is a violation of any Environmental Law concerning the Property. In such an event, Mortgagor will take all necessary remedial action in accordance with Environmental Law.
 - D. Mortgagor has no knowledge or reason to believe there is any pending or threatened investigation, claim, or proceeding of any kind relating to (1) any Hazardous Substance located on, under or about the Property; or (2) any violation by Mortgagor or any tenant of any Environmental Law. Mortgagor will immediately notify Lender in writing as soon as Mortgagor has reason to believe there is any such pending or threatened investigation, claim, or proceeding. In such an event, Lender has the right, but not the obligation, to participate in any such proceeding including the right to receive copies of any documents relating to such proceedings.
 - E. Mortgagor and every tenant have been, are and shall remain in full compliance with any applicable Environmental Law.
 - F. There are no underground storage tanks, private dumps or open wells located on or under the Property and no such tank, dump or well will be added unless Lender first consents in writing.
 - G. Mortgagor will regularly inspect the Property, monitor the activities and operations on the Property, and confirm that all permits, licenses or approvals required by any applicable Environmental Law are obtained and complied with.
 - H. Mortgagor will permit, or cause any tenant to permit, Lender or Lender's agent to enter and inspect the Property and review all records at any reasonable time to determine (1) the existence, location and nature of any Hazardous Substance on, under or about the Property; (2) the existence, location, nature, and magnitude of any Hazardous Substance that has been released on, under or about the Property; or (3) whether or not Mortgagor and any tenant are in compliance with applicable Environmental Law.
 - I. Upon Lender's request and at any time, Mortgagor agrees, at Mortgagor's expense, to engage a qualified environmental engineer to prepare an environmental audit of the Property and to submit the results of such audit to Lender. The choice of the environmental engineer who will perform such audit is subject to Lender's approval.
 - J. Lender has the right, but not the obligation, to perform any of Mortgagor's obligations under this section at Mortgagor's expense.
 - K. As a consequence of any breach of any representation, warranty or promise made in this section, (1) Mortgagor will indemnify and hold Lender and Lender's successors or assigns harmless from and against all losses, claims, demands, liabilities, damages, cleanup, response and remediation costs, penalties and expenses, including without limitation all costs of litigation and attorneys' fees, which Lender and Lender's successors or assigns may sustain; and (2) at Lender's discretion, Lender may release this Mortgage and in return Mortgagor will provide Lender with collateral of at least equal value to the Property secured by this Mortgage without prejudice to any of Lender's rights under this Mortgage.
 - L. Notwithstanding any of the language contained in this Mortgage to the contrary, the terms of this section shall survive any foreclosure or satisfaction of this Mortgage regardless of any passage of title to Lender or any disposition by Lender of any or all of the Property. Any claims and defenses to the contrary are hereby waived.
20. CONDEMNATION. Mortgagor will give Lender prompt notice of any action, real or threatened, by private or public entities to purchase or take any or all of the Property, including any easements, through condemnation, eminent domain, or any other means. Mortgagor further agrees to notify Lender of any proceedings instituted for the establishment of any sewer, water, conservation, ditch, drainage, or other district relating to or binding upon the Property or any part of it. Mortgagor authorizes Lender to intervene in Mortgagor's name in any of the above described actions or claims and to collect and receive all sums resulting from the action or claim. Mortgagor assigns to Lender the proceeds of any award or claim for damages connected with a condemnation or other taking of all or any part of the Property. Such proceeds shall be considered payments and will be applied as provided in this Mortgage. This assignment of proceeds is subject to the terms of any prior mortgage, deed of trust, security agreement or other lien document.
21. INSURANCE. Mortgagor agrees to maintain Insurance as follows:
- A. Mortgagor shall keep the Property insured against loss by fire, theft and other hazards and risks reasonably associated with the Property due to its type and location. Other hazards and risks may include, for example, coverage against loss due to floods or flooding. This insurance shall be maintained in the amounts and for the periods that Lender requires. What Lender requires pursuant to the preceding three sentences can change during the term of the Secured Debt. The insurance carrier providing the insurance shall be chosen by Mortgagor subject to Lender's approval, which shall not be unreasonably withheld. If Mortgagor fails to maintain the coverage described above, Lender may, at Lender's option, obtain coverage to protect Lender's rights in the Property according to the terms of this Mortgage.
- All insurance policies and renewals shall be acceptable to Lender and shall include a standard "mortgage clause" and, where applicable, "lender loss payee clause." Mortgagor shall immediately notify Lender of cancellation or termination of the insurance. Lender shall have the right to hold the policies and renewals. If Lender requires, Mortgagor shall immediately give to Lender all receipts of paid premiums and renewal notices. Upon loss, Mortgagor shall give immediate notice to the insurance carrier and Lender. Lender may make proof of loss if not made immediately by Mortgagor.

Unless Lender and Mortgagor otherwise agree in writing, insurance proceeds shall be applied to restoration or repair of the Property damaged if the restoration or repair is economically feasible and Lender's security is not lessened. If the restoration or repair is not economically feasible or Lender's security would be lessened, the insurance proceeds shall be applied to the Secured Debt, whether or not then due, with any excess paid to Mortgagor. If Mortgagor abandons the Property, or does not answer within 30 days a notice from Lender that the insurance carrier has offered to settle a claim, then Lender may collect the insurance proceeds. Lender may use the proceeds to repair or restore the Property or to pay the Secured Debt whether or not then due. The 30-day period will begin when the notice is given.

Unless Lender and Mortgagor otherwise agree in writing, any application of proceeds to principal shall not extend or postpone the due date of scheduled payments or change the amount of the payments. If the Property is acquired by Lender, Mortgagor's right to any insurance policies and proceeds resulting from damage to the Property before the acquisition shall pass to Lender to the extent of the Secured Debt immediately before the acquisition.

- B. Mortgagor agrees to maintain comprehensive general liability insurance naming Lender as an additional insured in an amount acceptable to Lender, insuring against claims arising from any accident or occurrence in or on the Property.
- C. Mortgagor agrees to maintain rental loss or business interruption insurance, as required by Lender, in an amount equal to at least coverage of one year's debt service, and required escrow account deposits (if agreed to separately in writing), under a form of policy acceptable to Lender.

22. **NO ESCROW FOR TAXES AND INSURANCE.** Unless otherwise provided in a separate agreement, Mortgagor will not be required to pay to Lender funds for taxes and insurance in escrow.

23. **FINANCIAL REPORTS AND ADDITIONAL DOCUMENTS.** Mortgagor will provide to Lender upon request, any financial statement or information Lender may deem necessary. Mortgagor warrants that all financial statements and information Mortgagor provides to Lender are, or will be, accurate, correct, and complete. Mortgagor agrees to sign, deliver, and file as Lender may reasonably request any additional documents or certifications that Lender may consider necessary to perfect, continue, and preserve Mortgagor's obligations under this Mortgage and Lender's lien status on the Property. If Mortgagor fails to do so, Lender may sign, deliver, and file such documents or certificates in Mortgagor's name and Mortgagor hereby irrevocably appoints Lender or Lender's agent as attorney in fact to do the things necessary to comply with this section.

24. **JOINT AND INDIVIDUAL LIABILITY; CO-SIGNERS; SUCCESSORS AND ASSIGNS BOUND.** All duties under this Mortgage are joint and individual. If Mortgagor signs this Mortgage but does not sign the Evidence of Debt, Mortgagor does so only to mortgage Mortgagor's interest in the Property to secure payment of the Secured Debt and Mortgagor does not agree to be personally liable on the Secured Debt. Mortgagor agrees that Lender and any party to this Mortgage may extend, modify or make any change in the terms of this Mortgage or the Evidence of Debt without Mortgagor's consent. Such a change will not release Mortgagor from the terms of this Mortgage. The duties and benefits of this Mortgage shall bind and benefit the successors and assigns of Mortgagor and Lender.

If this Mortgage secures a guaranty between Lender and Mortgagor and does not directly secure the obligation which is guaranteed, Mortgagor agrees to waive any rights that may prevent Lender from bringing any action or claim against Mortgagor or any party indebted under the obligation including, but not limited to, anti-deficiency or one-action laws.

25. **APPLICABLE LAW; SEVERABILITY; INTERPRETATION.** This Mortgage is governed by the laws of the jurisdiction in which Lender is located, except to the extent otherwise required by the laws of the jurisdiction where the Property is located. This Mortgage is complete and fully integrated. This Mortgage may not be amended or modified by oral agreement. Any section or clause in this Mortgage, attachments, or any agreement related to the Secured Debt that conflicts with applicable law will not be effective, unless that law expressly or impliedly permits the variations by written agreement. If any section or clause of this Mortgage cannot be enforced according to its terms, that section or clause will be severed and will not affect the enforceability of the remainder of this Mortgage. Whenever used, the singular shall include the plural and the plural the singular. The captions and headings of the sections of this Mortgage are for convenience only and are not to be used to interpret or define the terms of this Mortgage. Time is of the essence in this Mortgage.

26. **NOTICE.** Unless otherwise required by law, any notice shall be given by delivering it or by mailing it by first class mail to the appropriate party's address on page 1 of this Mortgage, or to any other address designated in writing. Notice to one mortgagor will be deemed to be notice to all mortgagors.

27. **WAIVER OF HOMESTEAD.** Except to the extent prohibited by law, Mortgagor waives all homestead exemption rights relating to the Property.

28. **U.C.C. PROVISIONS.** If checked, the following are applicable to, but do not limit, this Mortgage:

- ☒ **Construction Loan.** This Mortgage secures an obligation incurred for the construction of an improvement on the Property.
- ☐ **Fixture Filing.** Mortgagor grants to Lender a security interest in all goods that Mortgagor owns now or in the future and that are or will become fixtures related to the Property.
- ☒ **Crops; Timber; Minerals; Rents, Issues and Profits.** Mortgagor grants to Lender a security interest in all crops, timber, and minerals located on the Property as well as all rents, issues, and profits of them including, but not limited to, all Conservation Reserve Program (CRP) and Payment in Kind (PIK) payments and similar governmental programs (all of which shall also be included in the term "Property").

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- ☒ **Personal Property.** Mortgagor grants to Lender a security interest in all personal property located on or connected with the Property. This security interest includes all farm products, inventory, equipment, accounts, documents, instruments, chattel paper, general intangibles, and all other items of personal property Mortgagor owns now or in the future and that are used or useful in the construction, ownership, operation, management, or maintenance of the Property. The term "personal property" specifically excludes that property described as "household goods" secured in connection with a "consumer" loan as those terms are defined in applicable federal regulations governing unfair and deceptive credit practices.
- ☐ **Filing As Financing Statement.** Mortgagor agrees and acknowledges that this Mortgage also suffices as a financing statement and as such, may be filed of record as a financing statement for purposes of Article 9 of the Uniform Commercial Code. A carbon, photographic, image or other reproduction of this Mortgage is sufficient as a financing statement.

29. OTHER TERMS. If checked, the following are applicable to this Mortgage:

- ☐ **Line of Credit.** The Secured Debt includes a revolving line of credit provision. Although the Secured Debt may be reduced to a zero balance, this Mortgage will remain in effect until released.
- ☒ **Waiver of Appraisal Rights.** The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may, within thirty days after the sale of the mortgaged property, apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.
- ☒ **Separate Assignment.** The Mortgagor has executed or will execute a separate assignment of leases and rents. If the separate assignment of leases and rents is properly executed and recorded, then the separate assignment will supersede this Security Instrument's "Assignment of Leases and Rents" section.
- ☐ **Additional Terms.**

SIGNATURES: By signing below, Mortgagor agrees to the terms and covenants contained in this Mortgage and in any attachments. Mortgagor also acknowledges receipt of a copy of this Mortgage on the date stated above on Page 1.

☒ Actual authority was granted to the parties signing below by resolution signed and dated Dec. 27, 2007.

Entity Name PLANTATION ISLE EQUITY GROUP, LLC

[Signature] 12/27/07 (Signature) (Date) (Seal)
(Signature) MICHAEL AIELLO, MANAGING MEMBER (Date)

Signed, Sealed and delivered in the presence of:

[Signature] (Witness) [Signature] (Witness)

☐ Refer to the Addendum which is attached and incorporated herein for additional Mortgagors, signatures and acknowledgments.

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PROBATE:

STATE OF SOUTH CAROLINA, COUNTY OF Charleston ss.

Personally appeared before me the undersigned witness who, being duly sworn, deposed and said that (s)he saw the Mortgagor (and each Mortgagor if more than one) sign, seal and deliver the foregoing Mortgage and that (s)he, together with the other witness whose name appears as a witness, witnessed the execution thereof.

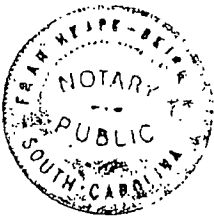
Sworn to and subscribed before me this 27TH day

of DECEMBER, 2007

[Signature]
Notary Public for South Carolina

[Signature]

My commission expires. 01/08/10



"EXHIBIT A"
LEGAL DESCRIPTION

BK M 647PG112

ALL that certain piece, parcel or tract of land, situate, lying and being located on or near the Ashley River, in the County of Charleston, State of South Carolina, being more particularly shown and designed as 12.16 ACRES, on a Plat entitled, "FINAL SUBDIVISION PLAT SHOWING PLANTATION ISLE PROPERTY OF HERITAGE BUILDERS, CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA", prepared by Davis & Floyd, Inc. of date of September 29, 1998, and recorded in Plat Book ED, at Pages 435-438, in the RMC Office for Charleston County, South Carolina. The property is more particularly described as follows: BEGINNING at a ½ inch rebar pin in the southern most point of property indicated as containing 12.16 Acres, thence moving in a northwesterly direction 75.18 feet to a point; thence turning in a northeasterly direction to a point on a property line with a calculated corner in an area indicated as Marsh; thence turning in a northwesterly direction to a point indicated as a property line with a calculated corner; thence continuing in the same direction and the line crosses the mean high water line; thence, continuing in the same direction where the line crosses a 50 foot Ashley River Scenic District setback line; thence that line continues in the same northwesterly direction to a point approximately 50 feet shy of a property line with a 5/8 inch iron pin to be set; thence continuing from that point approximately 50 feet shy from the 5/8 inch iron pin to be set and continuing through a 30' sanitary sewer easement and a 15' C.P.W. water line easement; thence, continuing along a curve indicated as C102 and that curve C102 further being described as having a delta of 60° 23' 38" a radius of 158.50 length of 167.07 a tangent of 92.24 a chord brg of South 81°38'45" East and a chord of 159.44, thence continuing along a curve similar to the curve of an access road indicated as Riverwalk Drive to the curve further described as C9; C9 further being described as having a delta of 47° 2' 53", a radius of 960.00, a length of 788.30, a tangent of 417.90, a chord brg. of North 88°58'22" East and a chord of 766.34. This curve has been traveling in a southeasterly direction to a point northeast of the point of beginning of this description and intersecting the southeastern border of property indicated to contain 12.16 Acres. From this point, the property boundary travels South 59° 8' 30" West a distance of 1,950.93 feet and meets a 4 x 4 CMF where the property line is indicated with a concrete monument and said corner is further indicated by a #3 in a circle. Thence, from this concrete monument found, turning in a southwesterly direction of 209.52 feet South 41°7'30" West to the _____ inch rebar pin found and further indicated as #4 with a circle around it.

TOGETHER with an easement for ingress and egress over Riverwalk Drive to that Access Easement Agreement from Plantation Isle, LLC to Stonebridge Development Group, LLC dated May 19, 2005, recorded May 19, 2005, in Book T-537, Page 874, in the RMC Office for Charleston County, South Carolina.

Also included in this conveyance is all that certain piece, parcel or tract of land situate, lying and being located on or near Ashley River, the County of Charleston, State of South Carolina, being more particularly shown and designated as 12.16 acres on a Plat entitled, "Final Subdivision Plat Showing Plantation Isle Property of Heritage Builders, City of North Charleston, Charleston County, South Carolina" prepared by Davis & Floyd, Inc. Of dated of September 29, 1998, and recorded in the RMC Office for Charleston County, South Carolina, in Plat Book ED, at Pages 435-438; further described as the strip of land beginning at a 5/8 inch iron pin to be set at the northwestern corner of the parcel designated as the 12.16 Acres located along the southern side of Riverwalk Drive from the back of the curb to the curve described above from approximately 50 feet shy of a property line with a 5/8 inch iron pin to be set at the northwestern corner of the parcel designated as the 12.16 acres; thence, continuing from the point approximately 50 feet shy from the 5/8 inch iron pin to be set and continuing through a 30' sanitary sewer easement and a 15' C.P.W. water line easement; thence continuing along a curve indicated as C102 and that curve C102 further being described as having a delta of $60^{\circ}23'38''$, a radius of 158.50, length of 167.07, a tangent of 92.24, a chord brg. of South $81^{\circ}38'45''$ East and a chord of 159.44; thence continuing along a curve similar to the curve of an access road indicated as Riverwalk Drive to the curve further described as C9. C9 further being described as having a delta of $47^{\circ}2'53''$, a radius of 960, a length of 788.30, a tangent of 417.90, a chord brg. of North $88^{\circ}58'22''$ East and a chord of 766.34. Included also is all property located to the South of the right of way of Riverwalk Drive. Reference is made to the aforesaid Plat for a more full and accurate description.

This conveyance is subject to any and all Restrictions, Covenants, Easements, Rights-of-Way, Matters and Conditions of record affecting said property, including without limitation, the matters set forth on the Plat referred to above, as the same may affect the within property; rules and regulations of applicable governmental authorities; real property taxes for the year of delivery hereof.

This being the same property conveyed to PLANTATION ISLE EQUITY GROUP, LLC. By Deed of STONEBRIDGE DEVELOPMENT GROUP, LLC dated December 27, 2007, being recorded simultaneously herewith in the RMC Office for Charleston County, SC.

FOR TMS REFERENCE SEE TMS # 410-00-00-025

ALSO

"EXHIBIT A"
LEGAL DESCRIPTION

8X M 647PG114

ALL that certain piece, parcel or lot of land, situate, lying and being in the County of Charleston, State of South Carolina, as shown and designated as LOT 1 on a Plat of Plantation Isle, Sheet 3 of 4 prepared by Davis & Floyd, Inc. Dated September 29, 1998, recorded in the RMC Office for Charleston County, SC in Plat Book ED, at Pages 435-438. Reference to said plat is being made for a more complete metes and bounds description hereof.

SAVING AND EXCEPTING: ALL that certain piece, parcel or lot of land, situate, lying and being in the County of Charleston, State of South Carolina, as shown and designated as LOT 1 on a Plat prepared by TRICO Engineering Consultants, Inc. entitled, "PLAT SHOWING THE ABANDONMENT OF A PROPERTY LINE ON LOT 1, TMS 410-00-00-067, PROPERTY OF STONEBRIDGE DEVELOPMENT GROUP, LLC, LOCATED IN PLANTATION ISLE SUBDIVISION, IN THE CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA", dated January 4, 2006, recorded in the RMC Office for Charleston County, SC in Plat Book DE, at Page 954; said lot having such size, shape, dimensions, buttings and boundings as will by reference to said Plat more fully and at large appear.

For Reference TMS See TMS # 410-00-00-067

This being the same property conveyed to the Mortgagor herein by Deed of STONEBRIDGE DEVELOPMENT GROUP, LLC dated December 27, 2007, being recorded simultaneously herewith in the RMC Office for Charleston County, SC.

This conveyance is subject to any and all Restrictions, Covenants, Easements, Rights-of-Way, Matters and Conditions of record affecting said property, including without limitation, the matters set forth on the Plat referred to above, as the same may affect the within property; rules and regulations of applicable governmental authorities; real property taxes for the year of delivery hereof.

BK M 647PG115

RECORDER'S PAGE

NOTE: This page **MUST** remain
with the original document



Filed By:

O'Neill & Phipps
Attorney at Law L.L.C.
P.O. Box 160
Mt. Pleasant SC 29465

Number of Pages:

12

FILED

December 27, 2007

4:14:21 PM

BK M 647PG104

Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION

AMOUNT

	\$ 17.00
Postage	

TOTAL

\$ 17.00

DRAWER:

C - slw

DO NOT STAMP BELOW THIS LINE

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

BK K 647PG765

TITLE TO REAL ESTATE

WHEREAS, Michael S. Aiello, as Managing Member of STONEBRIDGE DEVELOPMENT GROUP, LLC, is authorized to sign Deeds on behalf of STONEBRIDGE DEVELOPMENT GROUP, LLC, and said Managing Member, is also hereby authorized to execute, seal, and deliver the company's Deed or Title to Real Estate, conveying the said property to the Grantee hereinafter set forth in fee simple;

NOW, THEREFORE, KNOW ALL MEN BY THESE PRESENTS, that STONEBRIDGE DEVELOPMENT GROUP, LLC, a South Carolina limited liability company (the "Grantor"), for and in consideration of the sum of ONE MILLION EIGHT HUNDRED SIXTY THOUSAND AND 00/100 (\$ 1,860,000.00) DOLLARS , to the Grantor in hand paid, before the sealing of these presents by PLANTATION ISLE EQUITY GROUP, LLC, a Maryland limited liability company, in the State aforesaid, the receipt and sufficiency of which are hereby acknowledged, has granted, bargained, sold and released, and by these presents does grant, bargain, sell and release unto the said PLANTATION ISLE EQUITY GROUP, ^{LLC} a Maryland limited liability company, ("Grantee"), its successors and assigns, the following described property, to wit:

See Attached Exhibit "A" for Legal Description

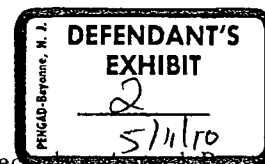
Grantee's Mailing Address:

906 COLD BOTTOM LN
SPARKS, MD 21152

TOGETHER with, all and singular, the rights, members, hereditaments, and appurtenances to the said Premises belonging, or in anywise incident or appertaining.

TO HAVE AND TO HOLD, All and singular, the said Premises before mentioned unto the said Grantee, its successors and assigns,, forever.

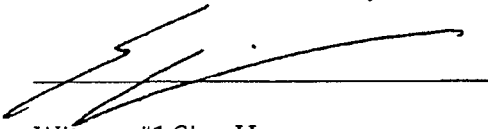
AND subject to any and all Restrictive Covenants, Easements, Rights-of-Way and Conditions, the said Grantor does hereby bind itself and its successors and assigns, to warrant and forever defend, all and singular, the said Premises unto the said Grantee, its successors and assigns, against itself and its successors and assigns, and all persons whomsoever lawfully claiming or to claim the same or any part thereof.



Record on Appeal, Page 29

The singular number as used herein shall include the plural. Wherever there is reference in the covenants and agreements herein contained to any of the parties hereto, the same shall be construed to mean the parties hereto, as well as the heirs, representatives successors, and assigns of the same.

IN WITNESS WHEREOF, the Grantor has caused these presents to be executed in its name this 27 day of December, 2007.


Witness #1 Sign Here

STONEBRIDGE DEVELOPMENT
GROUP, LLC
a South Carolina Limited Liability
Company

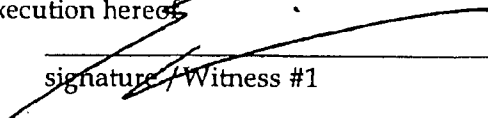

Notary Sign Here as Witness #2

BY: 
ITS: Managing Member

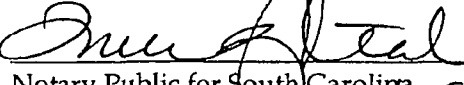
STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

PROBATE

PERSONALLY appeared before me the undersigned Witness and made oath that (s)he saw the within named Grantor, by its Managing Member, sign, seal and as its act and deed, deliver the within written instrument, and that (s)he along with the other subscribing witness herein, witnessed the execution hereof.


signature / Witness #1

SWORN to before me this
day of December, 2007.

 (Seal)
Notary Public for South Carolina
My commission expires: 1/10/08

"EXHIBIT A"
LEGAL DESCRIPTION

ALL that certain piece, parcel or tract of land, situate, lying and being located on or near the Ashley River, in the County of Charleston, State of South Carolina, being more particularly shown and designed as 12.16 ACRES, on a Plat entitled, "FINAL SUBDIVISION PLAT SHOWING PLANTATION ISLE PROPERTY OF HERITAGE BUILDERS, CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA", prepared by Davis & Floyd, Inc. of date of September 29, 1998, and recorded in Plat Book ED, at Pages 435-438, in the RMC Office for Charleston County, South Carolina. The property is more particularly described as follows: BEGINNING at a ½ inch rebar pin in the southern most point of property indicated as containing 12.16 Acres, thence moving in a northwesterly direction 75.18 feet to a point; thence turning in a northeasterly direction to a point on a property line with a calculated corner in an area indicated as Marsh; thence turning in a northwesterly direction to a point indicated as a property line with a calculated corner; thence continuing in the same direction and the line crosses the mean high water line; thence, continuing in the same direction where the line crosses a 50 foot Ashley River Scenic District setback line; thence that line continues in the same northwesterly direction to a point approximately 50 feet shy of a property line with a 5/8 inch iron pin to be set; thence continuing from that point approximately 50 feet shy from the 5/8 inch iron pin to be set and continuing through a 30' sanitary sewer easement and a 15' C.P.W. water line easement; thence, continuing along a curve indicated as C102 and that curve C102 further being described as having a delta of 60° 23' 38" a radius of 158.50 length of 167.07 a tangent of 92.24 a chord brg of South 81°38'45" East and a chord of 159.44, thence continuing along a curve similar to the curve of an access road indicated as Riverwalk Drive to the curve further described as C9; C9 further being described as having a delta of 47° 2' 53", a radius of 960.00, a length of 788.30, a tangent of 417.90, a chord brg. of North 88°58'22" East and a chord of 766.34. This curve has been traveling in a southeasterly direction to a point northeast of the point of beginning of this description and intersecting the southeastern border of property indicated to contain 12.16 Acres. From this point, the property boundary travels South 59° 8' 30" West a distance of 1,950.93 feet and meets a 4 x 4 CMF where the property line is indicated with a concrete monument and said corner is further indicated by a #3 in a circle. Thence, from this concrete monument found, turning in a southwesterly direction of 209.52 feet South 41°7'30" West to the _____ inch rebar pin found and further indicated as #4 with a circle around it.

TOGETHER with an easement for ingress and egress over Riverwalk Drive to that Access Easement Agreement from Plantation Isle, LLC to Stonebridge Development Group, LLC dated May 19, 2005, recorded May 19, 2005, in Book T-537, Page 874, in the RMC Office for Charleston County, South Carolina.

Also included in this conveyance is all that certain piece, parcel or tract of land situate, lying and being located on or near Ashley River, the County of Charleston, State of South Carolina, being more particularly shown on a Plat entitled, "Final Subdivision Plat Showing Plantation Isle Property of Heritage Builders, City of North Charleston, Charleston County, South Carolina" prepared by Davis & Floyd, Inc. Of dated of September 29, 1998, and recorded in the RMC Office for Charleston County, South Carolina, in Plat Book ED, at Pages 435-438; as described as the strip of land beginning at a 5/8 inch iron pin to be set at the northwestern corner of the parcel designated as the 12.16 Acres located along the southern side of Riverwalk Drive from the back of the curb to the curve described above from approximately 50 feet shy of a property line with a 5/8 inch iron pin to be set at the northwestern corner of the parcel designated as the 12.16 acres; thence, continuing from the point approximately 50 feet shy from the 5/8 inch iron pin to be set and continuing through a 30' sanitary sewer easement and a 15' C.P.W. water line easement; thence continuing along a curve indicated as C102 and that curve C102 further being described as having a delta of $60^{\circ}23'38''$, a radius of 158.50, length of 167.07, a tangent of 92.24, a chord brg. of South $81^{\circ}38'45''$ East and a chord of 159.44; thence continuing along a curve similar to the curve of an access road indicated as Riverwalk Drive to the curve further described as C9. C9 further being described as having a delta of $47^{\circ}2'53''$, a radius of 960, a length of 788.30, a tangent of 417.90, a chord brg. of North $88^{\circ}58'22''$ East and a chord of 766.34. Included also is all property located to the South of the right of way of Riverwalk Drive. Reference is made to the aforesaid Plat for a more full and accurate description.

This conveyance is subject to any and all Restrictions, Covenants, Easements, Rights-of-Way, Matters and Conditions of record affecting said property, including without limitation, the matters set forth on the Plat referred to above, as the same may affect the within property; rules and regulations of applicable governmental authorities; real property taxes for the year of delivery hereof.

This being the same property conveyed to STONEBRIDGE DEVELOPMENT GROUP, LLC by Deed of Dewey D. Brothers, d/b/a BROTHERS PROPERTIES dated May 18, 2005, recorded in the RMC Office for Charleston County, SC on May 19, 2005, in Deed Book O-537, Page 696.

FOR TMS REFERENCE SEE TMS # 410-00-00-025

ALSO

"EXHIBIT A"
LEGAL DESCRIPTION

ALL that certain piece, parcel or lot of land, situate, lying and being in the County of Charleston, State of South Carolina, as shown and designated as LOT 1 on a Plat of Plantation Isle, Sheet 3 of 4 prepared by Davis & Floyd, Inc. Dated September 29, 1998, recorded in the RMC Office for Charleston County, SC in Plat Book ED, at Pages 435-438. Reference to said plat is being made for a more complete metes and bounds description hereof.

For Reference TMS See TMS # 410-00-00-067

This conveyance is subject to any and all Restrictions, Covenants, Easements, Rights-of-Way, Matters and Conditions of record affecting said property, including without limitation, the matters set forth on the Plat referred to above, as the same may affect the within property; rules and regulations of applicable governmental authorities; real property taxes for the year of delivery hereof.

This being the same property conveyed to STONEBRIDGE DEVELOPMENT GROUP, LLC by Deed of Lewis Barles dated May 23, 2005, recorded in the RMC Office for Charleston County, SC on May 25, 2005, in Deed Book D-538, Page 770.

SAVING AND EXCEPTING: ALL that certain piece, parcel or lot of land, situate, lying and being in the County of Charleston, State of South Carolina, as shown and designated as LOT 1 on a Plat prepared by TRICO Engineering Consultants, Inc. entitled, "PLAT SHOWING THE ABANDONMENT OF A PROPERTY LINE ON LOT 1, TMS 410-00-00-067, PROPERTY OF STONEBRIDGE DEVELOPMENT GROUP, LLC, LOCATED IN PLANTATION ISLE SUBDIVISION, IN THE CITY OF NORTH CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA", dated January 4, 2006, recorded in the RMC Office for Charleston County, SC in Plat Book DE, at Page 954; said lot having such size, shape, dimensions, buttings and boundings as will by reference to said Plat more fully and at large appear.

BK K 647PG771

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



FILED

December 27, 2007

4:13:54 PM

BK K 647PG765

Charlie Lybrand, Register
Charleston County, SC

Filed By:

O'Neill & Phipps
Attorney at Law L.L.C.
P.O. Box 160
Mt. Pleasant SC 29465

Number of Pages:

7

AMOUNT

DESCRIPTION	AMOUNT
Recording Fee	\$ 12.00
State Fee	\$ 4,836.00
County Fee	\$ 2,046.00
Postage	

TOTAL	\$ 6,894.00
--------------	--------------------

\$ Amount (In thousands): 1860

DRAWER:

C - slw

AUDITOR STAMP HERE

RECEIVED

JAN 3 2008

PID VERIFIED BY ASSESSOR

REP

DATE

JAN -3 2008

DO NOT STAMP BELOW THIS LINE

9K 0 647PG544

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

SPECIFIC POWER OF ATTORNEY

KNOW ALL MEN BY THESE PRESENTS, FRANK HARVEY, INDIVIDUALLY, AND AS MEMBER OF PLANTATION ISLE EQUITY GROUP, LLC, do constitute, make and appoint MICHAEL AIELLO, my true and lawful attorney-in-fact for me in my name and stead, to perform any and all acts to execute any and all Purchasers'/Borrowers' loan closing documents, including, without limitation to, Note, Mortgage, Truth-in-Lending Disclosures, HUD Settlement Statement, and any and all related closing documents, pertaining to the purchase of Property known as 12.16 Acres and Part of Lot 1, Part Faber Place, Riverwalk Drive, North Charleston, South Carolina, Charleston County, South Carolina. Financing being obtained for said purchase with Carolina Federal Savings Bank. GIVING AND GRANTING unto my said Attorney-in-Fact, full authority and power to do and perform any and all other acts necessary and incident to the performance and execution of the powers therein expressly granted, with power to do and perform all acts authorized hereby as fully to all intents and purposes as I might or could do if personally present, with full power of substitution.

IN TESTIMONY WHEREOF, I have hereunto set my Hand and Seal this 22 day of December, 2007.

IN THE PRESENCE OF:

Kim Jordan
SIGNATURE 1ST WITNESS

Charlotte M. Mentzell
NOTARY PUBLIC/SIGNATURE

Frank Harvey
FRANK HARVEY, INDIVIDUALLY
AND AS MEMBER OF PLANTATION ISLE
EQUITY GROUP, LLC

STATE OF Maryland
COUNTY OF Baltimore City

ACKNOWLEDGEMENT

I, Charlotte M. Mentzell Notary Public, do hereby certify that FRANK HARVEY, INDIVIDUALLY, AND AS MEMBER OF PLANTATION ISLE EQUITY GROUP, LLC personally appeared before me this day and acknowledged the due execution of the foregoing instrument.

WITNESS, my hand and official seal this the 22 day of December, 2007.

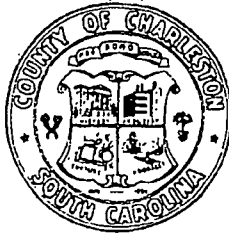
Charlotte M. Mentzell
SIGNATURE/NOTARY PUBLIC FOR Balto Md.
MY COMMISSION EXPIRES: _____

Charlotte M. Mentzell
Notary Public - State of Maryland
Qualified in Baltimore City
My Commission Expires January 19, 2008

BK 0 647PG545

RECORDER'S PAGE

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with the original document



Filed By:

O'Neill & Philpps
Attorney at Law L.L.C.
P.O. Box 160
Mt. Pleasant SC 29465

Number of Pages:

2

FILED

December 27, 2007

4:08:31 PM

BK 0 647PG544

Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION	AMOUNT
P/ATTY	\$ 15.00
Postage	
TOTAL	\$ 15.00
DRAWER:	
	C - slw

DO NOT STAMP BELOW THIS LINE

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-10-2513

Regions Bank,

Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.,

Defendants.

RECORD OF HEARING

FILED
2010 MAY 18 PM 3:41
JULIE J. ARMSTRONG
CLERK OF COURT

Pursuant to the Order of Default and Consent Order of Reference granted in the above entitled case, a hearing was held before Mikell R. Scarborough, Master in Equity for Charleston County, on Tuesday, May 11, 2010, attended by Louise M. Johnson, of Haynsworth Sinkler Boyd, P.A., attorneys for the Plaintiff.

BY THE MASTER IN EQUITY: Louise M. Johnson, attorney for the Plaintiff, calls attention to the filing of the original Civil Action Coversheet, Certificate of Exemption from ADR, Summons and Complaint with Exhibits (collectively hereinafter referred to as "Pleadings") in the Office of the Clerk of Court for Charleston County on May 7, 2008, and assigned Case No. 2008-CP-10-2513 by the Clerk of Court.

Also calls attention to the filing of the Lis Pendens on February 13, 2008, the filing of the Second Lis Pendens on March 5, 2008, the filing of the Second Lis Pendens on April 3, 2008,

the filing of the Third Lis Pendens on April 21, 2008, and the filing of the Fourth Lis Pendens on May 7, 2008.

Said Pleadings were served upon defendant Stonebridge Development Group, LLC via service on its registered agent, National Registered Agents, Inc., on May 14, 2008, as evidenced by the Affidavit of Service item on file with the Court.

Said pleadings were served upon defendant Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company via service on its registered agent, Sam G. Stathos, on May 19, 2008, evidenced by the Affidavit of Service item on file with the Court.

Said Pleadings were served upon defendant Carolina Federal Savings Bank via service on its attorney, Mark W. McKnight, on July 8, 2008, as evidenced by the Affidavit of Service item on file with the Court.

Said pleadings were served upon defendant Plantation Isle Equity Partners General Partnership via certified mail on May 16, 2008, evidenced by the Proof of Service item on file with the Court.

Said pleadings were served upon defendant Michael Aiello via personal service on August 16, 2008, evidenced by the Affidavit of Service item on file with the Court.

Said Pleadings were served upon defendant Frank M. Harvey aka Francis M. Harvey via personal service on August 14, 2008, as evidenced by the Affidavit of Service item on file with the Court.

Said Pleadings were served upon defendant Carolina Custom Docks, LLC via service on its owner on May 18, 2008, as evidenced by the Affidavit of Service item on file with the Court.

Said Pleadings were served upon defendant J. Mark Caldwell, individually via service on his attorney, Charles S. Altman, on June 10, 2008, as evidenced by the Affidavit of Service item on file with the Court.

Said Pleadings were served upon defendant Carolina Clearing & Grading, Inc. via service on its president, Jeremy Sanders, on June 24, 2008, as evidenced by the Affidavit of Service item on file with the Court.

On or about May 22, 2008, a Notice of Dismissal was filed with the Charleston County Clerk of Court as to Brandon Advertising, Inc.

On or about September 12, 2008, a Notice of Dismissal was filed with the Charleston County Clerk of Court as to Rubeling & Associates, Inc.

On or about April 21, 2010, a Notice of Dismissal was filed with the Charleston County Clerk of Court as to Carolina Clearing & Grading, Inc.

On our about June 27, 2008, Defendant Carolina Federal Savings Bank filed an Answer and Counterclaim by and through their attorney Mark W. McKnight.

On our about July 10, 2008, Defendants Stonebridge Development Group, LLC and J. Mark Caldwell, individually filed an answer by and through their attorney Charles S. Altman. On or about July 24, 2008, they filed an Amended Answer.

On or about July 21, 2008, Plaintiff filed a Reply to Defendant Carolina Federal Savings Bank's Answer and Counterclaim.

After a period of more than thirty (30) days, no notice, motion, or other pleading was filed by or on behalf of the defendants Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company, Plantation Isle Equity Partners General Partnership, Michael Aiello, Frank

M. Harvey aka Francis M. Harvey, Carolina Custom Docks, LLC, and Carolina Clearing & Grading, Inc. and said defendants are now and have been, in default.

Consequently, on February 18, 2010, the Order of Default and Consent Order of Reference was signed, and on February 24, 2010, it was entered by the Court, wherein the above entitled case was referred to Mikell R. Scarborough, Master in Equity for Charleston County, for the purpose of taking testimony and making findings of fact and conclusions of law, and to enter a final decree of foreclosure and sale.

Upon information and belief, the defendants are not individuals entitled to protection under the Servicemembers Civil Relief Act, 50 USCS Appx. §§ 501 *et seq.* (2004).

Defendants were served with the Notice of Hearing as evidenced by the Certificate of Service item that is of record herein.

WHEREIN, LOUISE M. JOHNSON, ESQUIRE, DOES HEREIN, REPORT AS FOLLOWS:

My firm, Haynsworth Sinkler Boyd, P.A., is attorney for the Plaintiff in this action and I report to the best of my knowledge, information and belief as follows.

From the Complaint herein, and from the examination of the records in the Office of the Register of Deeds for Charleston County, I find that on or about September 29, 2006, Stonebridge Development Group, LLC made, executed, and delivered unto Plaintiff a Promissory Note in the original principal amount of Five Hundred Ninety Five Thousand and 00/100 (\$595,000.00) Dollars ("Note").

I offer a copy of the Note into evidence.

NOTE identified, offered, and received in evidence as **Exhibit A**.

I also call the Court's attention to the provisions of the Note wherein it states,

Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Note.

I submit herewith an affidavit in support of attorney fees and costs.

AFFIDAVIT identified, offered and received into evidence as **Exhibit B**.

To secure the repayment of the Note, and the debt evidenced thereby, Stonebridge Development Group, LLC made, executed, and delivered unto Plaintiff a certain Mortgage dated September 29, 2006 ("Mortgage"), whereby Stonebridge Development Group, LLC mortgaged to Plaintiff the real property described in the Mortgage. The Mortgage was recorded on October 5, 2006, in the Charleston County Register of Deeds Office in Book Z600 at Page 841.

I offer a copy of the Mortgage into evidence.

MORTGAGE identified, offered, and received in evidence as **Exhibit C**.

To further induce Plaintiff to enter into the Note and Mortgage, and as additional security for the Note and the debt evidenced thereby, and for valuable consideration given, J. Mark Caldwell, Michael S. Aiello, and Frank M. Harvey aka Francis M. Harvey made, executed and delivered unto Plaintiff those certain Commercial Guaranties ("Guaranties") dated September 29, 2006.

I offer copies of said Guaranties into evidence.

GUARANTIES identified, offered, and received in evidence as **Exhibits D, E, and F**.

I call attention to the provisions of the Note with reference to acceleration and default.

The Mortgage constitutes a first priority mortgage lien covering the property therein described.

Plaintiff is the current holder of the Note and the Mortgage.

At the time of the Mortgage, Defendant Stonebridge Development Group, LLC was the legal owner of the property.

Stonebridge Development Group, LLC sold the subject property to Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company by virtue of a deed executed December 27, 2007, and recorded on December 27, 2007, in the Register of Deeds Office for Charleston County in Book K647 at Page 765.

There is due and owing on the Plaintiff's Note and Mortgage as of May 11, 2010, the sum of Seven Hundred Nineteen Thousand Six Hundred Ninety Four and 66/100 (\$719,694.66) Dollars, consisting of:

Original principal	\$595,000.00
(a) Principal Balance	\$ 595,000.00
(b) Accrued Interest Due	\$ 84,085.06
(c) Late Fees	\$ 448.32
(d) Appraisal	\$ 285.00
(e) 2008 and 2009 Taxes	\$ <u>36,912.43</u>
Total amount due on Note and Mortgage	\$ 716,730.81
(f) Filing, service, motion, and other fees	\$ 2,838.85
(g) Referral Fee	\$ <u>125.00</u>
Total Balance on Note and Mortgage	\$ 719,694.66

together with interest on the Note at the rate of 5.75% per annum (which is currently \$61.97917 *per diem*) from May 11, 2010, until judgment and at the Note rate thereafter plus costs and reasonable attorney's fees. The Court's attention is directed to the Note and Mortgage which allow recovery of costs and expenses associated with collection of the Note and Mortgage which include items (f) and (g) above.

I have an Affidavit of Debt on behalf of the Plaintiff regarding the default and indebtedness which I offer into evidence.

AFFIDAVIT OF DEBT identified, offered, and received in evidence as **Exhibit G**.

Pursuant to the Orders issued by the Supreme Court of South Carolina entered on May 4, 2009 (Temporary Restraining Order) and on May 22, 2009 (Administrative Order), both in reference to Mortgage Foreclosures and the Home Affordable Modification Program (HMP) “preventing the Foreclosure sale of any property arising out of a loan owned or guaranteed by petitioner [Federal National Mortgage Association] or Freddie Mac or held by a service who has signed an agreement to participate in the [Home Affordable Modification Program]”, Plaintiff served upon Defendants Defendants Charles S. Altman, attorney for Stonebridge Development Group, LLC and J. Mark Caldwell, individually; Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company; Mark W. McKnight, attorney for Carolina Federal Savings Bank; Plantation Isle Equity Partners General Partnership; Michael Aiello; Frank M. Harvey aka Francis M. Harvey; Carolina Custom Docks, LLC; Carolina Clearing & Grading, Inc. and filed with the Charleston County Clerk of Court the Affidavit of Louise M. Johnson wherein she averred that the within subject mortgage in this foreclosure action is not a mortgage owned or guaranteed by petitioner Federal National Mortgage Association or Freddie Mac or held by a service who has signed an agreement to participate in the Home Affordable Modification Program and as such, this foreclosure action is not subject to said Order.” Plaintiff has received no notice of “any counter affidavit asserting that the loan is subject to modification under the HMP or that the requirements of the HMP have not been met”.

AFFIDAVIT OF LOUISE M. JOHNSON and CERTIFICATE OF SERVICE is identified, offered and received as **Exhibit H**.

Defendants were served a copy of the Notice of Hearing as evidenced by the Certificate of Service, which I offer into evidence.

NOTICE OF HEARING, and CERTIFICATE OF SERVICE identified, offered, and received in evidence as **Exhibits I and J**.

Plaintiff is seeking foreclosure of the Mortgage and does not waive the right to a personal or deficiency judgment as to Stonebridge Development Group, LLC, J. Mark Caldwell, individually, Michael Aiello, and Frank M. Harvey aka Francis M. Harvey. However, Plaintiff reserves the right to waive deficiency prior to the sale.

The following defendants may claim an interest in the Mortgaged Property:

(a) The defendant Carolina Federal Savings Bank by virtue of a junior Mortgage in the amount of \$2,025,000.00 dated December 27, 2007, and recorded on December 27, 2007, in Book M647 at Page 104 in the Register of Deeds Office for Charleston County and by virtue of its Assignment of Leases and Rents recorded on December 27, 2007, in Book O647 at Page 567 in the Register of Deeds Office for Charleston County.

(b) The defendant Plantation Isle Equity Partners General Partnership by virtue of a junior Mortgage in the amount of \$1,604,000.00 dated January 8, 2008, and recorded January 9, 2008, in Book K648 at Page 272 in the Register of Deeds Office for Charleston County.

(c) The defendants Michael S. Aiello and Frank M. Harvey aka Francis M. Harvey by virtue of a junior Mortgage in the amount of \$561,321.58 dated January 8, 2008, and recorded January 9, 2008, in Book K648 at Page 280 in the Register of Deeds Office for Charleston County.

(d) The defendant Carolina Custom Docks, LLC by virtue of that certain Lis Pendens, Case No. 2007-CP-10-1362, dated April 2, 2007, and filed in the Office of the Clerk of Court for Charleston County.

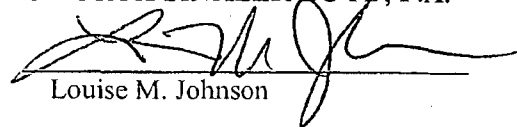
In the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with Rule 71(c) SCRPC. Any interest of these defendants are subordinate to Plaintiff's first Mortgage

That Your Honor completes the Plaintiff's case and the Plaintiff rests.

HEARING ADJOURNED

HAYNSWORTH SINKLER BOYD, P.A.

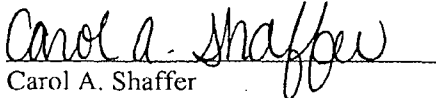
By:


Louise M. Johnson

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

Attorneys for Regions Bank

SWORN to and subscribed before me
on this 11th day of May, 2010.


Carol A. Shaffer

Notary Public for South Carolina

My commission expires: January 14, 2015

STONEBRIDGE DEVELOPMENT
20400001839001SF2



INS BANK
ORY NOTE

Reference in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or loans. Any item shown containing "****" has been omitted due to lost length restrictions.

Borrower: STONEBRIDGE DEVELOPMENT GROUP, LLC (FIRM)	Location: London	REDEMPTION BANK
22-2224-0000		WEST ASHLEY
18055 CATOCTIN ROAD STREET		1546 SAVANNAH HIGHWAY
FAIRFAX COUNTY, VA 22018		CHARLESTON, SC 29407

Principal Amount: 0855,000.00 Initial Rate: 8.750% Date of Note: September 29, 2006
PROMISE TO PAY. STONEBRIDGE DEVELOPMENT GROUP, LLC ("Borrower") promises to pay to REDMOND BANK ("Lender"), or order, in lawful money of the United States of America, the principal amount of Five Hundred Twenty-five Thousand & 00/100 Dollars (\$525,000.00), together with interest on the unpaid principal balance from September 29, 2006, until paid in full.

PAYMENT. Borrower will pay this loan in one principal payment of \$525,000.00 plus interest on October 10, 2007. This payment due on October 10, 2007, will be for all principal and all accrued interest not yet paid. In addition, Borrower will pay regular monthly payments of all accrued unpaid interest due on each payment date beginning November 10, 2006, with all subsequent interest payments to be due on the same day of each month thereafter. Unless otherwise agreed or accepted by applicable law, payments will be applied first to any accrued unpaid interest then to principal then to any unpaid collection costs; and then to any late charges. The annual interest rate for this Note is computed as a 360/360 basis (that is, by applying the ratio of the actual number of days in a year of 360 days, multiplied by the outstanding principal balance, multiplied by the actual number of days the principal balance is outstanding). Borrower will pay Lender at Lender's address shown above or at such other place as Lender may designate in writing.

VARIABLE INTEREST RATE. The interest rate on this Note is subject to change from time to time based on changes in an index which is the Regions Financial Corp. Commercial Rate - Daily (the "Index"). The Index is not necessarily the lowest rate charged by Lender on its loans and is set by Lender in its sole discretion. If the Index becomes unavailable during the term of this loan, Lender may designate a substitute index after notifying Borrower. Lender will tell Borrower the current index rate upon Borrower's request. The interest rate change will not occur more often than each day. Borrower understands that Lender may make loans based on other rates as well. The Index currently is 8.250% per annum. The interest rate to be applied to the unpaid principal balance during this Note will be a rate of 0.500 percentage points over the Index, resulting in an initial rate of 8.750% per annum. **NOTICE:** Under no circumstances will the interest rate on this Note be more than the maximum rate allowed by applicable law.

PREPAYMENT. Borrower may pay without penalty all or a portion of the amount owed earlier than it is due. Early payments will not, unless agreed to by Lender in writing, reduce Borrower's obligation to continue to make payments under the payment schedule. Rather, early payments will reduce the principal balance due. Borrower agrees not to send Lender payments marked "hold in full", "holdover account", or similar language. If Borrower sends such a payment, Lender may accept it without losing any of Lender's rights under this Note, and Borrower will remain obligated to pay any further amount owed to Lender. All written communications concerning disputed amounts, including any check or other payment instrument that indicates that the payment constitutes "payment in full" of the account owed or that is tendered with other goods or services or as full satisfaction of a disputed account must be mailed or delivered to REDMOND BANK, WEST ASHLEY, 1546 SAVANNAH HIGHWAY, CHARLESTON, SC 29407.

LATE CHARGE. If a payment is 10 days or more late, Borrower will be charged 5.000% of the unpaid portion of the regularly scheduled payment.

INTEREST AFTER DEFAULT. Upon default, including failure to pay upon final maturity, the term rate due under this Note will continue to accrue interest at the lesser rate under this Note. However, in no event will the interest rate exceed the maximum interest rate limitations under applicable law.

DEFAULT. Each of the following shall constitute an event of default ("Event of Default") under this Note:

Payment Default. Borrower fails to make any payment when due under this Note.

Other Defaults. Borrower fails to comply with or to perform any other term, obligation, covenant or condition stipulated in this Note or in any of the related documents or to comply with or to perform any term, obligation, covenant or condition stipulated in any other agreement between Lender and Borrower.

Default in Favor of Third Parties. Borrower or any Guarantor defaults under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's property or Borrower's ability to repay this Note or perform Borrower's obligations under this Note or any of the related documents.

Fake Documents. Any warranty, representation or statement made or furnished to Lender by Borrower or on Borrower's behalf under this Note or the related documents is false or misleading in any material respect either now or at the time made or furnished or becomes false or misleading at any one time.

Death or Insolvency. The dissolution of Borrower (regardless of whether election to continue is made), any member withdrawing from Borrower, or any other termination of Borrower's existence as a going business or the death of any member, the insolvency of Borrower, the appointment of a receiver for any part of Borrower's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower.

Creditor or Bankruptcy Proceedings. Commencement of foreclosure or foreclosure proceedings, whether by judicial proceeding, self-help repossession or any other method, by any creditor of Borrower or by any person acting against or against any collateral securing this Note. This includes a foreclosure of any of Borrower's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower as to the validity or enforceability of the claim which is the basis of the creditor or Borrower's proceeding and if Borrower files a lawsuit or initiates a proceeding and deposits with Lender evidence of a good faith dispute for the creditor or Borrower's proceeding, in an amount determined by Lender, in its sole discretion, to being an adequate amount or bond for the dispute.

Events Affecting Guarantors. Any of the preceding events occurs with respect to any Guarantor of any of the indebtedness or any Guarantor dies or becomes incompetent, or renounces or disavows the validity of, or defaults under, any guaranty of the indebtedness evidenced by this Note. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Borrower's financial condition, or Lender believes the prospect of payment or performance of this Note is impaired.

Insolvency. Lender in good faith believes that it is necessary.

Cure Provisions. If any default, other than a default in payment is capable and if Borrower has not been given a notice of a breach of the terms provision of this Note within the preceding twelve (12) months, it may be cured if Borrower, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days; or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps to achieve compliance as soon as reasonably practical.

LENDER'S RIGHTS. Upon default, Lender may declare the entire unpaid principal balance under this Note and all accrued unpaid interest immediately due, and then Borrower will pay that amount.

ATTORNEY'S FEES AND COSTS. Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay

000/1000

000/1000 000/1000 000/1000 000/1000 000/1000 000/1000 000/1000 000/1000 000/1000 000/1000

Loan No: 20400001639001

PROMISSORY NOTE
(Continued)

Page 2

Lender that amounts. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Note and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings including efforts to refile or convert any automatic stay or injunction, and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other costs provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Note has been accepted by Lender in the State of South Carolina.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or 401(k) accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or collect all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to subvertively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Note is secured by Real Estate Mortgage dated 8/28/00 from borrower covering Real Property located at Lot 1 Shoney Point Ct. Charleston, S.C. 29406, CHARLESTON COUNTY.

ARBITRATION. Borrower and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Note or otherwise, including without limitation contract and tort disputes, shall be submitted pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or cause of any collateral securing this Note shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, seeking injunctive relief or a temporary restraining order involving a power of sale under any deed of trust or mortgage involving a deed of assignment or assignment of a real estate or real estate interest to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any dispute, claim, or controversy concerning the lawfulness or reasonableness of any act or course of any right, concerning any collateral securing this Note, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral securing this Note, shall also be submitted, provided however that no arbitrator shall have the right or the power to order or modify any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Note shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The status of arbitrators, arbitrator, witness, lender, and other documents which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

DISCLOSURE FOR SPECIAL SERVICES. In general, there are no borrower-paid fees associated with the routine servicing of a loan or line of credit. Borrower, however, may occasionally find it necessary to request services for which there is a charge. The services that fall outside of routine servicing include, without limitation, providing the following documents upon request: certification of title, duplicate year-end statements, copies of loan documents or periodic statements, payment histories, and replacement coupon books. Borrower agrees to pay the fees imposed by Lender in connection with providing the requested services, as in effect from time to time. Borrower also agrees to pay penalties or other fees imposed by Lender if there are any charges on an expedited basis. All such fees shall be fully earned and non-refundable, and shall be paid upon Lender's demand (provided, that Lender, in its discretion, may add the fees to the principal indebtedness as due, and accrue interest thereon, and the same shall be due, if not sooner demanded by Lender, upon the maturity of the indebtedness without further demand). The fees shall not be deemed to be interest or charges for the use of money. If Borrower requests copies or documents as part of Lender's procedures for resolving a billing error on a line of credit, Lender will not impose, or will reverse, the fee.

NOTICE CONCERNING APPELLATE WAIVER. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within sixty days after the sale of the mortgaged property apply to the court for an order of appeal. The summary appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with this transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPELLATE RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

SUCCESSOR INTERESTS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall inure to the benefit of Lender and its successors and assigns.

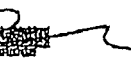
GENERAL PROVISIONS. If any part of this Note cannot be enforced, this fact will not affect the rest of the Note. Lender may delay or temporarily suspend any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or undertakes this Note, to the extent allowed by law, waive payment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend its indebtedness and for any length of time this loan or release any party or guarantor or collateral or loan, all to realize upon or perfect Lender's security interest in the collateral and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PROB TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THIS NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER

STONEMAN DEVELOPMENT GROUP, LLC

By: 
J. MARK CALDWELL, MEMBER OF STONEMAN DEVELOPMENT GROUP, LLC

800/800/008

06/28/2006 11:30 FAX 843 649 8799 Regions Mortgage

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-10-2513

Regions Bank,

Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.,

Defendants.

**ATTORNEY FEES AND COSTS
AFFIDAVIT**

I, Louise M. Johnson, being duly sworn, depose and state on oath as follows:

1. I am Special Counsel with the law firm of Haynsworth Sinkler Boyd, P.A., attorneys for plaintiff in the above captioned action. This affidavit is submitted to the court for its consideration in awarding Plaintiff attorneys' fees in a foreclosure action against Stonebridge Development Group, LLC; Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company; Carolina Federal Savings Bank; Plantation Isle Equity Partners General Partnership; Michael Aiello; Frank M. Harvey aka Francis M. Harvey; Brandon Advertising, Inc.; Rubeling & Associates, Inc.; Carolina Custom Docks, LLC; J. Mark Caldwell, individually; Carolina Clearing & Grading, Inc., pursuant to the terms of the subject Note dated September 29, 2006, and the Mortgage dated September 29, 2006, in the above case under the factors set forth in *Prevatte v. Asbury Arms*, 302 S.C. 413, 396 S.E.2d 642 (Ct. App 1990) and similar cases.

2. Time and labor expended. In connection with the foreclosure of this parcel, and the collection of this debt, my staff and I have spent approximately fifty five (55) hours. Counsel also expects that additional time and expense will be necessary to collect the subject debt until conclusion of this matter.

3. The novelty and difficulty of the questions raised. The legal principles involved were not unusually complex.

4. The skill required to perform the legal service properly. The skill required in this case was that possessed by an ordinarily competent collection attorney.

5. The preclusion of other employment by the attorney due to acceptance of the case. Plaintiff's counsel does not assert that preclusion of other employment arose as a result of this case.

6. Customary fee. The customary fee for the type of legal services involved is an hourly fee ranging from \$180.00 to \$375.00 per hour with paralegal time ranging from \$135.00 to \$170.00 per hour.

7. Expectations at the outset of litigation. Counsel for plaintiff was hired on an hourly fee basis plus expenses, subject to revision based upon circumstances.

8. Time limitations imposed by the client or circumstances. Plaintiff urged its counsel to pursue this matter with all promptness and diligence, but there were no unusual time limitations involved.

9. The amount in controversy and the results obtained. The amount in controversy exceeds \$716,000.00.

10. The experience, reputation and ability of the attorneys. I graduated from law school in 1997 and have been in private practice with Haynsworth Sinkler Boyd, P.A. since 2007. Approximately fifty percent of my time is spent in handling collection suits similar to the one in the instant case.

11. The undesirability of the case. There was no element of undesirability in handling this case.

12. The nature and length of the professional relationship with the client. Plaintiff and this law firm have had a continuing professional relationship for about the past five years.

13. Awards in similar cases. I am aware of no particular awards that would serve as guidance for this court in this case.

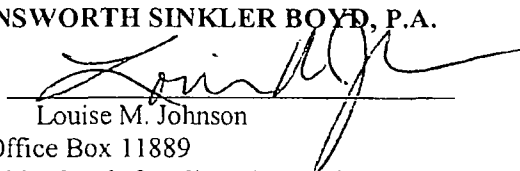
14. In addition to the above factors, the court should note that the Note provides that,

Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Note.

Plaintiff has incurred costs for filing, service, motion, and referral fees in the amount of \$2,036.69. Expenses have been incurred in the amount of approximately \$927.16. Counsel also expects that additional time and expense will be necessary to collect the subject debt and see this matter to conclusion (*i.e.* attend at hearing, advertise property for sale, consult with and advise client about bid amount and strategy, attend sale and bid for client, prepare Master in Equity's Title, Report of Sale, and Final Order confirming sale). It is therefore reasonable to award plaintiff costs of collection in the amount of \$2,963.85, plus a reasonable attorney's fee of \$14,000.00, with leave for Plaintiff to request additional attorney's fees and expenses at a later date.

Further Affiant sayeth not.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Louise M. Johnson

Post Office Box 11889

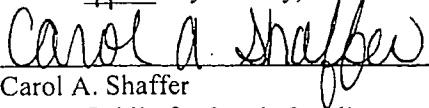
Columbia, South Carolina 29211-1889

(803) 779.3080 Tel

(803) 765.1243 Fax

Attorneys for Regions Bank

SWORN to and subscribed before me
on this 14th day of May, 2010.



Carol A. Shaffer

Notary Public for South Carolina

My commission expires: January 14, 2015

RCS File: 23400/09006

Commercial Loans (Correspondence Barcode)

COMM02174628



WHEN RECORDED MAIL TO:
Regional Loan Servicing Release
P O Box 48397
Montgomery, AL 36103

SPACE ABOVE THIS LINE IS FOR RECORDED USE ONLY



COMM02174628-0000016300100000

MORTGAGE

MAXIMUM LIEN. The amount of indebtedness secured by this Mortgage, including the outstanding amount of the Note and all future advances shall at no time exceed the principal amount of \$882,600.00, plus interest, reasonable attorneys' fees, court costs and the expenses to preserve and protect the Property. Interest under the Note will be deferred, accrued or capitalized, but Lender shall not be required to defer, accrue or capitalize any interest except as provided in the Note.

THIS MORTGAGE dated September 29, 2008, is made and executed between STONEBRIDGE DEVELOPMENT GROUP, LLC, whose address is 38889 CATOCTIN RIDGE STREET, PAEONIAN SPRINGS, VA 20129 (referred to below as "Grantor") and REGIONS BANK, whose address is 1848 SAVANNAH HIGHWAY, CHARLESTON, SC 29407 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, grants, and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently created or added buildings, improvements and fixtures (to be assessed, rights of way, and appurtenances) all water, water rights, watercourses and other rights (including those in water) with such or intangible rights and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, geothermal and solar resources, (the "Real Property") located in Charleston County, State of South Carolina:

See EXHIBIT "A", which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

The Real Property or its address is commonly known as Lot 1 Stoney Point Ct @ Plantation Isle, North Charleston, SC 29405.

CROSS-COLLATERALIZATION. In addition to the Note, this Mortgage secures all obligations, debts and liabilities, plus interest thereon, of either Grantor or Borrower to Lender, or any one or more of them, as well as all claims by Lender against Borrower and Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or otherwise, whether due or not due, direct or indirect, determined or undetermined, absolute or contingent, liquidated or unliquidated, whether Borrower or Grantor may be liable individually or jointly with others, whether obligated as guarantor, guaranty, accommodation party or otherwise, and whether recovery upon such accounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such accounts may be or hereafter may become otherwise unenforceable.

Grantor presently assigns to Lender all of Grantor's right, title, and interest in and to all present and future leases of the Property and all Rights from the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rents.

FUTURE ADVANCES. In addition to the Note, this Mortgage secures all future advances made by Lender to Grantor whether or not the advances are made pursuant to a commitment. Specifically, without limitation, this Mortgage secures, in addition to the amounts specified in the Note, all future amounts Lender in its discretion may loan to Borrower, together with all interest thereon; however, in no event shall such future advances (including interest) exceed in the aggregate \$297,500.00. This Mortgage shall remain an open mortgage of record to secure future advances in accordance with Section 29-3-50, as amended, Code of Laws of South Carolina (1976) even in the event all sums secured by this Mortgage may be fully paid at any one time; however, upon request of Grantor, Lender will cause this Mortgage to be released and certified of record upon full payment of all indebtedness then owing, and upon such certification of this Mortgage of record, this Mortgage shall become null and void. Such release shall be without charge to Grantor; however, Grantor shall pay all costs of recordation, if any, and all documentary stamps due on the Note evidencing future advances secured by this Mortgage.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RENTS AND THE SECURITY INTEREST IN THE RENTS AND PERSONAL PROPERTY, IS GIVEN TO SECURE: (A) PAYMENT OF THE INDEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR'S WAIVER. Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing any action against Grantor, including a claim for deficiency to the extent Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that: (a) this Mortgage is executed at Borrower's request and not at the request of Lender; (b) Grantor has the full power, right, and authority to enter into this Mortgage and to hypothecate the Property; (c) the provisions of this Mortgage do not conflict with, or result in a breach under any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court decree or order applicable to Grantor; (d) Grantor has established adequate means of checking from Borrower's continuing bank information about Borrower's financial condition; and (e) Lender has made no representation to Grantor about Borrower's checking without limitation the creditworthiness of Borrower.

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Borrower and Grantor shall pay to Lender all indebtedness secured by this Mortgage as it becomes due, and Borrower and Grantor shall satisfy perform all Borrower's and Grantor's obligations under this Mortgage.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Borrower and Grantor agree that Borrower's and Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may: (1) remain in possession and control of the Property; (2) use, operate or manage the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substances by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing, (a) any breach or violation of any Environmental Laws,

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(b) any use, generation, manufacture, storage, treatment, disposal, release or threatened release of any Hazardous Substance on, under, above or from the Property by any prior owner or occupant of the Property, or (c) any actual or threatened violation or claim of any kind by any person relating to such matters; and (d) except as previously disclosed to and acknowledged by Lender in writing, (i) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substance on, under, above or from the Property and (ii) any such activity shall be conducted in compliance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for liability or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws and (2) agrees to indemnify, defend and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly sustain or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same were or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligation to indemnify and defend, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Removal of Waste. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Withdrawing the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, mineral including oil and gas, coal, clay, stone, sand, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

Compliance with Governmental Regulations. Grantor shall promptly comply with all laws, ordinances, and regulations, now or hereafter in effect, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans With Disabilities Act. Grantor may contract in good faith with any such law, ordinance, or regulation and without compliance during any proceeding, including appropriate appeals, so long as Grantor has notified Lender in writing prior to doing so and so long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security as a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Duty to Protect. Grantor agrees neither to abandon nor leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which from the character and use of the Property are reasonably necessary to protect and preserve the Property.

DUE ON SALE - CONSENT BY LENDER. Lender may, in Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property whether legal, beneficial or equitable whether voluntary or involuntary whether by mortgage, sale, deed, installment sale contract, lease contract, contract for deed, leasehold interest with a term greater than three (3) years, lease-option contract, or by sale, assignment, or transfer of any beneficial interest in or to any land or building title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than ninety-five percent (95%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by South Carolina law.

TAXES AND LOANS. The following provisions relating to the taxes and loans on the Property are part of this Mortgage:

Payment. Grantor shall pay when due (and in all events prior to delinquency) all taxes, payroll taxes, special taxes, assessments, water charges and sewer service charges levied against or on account of the Property, and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Construct paragraph.

Right to Construct. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a lien arises or is filed as a result of nonpayment, Grantor shall within fifteen (15) days after the lien arises or, if a lien is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any event, Grantor shall defend itself and Lender and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in the contract proceedings.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental official to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property. If any contractor's firm, subcontractor's firm, or other lien claimant is awarded an account of the work, services, or materials, Grantor will upon request of Lender furnish to Lender advance assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

Maintenance of Insurance. Grantor shall procure and maintain policies of fire insurance with standard extended coverage endorsements on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any co-insurance clause, and with a standard mortgage clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance to such coverage as Lender may request when Lender has received an individual insurance in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to hazard, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a stipulation that coverage will not be suspended for cancellation without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy also shall include an endorsement providing that coverage in favor of Lender will not be impaired in any way by any act, omission or default of Grantor or any other person. Check the Real Property for location in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area. Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any prior loans to the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make partial or full if Grantor fails to do so within fifteen (15) days of the casualty. Whether or not Lender's security is impaired, Lender may, at Lender's election, receive and retain the proceeds of any insurance and apply the proceeds to the reduction of the indebtedness, payment of any lien affecting the Property, or the restoration and repair of the Property. If Lender elects to apply the proceeds to restoration and repair, Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditures, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 100 days after their receipt shall, unless Lender has not consented to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay secured interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds

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star payment in full of the indebtedness, such proceeds shall be paid to Grantee as Grantee's interests may appear.

Grantee's Report on Insurance. Upon request of Lender, however not more than once a year, Grantee shall furnish to Lender a report on each existing policy of insurance showing: (1) the name of the insurer; (2) the risks insured; (3) the amount of the policy; (4) the property insured; the then current replacement value of such property; and the manner of determining that value; and (5) the expiration date of the policy. Grantee shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENDITURES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantee fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantee's failure to discharge or pay when due any amounts Grantee is required to discharge or pay under this Mortgage or any Related Documents, Lender on Grantee's behalf may but shall not be obligated to take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, or any fees levied or placed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantee. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable on demand; (B) be added to the balance of the Note and be secured and secured and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy; or (2) the remaining term of the Note; or (C) be treated as a balloon payment which will be due and payable at the Note's maturity. The Mortgage will secure payment of these amounts. Such right shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY OF DEFENSE OF TITLE. The following provisions relating to ownership of the Property are a part of this Mortgage:

This Grantee warrants that: (a) Grantee holds good and marketable title of record to the Property in fee simple, free and clear of all liens and encumbrances other than those set forth in the Real Property description or in any title insurance policy, this report, or find this opinion based in favor of, and accepted by, Lender in connection with this Mortgage; and (b) Grantee has the full right, power, and authority to execute and deliver this Mortgage to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantee warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced that questions Grantee's title or the interest of Lender under this Mortgage, Grantee shall defend the action at Grantee's expense. Grantee may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantee will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantee warrants that the Property and Grantee's use of the Property complies with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantee in this Mortgage shall survive the consummation and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantee's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Mortgage:

Proceedings. If any proceeding in condemnation is filed, Grantee shall promptly notify Lender in writing, and Grantee shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantee may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of its own choice, and Grantee will deliver or cause to be delivered to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness or the repair or restoration of the Property. The net proceeds of the award shall mean the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

IMPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

Current Taxes, Fees and Charges. Upon request by Lender, Grantee shall execute such documents in addition to this Mortgage and take whatever other action is requested by Lender to perfect and continue Lender's lien on the Real Property. Grantee shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or enforcing this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage or upon all or any part of the indebtedness assumed by this Mortgage; (2) a specific tax on Grantee which Grantee is authorized or required to deduct from payments on the indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Grantee.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this event shall have the same effect as an Event of Default, and Lender may exercise any or all of its available remedies for an Event of Default as provided below unless Grantee either (1) pays the tax before it becomes delinquent; or (2) satisfies the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate money bond or other security satisfactory to Lender.

SECURITY AGREEMENT; FINANCIAL STATEMENTS. The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

Security Agreement. The instrument shall constitute a Security Agreement to the extent any of the Property constitutes fixtures, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as extended from time to time.

Security Interest. Upon request by Lender, Grantee shall take whatever action is requested by Lender to perfect and continue Lender's security interest in the Real and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantee, file accurate counterparts, copies or reproductions of this Mortgage as a financing statement. Grantee shall reimburse Lender for all expenses incurred in perfecting or continuing this security interest. Upon Default, Grantee shall not remove, cover or change the Personal Property from the Property. Upon Default, Grantee shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantee and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantee (debtor) and Lender (secured party) from which information concerning the security interest pursuant to this Mortgage may be obtained (each as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

FURTHER ASSURANCES; ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantee will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, refilled, or re-recorded, as the case may be, in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, continuation statements, instruments of further assurances, certificates, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, continue, or preserve (1) Grantee's and Grantee's obligations under the Note, this Mortgage, and the Related Documents; and (2) the lien and security interests created by this Mortgage in and upon the Property, whether now owned or hereafter acquired by Grantee. Unless prohibited by law or Lender agrees to the contrary in writing, Grantee shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantee fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantee and of Grantee's expenses. For such purposes, Grantee hereby irrevocably appoints Lender as Grantee's attorney-in-fact for the purpose of recording, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

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FULL PERFORMANCE. If Borrower and Grantor pay all the indebtedness, including without limitation all future advances, when due, and Grantor otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable encumbrance of any third-party instrument on the evidencing Lender's security interest in the Real and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable transaction fee as determined by Lender from time to time.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

Payment Default. Borrower fails to make any payment when due under the Indebtedness.

Default on Other Payments. Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to effect discharge of any lien.

Other Defaults. Borrower or Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Grantor.

Default in Favor of Third Parties. Should Borrower or any Grantor default under any loan, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may adversely affect any of Borrower's or any Grantor's property or Borrower's ability to repay the Indebtedness or Borrower's or Grantor's ability to perform their respective obligations under this Mortgage or any related document.

Fake Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or Grantor or on Borrower's or Grantor's behalf under this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Bad Faith Construction. This Mortgage or any of the Related Documents comes to be in full force and effect constituting a form of any document to create a valid and perfected security interest in or on any time and for any reason.

Death or Insolvency. The dissolution of Grantor's (regardless of whether election to continue is made), any member withdrawing from the limited liability company, or any other liquidation of Borrower's or Grantor's business as a going business or the death of any member, the insolvency of Borrower or Grantor, the appointment of a receiver for any part of Borrower's or Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or foreclosure proceedings, whether by judicial proceeding, self-help, representation or any other method, by any creditor of Borrower or Grantor or by any governmental agency against any property securing the Indebtedness. This includes a participation of any of Borrower's or Grantor's accounts, including deposit accounts, with Lender. However, this Event of Default shall not apply if there is a good faith dispute by Borrower or Grantor as to the validity or enforceability of the claim which is the basis of the creditor or foreclosure proceeding and if Borrower or Grantor gives Lender written notice of the creditor or foreclosure proceeding and deposits with Lender a sum of money held for the creditor or foreclosure proceeding, as an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreements. Any breach by Borrower or Grantor under the terms of any other agreement between Borrower or Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any Indebtedness or other obligation of Borrower or Grantor to Lender, whether existing now or later.

Events Affecting Grantor. Any of the preceding events occurs with respect to any Guarantor of any of the Indebtedness or any Guarantor dies or becomes incompetent, or revokes or disputes the validity of, or liability under, any Guaranty of the Indebtedness. In the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the guaranty in a manner satisfactory to Lender, and in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospects of payment or performance of the Indebtedness is impaired.

Insolvency. Lender in good faith believes itself insolvent.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of this section within the time specified in the preceding section (15 days), it may be cured by Grantor, after providing written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days or (2) if the cure requires more than fifteen (15) days, immediately initiates steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practicable.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Accelerate Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Borrower or Grantor, to take possession of the Property and, as mortgagee-in-possession, collect the rents, including amounts past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to endorse instruments received in payment thereof in the name of Grantor and to negotiate the same and collect the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a receiver.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property, to sell or lease the Property, to collect the rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from serving as a receiver.

Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

Nonjudicial Sale. If permitted by applicable law, Lender may foreclose Grantor's interest in all or any part of the Personal Property or the Real Property by non-judicial sale.

Deficiency Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency remaining in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Assignment. Grantor hereby waives the right to assert any claims providing assigned rights which may reduce any deficiency judgment obtained by Lender against Borrower in the event of foreclosure under this Mortgage.

Tenancy at Sufferance. If Grantor remains in possession of this Property after this Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

Sale of the Property. To the extent permitted by applicable law, Borrower and Grantor hereby waive any and all right to have the Property liquidated. In exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the time after which any private sale or other liquidated disposition of the Personal Property is to be made. Reasonable notice shall mean notice given at least ten (10) days before the date of the sale or disposition. Any sale of the Personal Property may be made in conjunction with

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Any Sale of the Real Property.

Shields of Foreclosure. Election by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make expenditures or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an event of default, or in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor and/or Borrower under any other co-obligation, guarantee, surety or endors or under to proceed against any other collateral directly or indirectly securing the indebtedness.

Attorneys' Fees Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may judge reasonable as attorneys' fees at trial and upon any appeal. Whether or not any court action is involved, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest in the enforcement of its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until paid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on the indebtedness and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services, the cost of obtaining records, obtaining title reports including foreclosure referral, surveys' reports, and appraisal fees and title insurance, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other costs provided by law.

NOTICES. Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by electronic means (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail (except insured delivery), directed to the addresses shown near the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

NOTICE CONCERNING APPRAISAL WAIVER. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the date of the judgment petition the court for an order of appraisal. The recovery appraised value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THIS UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

Amendments. This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be changed or bound by the alteration or amendment.

Assessments. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of all mortgage taxes assessed from the Property during Grantor's previous fiscal year in each town and district as Lender shall require. "Mortgage taxes" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Arbitration. Borrower and Grantor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Mortgage or otherwise, including without limitation contract and tort disputes, shall be submitted pursuant to the rules of the American Arbitration Association in effect at the time the claim is first upon request of either party. No act to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order blocking a power of sale under any deed of trust or mortgages or obtaining a writ of attachment or impoundment of a receiver or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the enforceability or rescission of any act, or exercise of any right, concerning any Property, including any claim to rescind, reform, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to modify or rescind any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Mortgage shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The terms of Arbitration, settlement, waiver, release, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding and the commencement of an arbitration proceeding shall be deemed the commencement of an action for those purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Caption Headings. Caption headings in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Governing Law. This Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Mortgage has been accepted by Lender in the State of South Carolina.

Joint and Several Liability. All obligations of Borrower and Grantor under this Mortgage shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each Grantor signing below is responsible for all obligations in this Mortgage. Where any one or more of the parties is a corporation, partnership, limited liability company or similar entity, it is not necessary for Lender to inquire into the powers of any of the officers, directors, partners, members, or other agents acting or purporting to act on the entity's behalf, and any obligations made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Mortgage.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future violations. Whenever the consent of Lender is required under this Mortgage, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Severability. If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the offending provision illegal, invalid, or unenforceable as to any other circumstance. If, however, the offending provision shall be considered voided so that it becomes legal, valid and enforceable. If the offending provision cannot be so modified it shall be considered deleted from this Mortgage. Unless otherwise required by law, the illegality, invalidity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or enforceability of any other provision of this Mortgage.

Merge. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Successors and Assigns. Subject to any restrictions stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than a Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of foreclosure or otherwise without releasing Grantor from the obligations of this Mortgage or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Mortgage.

Waiver Jury. All parties to this Mortgage hereby waive the right to any (any trial in any action, proceeding, or controversy brought by any party against any other party.

X 2600P6845

Loan No: 20400001638001

MORTGAGE
(Continued)

Z600P6846

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Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of South Carolina as to all indebtedness secured by this Mortgage.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, in the context any requires. Words and terms not otherwise defined in this Mortgage shall have the meanings ascribed to each word in the Uniform Commercial Code.

Borrower. The word "Borrower" means STONEBRIDGE DEVELOPMENT GROUP, LLC and Michael S. Alde and includes all co-signers and co-borrowers signing the Note and all their successors and heirs.

Default. The word "Default" means the Default set forth in this Mortgage in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-620 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1801, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 6901, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Mortgage in the events of default section of this Mortgage.

Grantor. The word "Grantor" means STONEBRIDGE DEVELOPMENT GROUP, LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may pose a present or potential hazard to human health or the environment when improperly stored, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in their very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum by-products or any fraction thereof and extraction.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes attached to the Real Property, fixtures, additions, replacements and other construction on the Real Property.

Indebtedness. The word "Indebtedness" means all principal, interest, and other amounts, costs and expenses payable under the Note or Related Documents, together with all renewals of, extensions of, modifications of, amendments to and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligations or expenses incurred by Lender to enforce Grantor's obligations under this Mortgage, together with interest on such amounts as provided in this Mortgage. Additionally, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision of this Mortgage, together with all amounts due and all amounts that may be indirectly secured by the Cross-Collateralization provision of this Mortgage.

Lender. The word "Lender" means REGIONAL BANK, its successors and assigns.

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender.

Note. The word "Note" means the promissory note dated September 28, 2006, in the original principal amount of \$695,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, amendments to and substitutions for the promissory note or agreement. The maturity date of this Mortgage is October 10, 2027. **NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.**

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property together with all accessories, parts, and additions to, all replacements of, and all substitutions for, any of such property and together with all proceeds including without limitation all insurance proceeds and value of proceeds from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, amendment agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter executed, executed in connection with the Indebtedness.

Rents. The word "Rents" means all present and future rents, revenues, income, issues, royalties, profits, and other benefits derived from the Property.

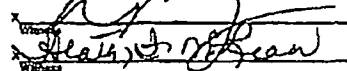
GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

STONEBRIDGE DEVELOPMENT GROUP, LLC

By: 
MICHAEL S. ALDE, President of STONEBRIDGE DEVELOPMENT GROUP, LLC

Signed, acknowledged and delivered to the presence of:

X 
Witness

Loan No: 20400001639001	MORTGAGE (Continued)	Page 7
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LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON)

EX Z600P6847

PERSONALLY appeared before me and made oath that he or she saw the within-named Grantee(s) sign, read, and, as his or her act and deed, deliver the within-written Mortgage for the uses and purposes therein mentioned, and that he or she with the other witness subscribed above witnessed the execution thereof.

Henry J. Morgan
(Witness)

SWORN to before me this 28th
day of September, A.D. 2008
Henry J. Morgan (Seal)
My Commission expires: 01/17/10

(Not to be used for recording purposes. This form is to be used for recording purposes only. See also the instructions on the back of this form.)

EXHIBIT "A"

BK Z600PG848

ALL that certain piece, parcel or lot of land, lying and being in the State of South Carolina, County of Charleston, being shown and designated as Lot No. 1 on a plat of Plantation Isle, Sheet 3 of 4 prepared by David & Floyd, Inc. dated September 29, 1998 filed in the RMC Office for Charleston County, S.C. in Plat Book ED, Page 437, reference being made to said plat for a more complete metes and bounds description hereof.

BEING the same property conveyed to Mortgagor herein by Deed of Lewis Bartles dated May 23, 2005 and recorded May 25, 2005 in Book D-538, Page 770, in the Charleston County RMC Office.

For reference see TMS: 410-00-00-067

BK Z600P6849

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

Nelson Mullins Riley & Scarborough

Post Office Box 1806
Charleston

SC 29402

duv

FILED

October 5, 2006

3:11:22 PM

BK Z600P6841

Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION	AMOUNT
	\$ 14.00
Postage	

TOTAL	\$ 14.00
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DRAWER:

	A- bmm
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DO NOT STAMP BELOW THIS LINE

843-858-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org



00C16G00020400001639001000000

REGIONS BANK COMMERCIAL GUARANTY

Principal	Loan Data	Security	Loan No.	Account	Office	Initials
References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item. Any item above containing "XXX" has been omitted due to text length limitations.						

Borrower: STONEBRIDGE DEVELOPMENT GROUP, LLC (TIN: 20-2254898)
Michael S. Alabo (BSN: 214-84-8433)
38569 CATOCTIN RIDGE STREET
PATERSON SPRINGS, VA 20120

Lender: REGIONS BANK
WEST ASHLEY
1848 BAYVIEW HIGHWAY
CHARLESTON, SC 29407

Guarantor: J MARK CALDWELL (SSN: 230-13-7864)
18003 WATERFORD CREEK CIR
HAMILTON, VA 20188-3342

GUARANTEE OF PAYMENT AND PERFORMANCE. For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of Guarantor's Share of the Indebtedness of Borrower, or any one or more of them, to Lender, and the performance and discharge of all Borrower's obligations under the Note and the Related Documents. This is a guaranty of payment and performance and not of collection, so Lender can enforce this Guaranty against Guarantor even when Lender has not exhausted Lender's remedies against anyone else obligated to pay the Indebtedness or against any collateral securing the Indebtedness, this Guaranty or any other guaranty of the Indebtedness. Guarantor will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Borrower's obligations under the Note and Related Documents.

INDEBTEDNESS. The word "Indebtedness" as used in this Guaranty means all of the principal amount outstanding from time to time and at any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, reasonable attorneys' fees, arising from any and all debts, liabilities and obligations that Borrower individually or collectively or interchangeably with others, owes or will owe Lender under the Note and Related Documents and any renewals, extensions, modifications, refinancings, consolidations and substitutions of the Note and Related Documents.

If Lender presently holds one or more guaranties, or hereafter receives additional guaranties from Guarantor, Lender's rights under all guaranties shall be cumulative. This Guaranty shall not (unless specifically provided below to the contrary) effect or invalidate any such other guaranties. Guarantor's liability will be Guarantor's aggregate liability under the terms of this Guaranty and any such other unperfected guaranties.

GUARANTOR'S SHARE OF THE INDEBTEDNESS. The words "Guarantor's Share of the Indebtedness" as used in this Guaranty mean 60.00% of all the principal amount, interest thereon to the extent not prohibited by law, and all collection costs, expenses and reasonable attorneys' fees whether or not there is a lawsuit, and if there is a lawsuit, any fees and costs for trial and appeals, not to exceed Three Hundred Fifty-seven Thousand & 00/100 Dollars (\$37,000.00).

Lender shall determine Guarantor's Share of the Indebtedness when Lender makes demand on Guarantor. After a determination, Guarantor's Share of the Indebtedness will only be reduced by sums actually paid by Guarantor under this Guaranty, but will not be reduced by sums from any other source (including, but not limited to, sums realized from any collateral securing the Indebtedness or this Guaranty, or payments by anyone other than Guarantor, or reductions by operation of law, judicial order or equitable principles. Lender has the sole and absolute discretion to determine how sums shall be applied among guaranties of the Indebtedness.

The above limitation on liability is not a restriction on the amount of the Note of Borrower to Lender either in the aggregate or at any one time.

DURATION OF GUARANTY. This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all the Indebtedness shall have been fully and finally paid and satisfied and all of Guarantor's other obligations under this Guaranty shall have been performed in full. Release of any other guaranty or termination of any other guaranty of the Indebtedness shall not affect the liability of Guarantor under this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty.

GUARANTOR'S AUTHORIZATION TO LENDER. Guarantor authorizes Lender, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (A) to make one or more additional secured or unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, amend, accelerate, or otherwise change one or more times the time for payment or other terms of the Indebtedness or any part of the Indebtedness, including increases and decreases of the rate of interest on the Indebtedness; extensions may be repeated and may be for longer than the original loan term; (C) to take and hold security for the payment of this Guaranty or the Indebtedness, and exchange, enforce, waive, subordinate, fail or decide not to perfect, and release any such security, with or without the substitution of new collateral; (D) to release, subordinate, agree not to sue, or deal with any one or more of Borrower's sureties, endorsers, or other guarantors on any terms or in any manner Lender may choose; (E) to determine how, when and what application of payments and credits shall be made on the Indebtedness; (F) to apply such security and direct the order or manner of sale thereof, including without limitation, any nonjudicial sale permitted by the terms of the controlling security agreement or deed of trust, as Lender in its discretion may determine; (G) to sell, transfer, assign or grant participations in all or any part of the Indebtedness; and (H) to assign or transfer this Guaranty in whole or in part.

GUARANTOR'S REPRESENTATIONS AND WARRANTIES. Guarantor represents and warrants to Lender that: (A) no representations or agreements of any kind have been made to Guarantor which would limit or qualify in any way the terms of this Guaranty; (B) this Guaranty is executed at Borrower's request and not at the request of Lender; (C) Guarantor has full power, right and authority to enter into this Guaranty; (D) the provisions of this Guaranty do not conflict with or result in a default under any agreement or other instrument binding upon Guarantor and do not result in a violation of any law, regulation, court decree or order applicable to Guarantor; (E) Guarantor has not and will not, without the prior written consent of Lender, sell, lease, assign, encumber, hypothecate, transfer, or otherwise dispose of all or substantially all of Guarantor's assets, or any interest therein; (F) upon Lender's request, Guarantor will provide to Lender financial and credit information in form acceptable to Lender, and all such financial information which currently has been, and all future financial information which will be provided to Lender is and will be true and correct in all material respects and fairly present Guarantor's financial condition as of the dates the financial information is provided; (G) no material adverse change has occurred in Guarantor's financial condition since the date of the most recent financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition; (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep accurately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risk under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

GUARANTOR'S WAIVERS. Except as prohibited by applicable law, Guarantor waives any right to require Lender: (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the Indebtedness or of any nonpayment related to any collateral, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the Indebtedness or in connection with the creation of new or additional loans or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or defenses arising by reason of: (A) any right of appraisal, "one action" or "anti-deficiency" law or any other law which may prevent Lender from

COMMERCIAL GUARANTY (Continued)

Loan No: 20400001630001

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bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (E) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the indebtedness; (F) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the indebtedness; (G) any right to claim discharge of the indebtedness on the basis of unjustified impairment of any collateral for the indebtedness; (H) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, there is outstanding indebtedness which is not barred by any applicable statute of limitations; or (I) any defenses given to guarantors at law or in equity other than actual payment and performance of the indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS. Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor holds jointly with someone else and all accounts Guarantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Guarantor authorizes Lender, to the extent permitted by applicable law, to hold these funds if there is a default, and Lender may apply the funds in these accounts to pay what Guarantor owes under the terms of this Guaranty.

SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR. Guarantor agrees that the indebtedness, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of bankruptcy and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the indebtedness. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Guaranty:

Amendments. This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Arbitration. Borrower and Guarantor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Guaranty or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any collateral shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Collateral including any claim to rescind, reform, or otherwise modify any agreement relating to the Collateral, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Guaranty shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Attorneys' Fees; Expenses. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

Governing Law. This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Guaranty has been accepted by Lender in the State of South Carolina.

Integration. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty. Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parcel evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

Interpretation. In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the provisions of this Guaranty even if a provision of this Guaranty may be found to be invalid or unenforceable. If any one or more of Borrower or Guarantor are corporations, partnerships, limited liability companies, or similar entities, it is not necessary for Lender to inquire into the powers of Borrower or Guarantor or of the officers, directors, partners, managers, or other agents acting or purporting to act on their behalf, and any indebtedness made or created in reliance upon the professed exercise of such powers shall be guaranteed under this Guaranty.

Notices. Any notice required to be given under this Guaranty shall be given in writing, and shall be effective when actually delivered, when actually received by telefacsimile (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown near the beginning of this Guaranty. Any party may change its address for notices under this Guaranty by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Guarantor agrees to keep Lender informed at all times of Guarantor's current address. Unless otherwise provided or required by law, if there is more than one Guarantor, any notice given by Lender to any Guarantor is deemed to be notice given to all Guarantors.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Guaranty unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of that right or any other right. A waiver by Lender of a provision of this Guaranty shall not prejudice or constitute a waiver of Lender's right otherwise to demand strict compliance with that provision or any other provision of this Guaranty. No prior waiver by Lender, nor any course of dealing between

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REGIONS
BANK
COMMERCIAL GUARANTY

References in the shaded area are for Lender's use only and do not limit the applicability of this document to any particular loan or item.
Any item above containing "xxx" has been omitted due to text length limitations.

Lender: REGIONS BANK
WEST ASHLEY
1645 BAYANNAH HIGHWAY
CHARLESTON, SC 29407

Guarantor: Michael S. Alejo (SSN: 214-84-8439)
908 Cold Bottom Rd
Sparks, MD 21152

CONTINUING GUARANTEE OF PAYMENT AND PERFORMANCE. For good and valuable consideration, Guarantor absolutely and unconditionally guarantees full and punctual payment and satisfaction of the indebtedness of Borrower to Lender, and the performance and discharge of all of Borrower's obligations under the Note and the Related Documents. This is a guaranty of payment and performance and not of collection. Lender can enforce this Guaranty against Guarantor when the Related Documents are enforceable. Lender waives all remedies against anyone else obligated to pay the indebtedness, or against any collateral securing the indebtedness, this Guaranty or any other guaranty of the indebtedness. Guarantor will make any payments to Lender or its order, on demand, in legal tender of the United States of America, in same-day funds, without set-off or deduction or counterclaim, and will otherwise perform Borrower's obligations under the Note and Related Documents. Under this Guaranty, Guarantor's liability is unlimited and Guarantor's obligations are continuing.

INDEBTEDNESS. The word "indebtedness" as used in this Guaranty means all of the principal amount outstanding from the Guarantor and any one or more times, accrued unpaid interest thereon and all collection costs and legal expenses related thereto permitted by law, reasonable attorneys' fees, arising from any and all debts, liabilities and obligations of any nature or form, now existing or hereafter arising or acquired, that Borrower (individually or collectively or interchangeably with others, owns or will own Lands. "Indebtedness" includes, without limitation, loans, advances, debts, overdrafts, indebtedness, credit card indebtedness, lease obligations, liabilities and obligations under any interest rate protection agreements or foreign currency exchange agreements or commodity price protection agreements, other obligations, and liabilities of Borrower, and any present or future judgments against Borrower, future advances, loans or transactions that renew, extend, modify, refinances, consolidate or substitute these debts, liabilities and obligations whether: voluntarily or involuntarily incurred; due or to become due by their own terms or accelerating absolute or contingent; registered or unregistered; determined or undetermined; direct or indirect; primary or secondary in nature; secured or unsecured; joint or several or joint and several; evidenced by a negotiable or non-negotiable instrument or writing; arising under or by operation of law; or otherwise incurred or contracted by Borrower for any reason whatsoever; for any transactions that may be voidable for any reason (such as infancy, insanity, ultra vires or otherwise); and originated, renewed or extinguished and then afterwards increased or reimposed.

If Lender presently holds one or more guarantees, or hereafter receives additional guarantees from Guarantor, Lender's rights under all guarantees shall be cumulative. This Guaranty shall not surface specifically provided below to the contrary, affect or invalidate any such other guarantees. Guarantor's liability will be Guarantor's aggregate liability under the terms of this Guaranty and any such other undated guarantees.

CONTINUING GUARANTY. THIS "CONTINUING GUARANTY" UNDER WHICH GUARANTOR AGREES TO GUARANTEE THE FULL AND PUNCTUAL PAYMENT, PERFORMANCE AND SATISFACTION OF THE INDEBTEDNESS OF BORROWER TO LENDER, NOW EXISTING OR HEREAFTER ARISING OR ACQUIRED, ON OPENING AND MATURING THEREOF. ACCORDINGLY, PAYMENTS MADE ON THE INDEBTEDNESS WILL NOT DISCHARGE OR DIMINISH GUARANTOR'S OBLIGATIONS UNDER THIS GUARANTY FOR AS LONG AS REMAINING AND SUCCEEDING INDEBTEDNESS EVEN WHEN ALL OR PART OF THE OUTSTANDING INDEBTEDNESS MAY BE A ZERO BALANCE FROM TIME TO TIME.

DURATION OF GUARANTY. This Guaranty will take effect when received by Lender without the necessity of any acceptance by Lender, or any notice to Guarantor or to Borrower, and will continue in full force until all of the Indebtedness incurred or contracted before receipt by Lender of any notice of revocation shall have been fully and finally paid and satisfied and until Guarantor's other obligations under this Guaranty shall have been performed in full. If Guarantor elects to terminate this Guaranty, Guarantor may only do so in writing. Guarantor's written notice of revocation must be mailed to Lender, by certified mail, at Lender's address last known to Guarantor. Lender may sign in writing. Written revocation of this Guaranty will apply only to advances or new indebtedness created after actual receipt by Lender of Guarantor's written revocation. For this purpose and without limitation, the sum "new indebtedness" does not include the indebtedness which at the time of notice of revocation is contingent, unliquidated, undetermined or not due and which later becomes absolute, liquidated, determined or due. This Guaranty will continue to bind Guarantor for all the indebtedness incurred by Borrower or committed by Lender prior to receipt of Guarantor's written notice of revocation, including any extensions, renewals, substitutions or modifications of the indebtedness. All renewals, extensions, substitutions, and modifications of the indebtedness granted after Guarantor's revocation, are contemplated under this Guaranty and, specifically will not be considered to be new indebtedness. This Guaranty shall bind Guarantor's estate as to the indebtedness created both before and after Guarantor's death or incapacity, regardless of Lender's actual notice of Guarantor's death. Subject to the foregoing, Guarantor, executor or administrator or other legal representative may terminate this Guaranty in the same manner in which Guarantor might have terminated it with respect to this Guaranty. A revocation Lender receives from any one or more Guarantors shall not affect the liability of any remaining Guarantors under this Guaranty. A revocation Lender receives may occur in the foregoing manner if the indebtedness covered by the Guaranty, and Guarantor specifically acknowledges and assigns as part of the indebtedness remains unpaid and even though the indebtedness may from time to time be zero dollars (\$0.00).

GUARANTOR'S AUTHORIZATION TO LENDER. Guarantor authorizes Lender, either before or after any revocation hereof, without notice or demand and without lessening Guarantor's liability under this Guaranty, from time to time: (A) prior to revocation as set forth above, to make one or more additional secured or unsecured loans to Borrower, to lease equipment or other goods to Borrower, or otherwise to extend additional credit to Borrower; (B) to alter, compromise, renew, extend, accelerate, or otherwise change one or more times the time for payment of either principal or interest on any indebtedness or any part of the Indebtedness, including increases and decreases of the rate of interest on the Indebtedness; (C) to repeat or make for as long thereafter as the original loan terms (I) to take and hold security for the payment of the Indebtedness; (D) to subordinate, amend, modify, vary, waive, subordinate, sell or dispose of, or release any such security, whether by deed or otherwise, to the lender or its assigns; and (E) to do all such acts and things as may be required or deemed wise by the lender in connection with the performance of its duties as guarantor.

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financial statements provided to Lender and no event has occurred which may materially adversely affect Guarantor's financial condition: (H) no litigation, claim, investigation, administrative proceeding or similar action (including those for unpaid taxes) against Guarantor is pending or threatened; (I) Lender has made no representation to Guarantor as to the creditworthiness of Borrower; and (J) Guarantor has established adequate means of obtaining from Borrower on a continuing basis information regarding Borrower's financial condition. Guarantor agrees to keep adequately informed from such means of any facts, events, or circumstances which might in any way affect Guarantor's risks under this Guaranty, and Guarantor further agrees that, absent a request for information, Lender shall have no obligation to disclose to Guarantor any information or documents acquired by Lender in the course of its relationship with Borrower.

GUARANTOR'S WAIVERS. Except as prohibited by applicable law, Guarantor waives any right to require Lender: (A) to continue lending money or to extend other credit to Borrower; (B) to make any presentment, protest, demand, or notice of any kind, including notice of any nonpayment of the indebtedness or of any nonpayment related to any collateral, or notice of any action or nonaction on the part of Borrower, Lender, any surety, endorser, or other guarantor in connection with the indebtedness or in connection with the creation of new or additional liens or obligations; (C) to resort for payment or to proceed directly or at once against any person, including Borrower or any other guarantor; (D) to proceed directly against or exhaust any collateral held by Lender from Borrower, any other guarantor, or any other person; (E) to give notice of the terms, time, and place of any public or private sale of personal property security held by Lender from Borrower or to comply with any other applicable provisions of the Uniform Commercial Code; (F) to pursue any other remedy within Lender's power; or (G) to commit any act or omission of any kind, or at any time, with respect to any matter whatsoever.

Guarantor also waives any and all rights or defenses based on suretyship or impairment of collateral including, but not limited to, any rights or defenses arising by reason of: (A) any right of appraisal, "one action" or "anti-deficiency" law or any other law which may prevent Lender from bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement of completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's right to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the indebtedness; (C) any inability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the indebtedness; (D) any right to claim discharge of the indebtedness on the basis of unjustified impairment of any collateral for the indebtedness; (E) any statute of limitations, if at any time any action or suit brought by Lender against Guarantor is commenced, there is outstanding indebtedness which is not barred by any applicable statute of limitations; or (F) any defenses given to guarantors at law or in equity other than actual payment and performance of the indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS. Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor holds jointly with someone else and all accounts Guarantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Guarantor authorizes Lender, to the extent permitted by applicable law, to hold those funds if there is a default, and Lender may apply the funds in these accounts to pay what Guarantor owes under the terms of this Guaranty.

SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR. Guarantor agrees that the indebtedness, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the indebtedness. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the indebtedness. If Lender so requests, any notes or credit agreements now or hereafter evidencing any debt or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Guaranty:

Amendments. This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Arbitration. Borrower and Guarantor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Guaranty or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act or disposition of any collateral shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order involving a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any collateral, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Guaranty shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, set-off, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Attorneys' Fees/Expenses. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay of liquidation), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

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**COMMERCIAL GUARANTY
(Continued)**

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bringing any action, including a claim for deficiency, against Guarantor, before or after Lender's commencement or completion of any foreclosure action, either judicially or by exercise of a power of sale; (B) any election of remedies by Lender which destroys or otherwise adversely affects Guarantor's subrogation rights or Guarantor's rights to proceed against Borrower for reimbursement, including without limitation, any loss of rights Guarantor may suffer by reason of any law limiting, qualifying, or discharging the indebtedness; (C) any disability or other defense of Borrower, of any other guarantor, or of any other person, or by reason of the cessation of Borrower's liability from any cause whatsoever, other than payment in full in legal tender, of the indebtedness; (D) any right to claim discharge of the indebtedness on the basis of unjustified impairment of any collateral for the indebtedness which is not barred by any applicable statute of limitations; or (E) any defense given to guarantors at law or in equity other than actual payment and performance of the indebtedness. If payment is made by Borrower, whether voluntarily or otherwise, or by any third party, on the indebtedness and thereafter Lender is forced to remit the amount of that payment to Borrower's trustee in bankruptcy or to any similar person under any federal or state bankruptcy law or law for the relief of debtors, the indebtedness shall be considered unpaid for the purpose of the enforcement of this Guaranty.

Guarantor further waives and agrees not to assert or claim at any time any deductions to the amount guaranteed under this Guaranty for any claim of setoff, counterclaim, counter demand, recoupment or similar right, whether such claim, demand or right may be asserted by the Borrower, the Guarantor, or both.

GUARANTOR'S UNDERSTANDING WITH RESPECT TO WAIVERS. Guarantor warrants and agrees that each of the waivers set forth above is made with Guarantor's full knowledge of its significance and consequences and that, under the circumstances, the waivers are reasonable and not contrary to public policy or law. If any such waiver is determined to be contrary to any applicable law or public policy, such waiver shall be effective only to the extent permitted by law or public policy.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Guarantor's accounts with Lender (whether checking, savings, or some other account). This includes all accounts Guarantor holds jointly with someone else and all accounts Guarantor may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Guarantor authorizes Lender, to the extent permitted by applicable law, to hold these funds if there is a default, and Lender may apply the funds in these accounts to pay what Guarantor owes under the terms of this Guaranty.

SUBORDINATION OF BORROWER'S DEBTS TO GUARANTOR. Guarantor agrees that the indebtedness, whether now existing or hereafter created, shall be superior to any claim that Guarantor may now have or hereafter acquire against Borrower, whether or not Borrower becomes insolvent. Guarantor hereby expressly subordinates any claim Guarantor may have against Borrower, upon any account whatsoever, to any claim that Lender may now or hereafter have against Borrower. In the event of insolvency and consequent liquidation of the assets of Borrower, through bankruptcy, by an assignment for the benefit of creditors, by voluntary liquidation, or otherwise, the assets of Borrower applicable to the payment of the claims of both Lender and Guarantor shall be paid to Lender and shall be first applied by Lender to the indebtedness. Guarantor does hereby assign to Lender all claims which it may have or acquire against Borrower or against any assignee or trustee in bankruptcy of Borrower; provided however, that such assignment shall be effective only for the purpose of assuring to Lender full payment in legal tender of the indebtedness. If Lender so requests, any notes or credit agreements now or hereafter outstanding any debts or obligations of Borrower to Guarantor shall be marked with a legend that the same are subject to this Guaranty and shall be delivered to Lender. Guarantor agrees, and Lender is hereby authorized, in the name of Guarantor, from time to time to file financing statements and continuation statements and to execute documents and to take such other actions as Lender deems necessary or appropriate to perfect, preserve and enforce its rights under this Guaranty.

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Amendments. This Guaranty, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Guaranty. No alteration or amendment to this Guaranty shall be effective unless given in writing and signed by the party or parties sought to be charged or bound by the alteration or amendment.

Arbitration. Borrower and Guarantor and Lender agree that all disputes, claims and controversies between them whether individual, joint, or class in nature, arising from this Guaranty or otherwise, including without limitation contract and tort disputes, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any collateral shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining injunctive relief or a temporary restraining order; invoking a power of sale under any deed of trust or mortgage; obtaining a writ of attachment or imposition of a receiver; or exercising any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any collateral, including any claim to rescind, reform, or otherwise modify any agreement relating to the collateral, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to enjoin or restrain any act of any party. Judgment upon any award rendered by any arbitrator may be entered in any court having jurisdiction. Nothing in this Guaranty shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceeding, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for those purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Attorneys' Fees; Expenses. Guarantor agrees to pay upon demand all of Lender's costs and expenses, including Lender's reasonable attorneys' fees and Lender's legal expenses, incurred in connection with the enforcement of this Guaranty. Lender may hire or pay someone else to help enforce this Guaranty, and Guarantor shall pay the costs and expenses of such enforcement. Costs and expenses include Lender's reasonable attorneys' fees and legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings (including efforts to modify or vacate any automatic stay or injunction), appeals, and any anticipated post-judgment collection services. Guarantor also shall pay all court costs and such additional fees as may be directed by the court.

Caption Headings. Caption headings in this Guaranty are for convenience purposes only and are not to be used to interpret or define the provisions of this Guaranty.

Governing Law. This Guaranty will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Guaranty has been accepted by Lender in the State of South Carolina.

Integration. Guarantor further agrees that Guarantor has read and fully understands the terms of this Guaranty; Guarantor has had the opportunity to be advised by Guarantor's attorney with respect to this Guaranty; the Guaranty fully reflects Guarantor's intentions and parol evidence is not required to interpret the terms of this Guaranty. Guarantor hereby indemnifies and holds Lender harmless from all losses, claims, damages, and costs (including Lender's attorneys' fees) suffered or incurred by Lender as a result of any breach by Guarantor of the warranties, representations and agreements of this paragraph.

Interpretation. In all cases where there is more than one Borrower or Guarantor, then all words used in this Guaranty in the singular shall be deemed to have been used in the plural where the context and construction so require; and where there is more than one Borrower named in this Guaranty or when this Guaranty is executed by more than one Guarantor, the words "Borrower" and "Guarantor" respectively shall mean all and any one or more of them. The words "Guarantor," "Borrower," and "Lender" include the heirs, successors, assigns, and transferees of each of them. If a court finds that any provision of this Guaranty is not valid or should not be enforced, that fact by itself will not mean that the rest of this Guaranty will not be valid or enforced. Therefore, a court will enforce the rest of the

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COMMERCIAL GUARANTY (Continued)

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Lender and Guarantor, shall constitute a waiver of any of Lender's rights or of any of Guarantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Guaranty, the granting of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Successors and Assigns. Subject to any limitations stated in this Guaranty on transfer of Guarantor's interest, this Guaranty shall be binding upon and inure to the benefit of the parties, their successors and assigns.

Waive Jury. Lender and Guarantor hereby waive the right to any jury trial in any action, proceeding, or counterclaim brought by either Lender or Borrower against the other.

CONSTRUCTION WITH OTHER GUARANTIES. No guaranty hereafter executed and delivered with respect to any liability, obligation or debt of Borrower to Lender shall be construed or deemed (i) to limit, restrict or otherwise adversely affect any security interest or other interest in property, or any other right, power or remedy, granted to or vested in Lender under or pursuant to either this Guaranty or any Related Document, or (ii) to alter or amend this Guaranty, or (iii) to be, or to give rise to, any waiver by Lender of any right under this Guaranty, unless such guaranty, or another written instrument signed by Lender, so provides by express reference to this Guaranty.

In addition, this Guaranty shall not be construed or deemed (a) to limit, restrict or otherwise adversely affect any security interest or other interest in property, or any other right, power or remedy, granted to or vested in Lender under or pursuant to any guaranty now existing with respect to any liability, obligation or debt of Borrower to Lender, or (b) to alter or amend any such guaranty, or (iii) to be, or to give rise to, any waiver by Lender of any right under any such guaranty.

NOTICE CONCERNING APPRAISAL WAIVER. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Guaranty. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Guaranty shall have the meanings ascribed to such terms in the Uniform Commercial Code:

Borrower. The word "Borrower" means STONEBRIDGE DEVELOPMENT GROUP, LLC; and Michael B. Alhalo and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Guarantor. The word "Guarantor" means everyone signing this Guaranty, including without limitation Francis M. Harvey, and in each case, any signer's successors and assigns.

Guarantor's Share of the Indebtedness. The words "Guarantor's Share of the Indebtedness" mean Guarantor's indebtedness to Lender as more particularly described in this Guaranty.

Guaranty. The word "Guaranty" means this guaranty from Guarantor to Lender.

Indebtedness. The word "Indebtedness" means Borrower's indebtedness to Lender as more particularly described in this Guaranty.

Lender. The word "Lender" means REGIONS BANK, its successors and assigns.

Note. The word "Note" means the promissory note dated September 28, 2008, in the original principal amount of \$595,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, refinancings of, consolidations of, and substitutions for the promissory note or agreement.

Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, guaranties, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the indebtedness.

EACH UNDERSIGNED GUARANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS GUARANTY AND AGREES TO ITS TERMS. IN ADDITION, EACH GUARANTOR UNDERSTANDS THAT THIS GUARANTY IS EFFECTIVE UPON GUARANTOR'S EXECUTION AND DELIVERY OF THIS GUARANTY TO LENDER AND THAT THE GUARANTY WILL CONTINUE UNTIL TERMINATED IN THE MANNER SET FORTH IN THE SECTION TITLED "DURATION OF GUARANTY". NO FORMAL ACCEPTANCE BY LENDER IS NECESSARY TO MAKE THIS GUARANTY EFFECTIVE. THIS GUARANTY IS DATED SEPTEMBER 29, 2008.

GUARANTOR:

Francis M. Harvey

SIGN HERE

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
Case No. 2008-CP-10-2513

Regions Bank,

Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.,

Defendants.

AFFIDAVIT OF DEBT

PERSONALLY appeared before me, Mark Smith, who being duly sworn, says that:

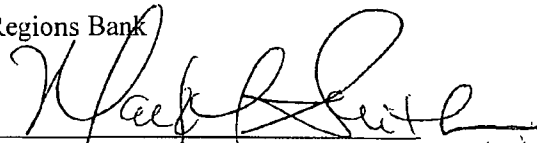
1. He is the Vice President for Regions Bank d/b/a Regions Mortgage, Plaintiff in this action.
2. Plaintiff is the owner and holder of the Note and Mortgage subject of this action.
3. Installments of principal and interest required by the Note and Mortgage have not been paid although demand for the payment thereof has been made by Plaintiff, and all required notices have been provided.
4. Plaintiff as the holder of the said Note and Mortgage has elected to declare the entire balance of said principal and interest due and payable at once.
5. There is now due and owing and unpaid upon the said Note and Mortgage the following amounts as of May 11, 2010:

Original principal	\$595,000.00
Principal Balance	\$595,000.00
Accrued Interest Due	\$84,085.06
Late Fees	\$448.32
Appraisal	\$285.00
2008 and 2009 Taxes	<u>\$36,912.43</u>
Total amount due on Note and Mortgage	\$716,730.81

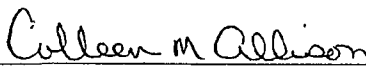
Interest continues to accrue at the current rate of 5.75% *per annum* (which is currently \$61.97917 *per diem*) from May 11, 2010.

6. Plaintiff is seeking foreclosure of its Mortgage and does not waive the right to a personal or deficiency judgment.

7. The attorneys of the firm of Haynsworth Sinkler Boyd, P.A., are authorized to testify on behalf of the Plaintiff in connection with the above-captioned foreclosure action.

Regions Bank
 By: 
 Mark Smith
 Its: Vice President

SWORN to and subscribed before me
 on this 5 day of May, 2010.

 (Seal)
 Notary Public for South Carolina
 My commission expires: 2-12-2017



STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-10-2513

Regions Bank,

Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.

Defendants.

AFFIDAVIT OF LOUISE M. JOHNSON

FILED
2009 MAY 15 PM 12:56
JULIE J. ARMSTRONG
CLERK OF COURT

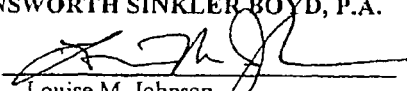
I, Louise M. Johnson, being duly sworn, depose and state on oath as follows:

1. I am an attorney with the law firm of Haynsworth Sinkler Boyd, P.A., attorneys for plaintiff in the above captioned action.
2. I have read the Order issued by the Supreme Court of South Carolina entered May 4, 2009 (Temporary Restraining Order) "preventing the Foreclosure sale of any property arising out of a loan owned or guaranteed by petitioner [Federal National Mortgage Association] or Freddie Mac or held by a servicer who has signed an agreement to participate in the [Home Affordable Modification Program]". Said Order is attached hereto as Exhibit A.
3. The subject mortgage in this foreclosure action is not a mortgage owned or guaranteed by petitioner Federal National Mortgage Association or Freddie Mac or held by a servicer who has signed an agreement to participate in the Home Affordable Modification Program.
4. As such, this foreclosure action is not subject to said Order.

Further Affiant sayeth not.

HAYNSWORTH SINKLER BOYD, P.A.

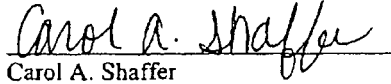
By:


Louise M. Johnson

Post Office Box 11889
Columbia, South Carolina 29211-1889

Attorneys for Regions Bank

SWORN to and subscribed before me
on this 12 day of May, 2009.


Carol A. Shaffer

Notary Public for South Carolina

My commission expires: January 14, 2015

The Supreme Court of South Carolina

Ex Parte Federal National
Mortgage Association, Petitioner.

In Re Federal National
Mortgage Association ("Fannie
Mae") Loans Subject to
Foreclosure Sale.

ORDER

Petitioner asks this Court to issue an ex parte temporary injunction¹ or restraining order "enjoining all judicial officials in South Carolina conducting foreclosure sales on May 4, 2009 (or the next judicial sales dated) from dismissing all eligible one- to four-unit owner occupied properties securing Fannie Mae portfolio mortgage loans and MBS pool mortgage loans guaranteed by Fannie Mae for which there is a foreclosure judgment." It asserts that this injunction is necessary to avoid undue costs if these foreclosure actions are dismissed rather than stayed or postponed based

¹ Under Rule 65(a), SCRPC, a temporary injunction cannot be issued without notice to the adverse party.

EXHIBIT A

on the fact that the underlying loans may be subject to modification under the Homeowner Affordability and Stability Plan, the Home Affordable Modification Program (HMP), and the United States Treasury Supplemental Directive 09-01. It also states that, "absent injunction, mortgagors eligible for relief under the HMP program could be denied their right to participate because their property was sold at the foreclosure sale. This qualifies as irreparable injury for which the court should provide redress in the form of a temporary injunction."

While I am very troubled by the ex parte nature of this petition,² I grant a temporary restraining order (TRO) preventing the foreclosure sale of any property arising out of a loan owned or guaranteed by petitioner or Freddie Mac or held by a servicer who has signed an agreement to participate in the HMP.³ If a sale has already taken place today prior to issuance of this order, this TRO shall stay the master-in-equity, circuit court judge or special

² Petitioner has known about the facts supporting its request for injunctive relief for almost a month before filing this petition, and could have provided notice to the opposing parties during that period. If it were not for the interest of mortgagors who may be entitled to a loan modification, I would deny the requested relief based on petitioner's lack of diligence.

³ While petitioner asks for this relief only as to Fannie Mae owned or guaranteed loans, this TRO applies to all loans that are subject to modification whether owned or guaranteed by Fannie Mae or Freddie Mac, or a servicer who has signed an agreement to participate in the HMP.

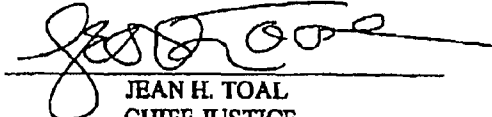
referee from taking any further action to complete the sale including the issuance of a deed to the purchaser.

By May 15, 2009, the plaintiff in every mortgage foreclosure action stayed by this order shall serve on all other parties to the action (including petitioner and/or Freddie Mac as appropriate) an affidavit setting forth its belief whether the loan is subject to modification under the HMP. If the affidavit indicates that the loan is subject to modification under the HMP, the foreclosure shall be stayed pending a determination if the loan will be modified. If the loan is modified, the foreclosure action shall be dismissed. If the loan is not modified, the foreclosure may proceed.

If the affidavit indicates that the loan is not subject to modification under the HMP, the TRO will be lifted unless petitioner, Freddie Mac or another party serves and files a counter affidavit asserting that the loan is subject to modification under the HMP by May 22, 2009. If a counter affidavit is timely filed, the TRO will remain in effect until the master-in-equity or circuit court judge determines if the HMP is applicable to the loan. The lower court shall insure that these determinations are made in an expeditious manner.

If the loan is determined not to be subject to modification under the HMP, the TRO shall be lifted and the foreclosure may continue. If the lower court determines that the loan is subject to modification and the loan is modified, the foreclosure action shall be dismissed. If the lower court determines that the loan is subject to modification but the loan is not subsequently modified, the TRO shall be lifted and the foreclosure may continue.

IT IS SO ORDERED.



JEAN H. TOAL
CHIEF JUSTICE

Columbia, South Carolina

May 4, 2009
4:50 p.m.

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-10-2513

Regions Bank,

Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka Francis
M. Harvey; Brandon Advertising, Inc.;
Rubeling & Associates, Inc.; Carolina Custom
Docks, LLC; J. Mark Caldwell, individually;
Carolina Clearing & Grading, Inc.

Defendants.

CERTIFICATE OF SERVICE

FILED
2009 MAY 15 PM 12:56
JULIE J. ARMSTRONG
CLERK OF COURT

I, the undersigned employee of Haynsworth Sinkler Boyd, P.A., do hereby certify that I have caused the foregoing to be served via U.S. mail, postage prepaid, to all parties of record at the addresses shown below.

1. Affidavit of Louise M. Johnson; and
2. Certificate of Service.

Parties of Record

Plantation Isle Equity Partners General Partnership
ATTN: President
906 Cold Bottom Rd.
Sparks, MD 21152

Plantation Isle Equity Group, LLC, a Maryland
Limited Liability Company
ATTN: Sam Stathos, its Registered Agent
412 N. Poplar Dr.
Surfside Beach, SC 29575

Mark W. McKnight, Esq.
P.O. Box 1255
Charleston, SC 29402

Carolina Clearing & Grading, Inc.
ATTN: Jeremy Sanders, President
1034 Live Oak Ave.
Moncks Comer, SC 29461

Attorney for Defendant Carolina Federal Savings
Bank

Michael Aiello
906 Cold Bottom Rd.
Sparks, MD 21152

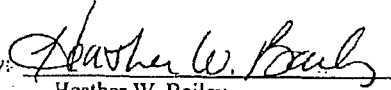
Frank M. Harvey aka Francis M. Harvey
2109 Fox Trail Court
Reisterstown, MD 21136

Carolina Custom Docks, LLC
ATTN: George Ruth, Owner
2266 United Dr.
Huger, SC 29450

Charles S. Altman, Esq.
Altman & Coker, LLC
P.O. Box 265
Charleston, SC 29402

Attorney for Defendant J. Mark Caldwell and
Stonebridge Development Group, LLC

HAYNSWORTH SINKLER BOYD, P.A.

By: 
Heather W. Bailey
Paralegal

May 14, 2009

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
Case No. 2008-CP-10-2513

Regions Bank,

Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.,

Defendants.

NOTICE OF HEARING

FILED
2010 APR 26 PM 4:00
JULIE J. ARMSTRONG
CLERK OF COURT

**TO PLANTATION ISLE EQUITY GROUP, LLC, A MARYLAND LIMITED LIABILITY
COMPANY, PLANTATION ISLE EQUITY PARTNERS GENERAL PARTNERSHIP,
MICHAEL AIELLO, FRANK M. HARVEY AKA FRANCIS M. HARVEY, AND
CAROLINA CUSTOM DOCKS, LLC, *PRO SE* DEFENDANTS, CHARLES S. ALTMAN,
ATTORNEY FOR DEFENDANTS STONEBRIDGE DEVELOPMENT GROUP, LLC AND
J. MARK CALDWELL, INDIVIDUALLY, AND MARK W. MCKNIGHT, ATTORNEY
FOR DEFENDANT CAROLINA FEDERAL SAVINGS BANK:**

NOTICE IS HEREBY GIVEN that a hearing on the following matters will be held before
The Honorable Mikell R. Scarborough, Master in Equity for Charleston County, in the above

captioned matter on Tuesday, May 11, 2010, at 2:00 P.M., at the Charleston County Courthouse,
100 Broad Street, Courtroom 2A, Charleston, South Carolina 29401:

1) Plaintiff's Motion for Summary Judgment on priority of title/lien against Defendant
Carolina Federal Savings Bank; and

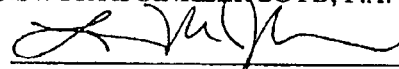
2) Plaintiff's foreclosure action.

You are requested to notify Louise M. Johnson at (803) 540-7863 of your intention to
appear.

YOU ARE INVITED TO ATTEND AS YOU SEE FIT.

HAYNSWORTH SINKLER BOYD, P.A.

By:


Louise M. Johnson

Post Office Box 11889
Columbia, South Carolina 29211-1889
(803) 779.3080 Tel
(803) 765.1243 Fax
Attorneys for Regions Bank

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
Case No. 2008-CP-10-2513

Regions Bank,

Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.,

Defendants.

FILED
2010 APR 26 PM 2:00
JULIE J. ARMSTRONG
CLERK OF COURT

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on April 23, 2010, I caused the below named parties to be served with a copy of the following document(s):

1. Notice of Hearing; and
2. Certificate of Service

by causing said document(s) to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, with return address clearly shown, as set forth below.

**VIA FACSIMILE 843-853-9838
and US MAIL**
Charles S. Altman, Esq.
Altman & Coker, LLC
PO Box 265
Charleston, SC 29402
Attorneys for Defendants Stonebridge
Development Group, LLC and J. Mark
Caldwell, individually

**VIA FACSIMILE 843-722-4094
and US MAIL**
Mark W. McKnight, Esq.
PO Box 1255
Charleston, SC 29402
Attorney for Carolina Federal Savings Bank

**VIA FACSIMILE 843-577-1655
and US MAIL**

Nosizi Ralephata, Esq.
Turner Padgett Graham & Laney, P.A.
PO Box 22129
Charleston, SC 29413-2129

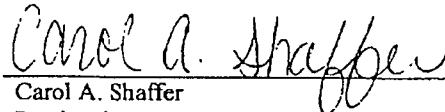
Plantation Isle Equity Partners General
Partnership
906 Cold Bottom Road
Sparks, MD 21152
Attn: President

Frank M. Harvey aka Francis M. Harvey
2109 Fox Trail Court
Reisterstown, MD 21136

Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company
c/o Sam G. Stathos as Registered Agent
412 N. Poplar Drive
Surfside Beach, SC 29575

Michael Aiello
906 Cold Bottom Road
Sparks, MD 21152

Carolina Custom Docks, LLC
2266 United Drive
Huger, SC 29450



Carol A. Shaffer
Paralegal
Haynsworth Sinkler Boyd, P.A.
Post Office Drawer 11889
Columbia, South Carolina 29211-1889

Master's Order of Sale and Disbursement (Sept. 10, 2010)

STATE OF SOUTH CAROLINA)

COUNTY OF CHARLESTON)

Regions Bank,)

PLAINTIFF)

vs.)

Stonebridge Development Group, LLC,)
et al)

DEFENDANT(S))

IN THE COURT OF COMMON PLEAS
CASE NO. 2008-CP-10-2513

MASTER'S ORDER OF SALE AND
DISBURSEMENT

2010 SEP 10 PM 1:34
JULIE J. ARMS, FRON
CLERK OF COURT

FILED

UNDER AUTHORITY of a Decree herein dated May 14, 2010, I offered for sale, to the highest bidder for cash, at public auction on August 5, 2010, the premises subjected to this suit, and I received a high bid of \$260,000.00, from Woodrow W. Blizzard; and I executed and delivered a Master's deed to Woodrow W. Blizzard, and I have disbursed the funds as follows:

CONSIDERATION	\$	260,000.00
DEPOSIT (ORDER OF REFERENCE)	\$	125.00
RECEIVED BY MASTER	\$	3,197.97
TOTAL RECEIVED BY MASTER	\$	3,322.97
DISBURSEMENTS		
MASTER'S FEES	\$	100.00
NEWSPAPER ADVERTISEMENT	\$	697.97
COUNTY COMMISSION	\$	2,500.00
MASTER'S DEED	\$	25.00
TOTAL OF MASTER'S COSTS	\$	3,322.97

ALL OF THE FUNDS HAVING BEEN DISBURSED, I HEREBY ORDER THE FILE CLOSED AND THE CASE ENDED.

9/3, 2010
CHARLESTON, SC

MIKELL R. SCARBOROUGH
MASTER IN EQUITY

Order of Deficiency Judgment (Nov. 30, 2010)



STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

COUNTY OF CHARLESTON

Case No. 2008-CP-10-2513

Regions Bank,

Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.,

Defendants.

ORDER OF DEFICIENCY JUDGMENT

(As to Stonebridge Development Group, LLC, J.
Mark Caldwell, individually, Michael Aiello, and
Frank M. Harvey aka Francis M. Harvey)

FILED
2010 MAY 30 PM 2:22
JULIE J. ARMSTRONG
CLERK OF COURT

Pursuant to the Judgment of the Master in Equity given in the above case issued on May 14, 2010, and filed May 18, 2010, the Plaintiff is entitled to have a personal and deficiency judgment against defendants Stonebridge Development Group, LLC, J. Mark Caldwell, individually, Michael Aiello, and Frank M. Harvey aka Francis M. Harvey as follows:

Amount of judgment of foreclosure entered by Equity Court	\$733,694.66
PLUS: Interest from May 11, 2010, to August 5, 2010 (86 days at \$61.97917 <i>per diem</i>)	\$5,330.21
Bid Fee	<u>\$60.00</u>
Total Judgment	\$739,084.87
LESS: Amount of Third- Party Sales Proceeds	<u>-\$256,802.03</u>
DEFICIENCY JUDGMENT ENTERED AGAINST STONEBRIDGE DEVELOPMENT GROUP, LLC, J. MARK CALDWELL, INVIDIDUALLY, MICHAEL AIELLO, AND FRANK M. HARVEY AKA FRANCIS M. HARVEY	\$482,282.84

IT IS SO ORDERED.

11/24, 2010

Charleston, South Carolina

Mikell R. Scarborough
Master in Equity for Charleston County

Order Denying Motion
of Defendant Frank M.
Harvey for Relief from
Judgment (Oct. 29,
2010)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No.: 2008-CP-10-2513

Regions Bank,

Plaintiff,

v.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.,

Defendants.

**ORDER DENYING MOTION OF DEFENDANT
FRANK M. HARVEY FOR RELIEF FROM
JUDGMENT**

FILED
2010 OCT 29 AM 11:02
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

THIS MATTER CAME before the Court pursuant to the Motion of Defendant Frank M. Harvey for Relief From Judgment ("Defendant's Motion") filed on August 4, 2010, as supplemented on August 20, 2010. Regions Bank ("Plaintiff") filed Plaintiff's Memorandum in Opposition to Defendant's Motion ("Plaintiff's Memorandum") on September 16, 2010.

In the above-referenced action, Plaintiff sought foreclosure of the subject note and mortgage, with deficiency demanded, and sought personal judgment against Frank M. Harvey ("Defendant") pursuant to his unconditional personal guaranty of the debt. On May 7, 2008, Plaintiff filed the original Civil Action Coversheet, Certificate of Exemption from ADR, Summons and Complaint ("Foreclosure Action") with Exhibits (collectively referred to hereinafter as the "Pleadings") in the Office of the Clerk of Court for Charleston County.

Defendant was personally served the Pleadings on August 14, 2008, as evidenced by the Affidavit of Service ("Affidavit") filed with the Court on September 2, 2008, a copy of which is attached hereto as **Exhibit A**. After a period of more than thirty (30) days, no notice, motion, or other pleading was filed by or on behalf of Defendant, and, on February 24, 2010, an Order of Default as to Defendant was entered ("Order of Default").

On May 18, 2010, after notice and a hearing, the Master in Equity's Order and Judgment of Foreclosure and Sale was entered ("Foreclosure Decree"). The Foreclosure Decree awarded Plaintiff, in addition to other relief, personal judgment against Defendant in the amount of \$733,694.66, with a credit against the judgment to be given for the net proceeds received by Plaintiff for the sale. Pursuant to the Foreclosure Decree, the property was offered for sale on July 6, 2010, at the initial foreclosure sale, and on August 5, 2010, at the deficiency sale. Woodrow W. Blizzard was the high bidder at the conclusion of the deficiency sale with a bid in the amount of \$260,000.00.

On August 4, 2010, one day prior to the deficiency sale, Defendant filed this Motion asserting that the Foreclosure Decree is void due to lack of personal jurisdiction. As a result, an emergency hearing on Defendant's Motion was held before me, via phone conference, the morning of August 5, 2010, at 9:00 a.m., just hours before the deficiency sale occurred. Present and participating in the hearing was Louise M. Johnson of Haynsworth Sinkler Boyd, P.A., attorneys for Plaintiff. Also present was J. Rutledge Young, III, attorney Defendant. For the reasons set forth herein, Defendant's Motion is DENIED.

FINDING OF FACT AND CONCLUSION OF LAW

The South Carolina Supreme Court has held that, "[a] presumption of proper service exists when the rules governing service are followed." *BB&T v. Taylor*, 369 S.C. 548, 633

S.E.2d 501 (2006). Plaintiff contends that it followed the rules governing service of process by hiring a process server who hand delivered the Pleadings to Defendant and who, after personally serving Defendant, executed the Affidavit which included the time, date, and location of service, along with a physical description of Defendant. In the Affidavit of Frank M. Harvey filed on August 26, 2010, Defendant attempts to rebut the presumption of proper service by asserting that the Affidavit is false and that he was not personally, nor properly served. Further, Plaintiff argues that the filing of an Answer and Counterclaim by Defendant on June 13, 2008, in a separate civil action (*J. Mark Caldwell et al. v. Michael Aiello, Francis M. Harvey, et al.*, C/A No. 2008-CP-10-2169) ("Caldwell Case") is evidence that Defendant had actual notice of this foreclosure action as early as June 2008.

After considering Defendant's Motion, Plaintiff's Memorandum, oral arguments presented at the hearing, and all other relevant evidence, I find the following:

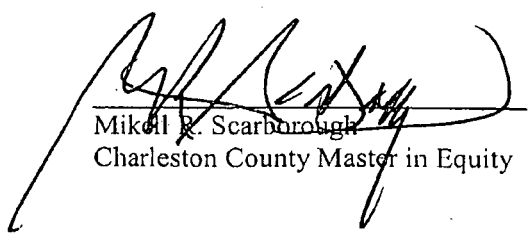
1. Plaintiff complied with the South Carolina Rules of Civil Procedure governing service of process and Defendant was properly served as evidenced by the service Affidavit; and
2. Defendant's Motion was not filed in a timely manner as Defendant had actual notice of this foreclosure action on June 13, 2008, which is evidenced by the Answer and Counterclaim he filed in the Caldwell Case.

For the reasons set forth above,

IT IS THEREFORE ORDERED that the Motion of Defendant Frank M. Harvey for Relief from Judgment is DENIED, and

IT IS SO ORDERED.

October 24, 2010


Mikell R. Scarborough
Charleston County Master in Equity

Summons and Complaint (May 7, 2008)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP- 10- 2513

Regions Bank,

Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.,

Defendants.

SUMMONS

Mortgage Foreclosure
Deficiency Demanded
Non-Jury

FILED
2008 MAY -7 PM 1:42
JULIE J. ARMSTRONG
CLERK OF COURT
BY CD

03-6589

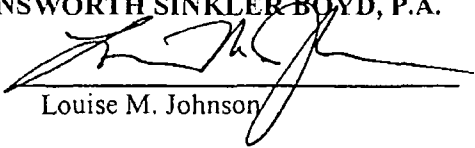
YOU ARE HEREBY SUMMONED and required to answer the Complaint herein, a copy of which is herewith served upon you, or otherwise appear and defend, and to serve a copy of your Answer to the said Complaint upon the subscriber at her offices, 1201 Main Street, 22nd Floor (29201-3226), Post Office Box 11889, Columbia, South Carolina 29211-1889, within thirty (30) days after the service hereof (except as to the Defendant United States of America, if named, shall have sixty (60) days after the service hereof), exclusive of the day of such service; and if you fail to answer the Complaint within the time period aforesaid, or otherwise appear and defend, the Plaintiff in this action will apply to the Court for the relief demanded therein, and judgment by default will be rendered against you for the relief demanded in the Complaint.

YOU WILL ALSO TAKE NOTICE that should you fail to Answer the foregoing Complaint, the Plaintiff will move for a general Order of Reference of this cause to the Master-in-Equity or Special Referee for this county, which Order shall, pursuant to Rule 53 of the South Carolina Rules of Civil Procedure, specifically provide that the said Master-in-Equity or Special Referee is authorized and empowered to enter a final judgment in this cause.

This communication is an attempt to collect a debt, and any information obtained will be used for that purpose.

HAYNSWORTH SINKLER BOYD, P.A.

By:


Louise M. Johnson

1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 Tel
(803) 765.1243 Fax

Attorney for Regions Bank

May 6, 2008

STATE OF SOUTH CAROLINA
COUNTY OF ANDERSON

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP- 10-2513

Regions Bank,

Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.,

Defendants.

COMPLAINT
Mortgage Foreclosure
Deficiency Demanded
Non-Jury

FILED
2008 MAY -7 PM 1:44
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Plaintiff Regions Bank, ("Plaintiff"), complaining of the above-captioned defendants,
alleges as follows:

1. This is an action for foreclosure of a mortgage upon certain real estate in Charleston County, South Carolina.
2. Plaintiff is a state banking association organized and existing under the laws of the South Carolina.
3. On information and belief, Stonebridge Development Group, LLC is a South Carolina corporation with its principal place of business in Charleston County, State of South Carolina.
4. On information and belief, Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company is a Maryland company doing business in Charleston County, State of South Carolina.

5. On information and belief, J. Mark Caldwell, individually, Michael Aiello, and Frank M. Harvey aka Francis M. Harvey are citizens and residents of Charleston County, State of South Carolina.

6. The remaining defendants Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company, Carolina Federal Savings Bank, Plantation Isle Equity Partners General Partnership, Brandon Advertising, Inc., Rubeling & Associates, Inc., Carolina Custom Docks, LLC, and Carolina Clearing & Grading, Inc. may have an interest or lien on the subject property.

7. The real property hereinafter described, that is the subject of this foreclosure action, is situated and located in the County of Charleston, State of South Carolina; therefore, this Court has proper jurisdiction over the subject matter of and the parties to this action.

8. This is an action by a debt collector to foreclose a mortgage from Stonebridge Development Group, LLC to Plaintiff and any information obtained may be used for that purpose. The Notice required by the Fair Debt Collection Practices Act is attached hereto as **Exhibit A**.

**FOR A FIRST CAUSE OF ACTION
(Foreclosure)**

9. Plaintiff incorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

10. For valuable consideration given, on or about September 29, 2006, Defendant Stonebridge Development Group, LLC ("Defendant Stonebridge") executed and delivered to Plaintiff a Promissory Note in the original principal amount of Five Hundred Ninety-five Thousand and 00/100 (\$595,000.00) Dollars ("Note"). A true and correct copy of the Note is attached hereto as **Exhibit B** and its terms thereof are incorporated herein by reference.

11. To secure the repayment of the Note and the debt evidenced thereby, Defendant Stonebridge executed and delivered unto Plaintiff a certain Mortgage dated September 29, 2006 ("Mortgage"), whereby Defendant Stonebridge mortgaged to Plaintiff the real property described in the Mortgage. The Mortgage was recorded on October 5, 2006, in the Register of Deeds Office for Charleston County in Book Z600 at Page 841. A true and correct copy of the Mortgage is attached hereto as **Exhibit C** and its terms thereof are incorporated herein by reference.

12. The real property ("Mortgaged Property") that is subject to the lien of the Mortgage is more fully described as follows:

ALL that certain piece, parcel or lot of land, lying and being in the State of South Carolina, County of Charleston, being shown and designated as Lot No. 1 on a plat of Plantation Isle, Sheet 3 of 4 prepared by David & Floyd, Inc. dated September 29, 1998 filed in the RMC Office for Charleston County, S.C. in Plat Book ED, Page 437, reference being made to said plat for a more complete metes and bounds description hereof.

BEING the same property conveyed to Mortgagor herein by Deed of Lewis Bartles dated May 23, 2005 and recorded May 25, 2005 in Book D-538, Page 770, in the Charleston County RMC Office.

For reference see TMS: 410-00-00-067

Property Address: Lot 1 Stoney Poynt Ct @ Plantation Isle, North Charleston, SC
29405

13. Defendant Stonebridge was the legal owner of the property at the time the Mortgage was executed.

14. Defendant Stonebridge sold the subject property to Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company by virtue of a deed executed on December 27, 2007, and recorded on December 27, 2007, in the Register of Deeds Office for Charleston County in Book K647 at Page 765.

15. The Note and Mortgage provide that upon Defendant Stonebridge's failure to make payments thereunder when due, the entire outstanding balance under the Note and Mortgage

shall at the option of Plaintiff, become immediately due and payable, and Plaintiff may foreclose the Mortgages.

16. Defendant Stonebridge is in default under the terms of the Note by failing to make payments when due.

17. Plaintiff has and does hereby elect to declare the total unpaid balance of principal and interest on the Note due and payable and does hereby elect to foreclose its Mortgage on the Mortgaged Property, reserving, however, any and all other rights and remedies Plaintiff may have under the Note and Mortgage including the right to a deficiency judgment and the right to judgment against any other person or entity liable for the debt.

18. There is due and owing on the Note, as of April 28, 2008, the total sum of Six Hundred Twenty Seven Thousand Seven Hundred Thirty-One and 20/100 (\$627,731.20) Dollars consisting of:

Original Principal	\$595,000.00
Principal Balance	\$595,000.00
Accrued but unpaid interest	\$32,282.88
Late Fees	<u>\$448.32</u>
Total balance on Agreement and Mortgage	\$627,731.20

Interest continues to accrue at 5.75% per annum (which is currently \$95.03472 *per diem*).

19. Despite demand, Defendant Stonebridge has not paid the aforesaid amounts due under the Note.

20. The Note provide that,

Lender may hire or pay someone else to help collect this Note if Borrower does not pay. Borrower will pay Lender that amount. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Note.

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

22. If Plaintiff secures the premises being foreclosed herein, Plaintiff's costs of securing said premises should be added to any judgment rendered on its behalf. If Plaintiff pays any utility charges constituting a lien on said premises, Plaintiff's costs should be added to any judgment rendered on its behalf.

23. Plaintiff does not waive, but specifically demands judgment against Defendant Stonebridge for the full amount found to be due to Plaintiff on the Note and Mortgage held by Plaintiff, with the right to enter a personal deficiency judgment against Defendant Stonebridge for any deficiency in this action remaining after the sale of the Mortgaged Property.

24. Upon information and belief, the Defendants below named claims or may claim a subordinate lien or junior interest upon or interest in the subject property, and in the event there is a surplus from the sale of the subject property, the validity, priority and amount of any such lien claim will be determined at a hearing subsequent to the sale, in accordance with the Circuit Court Rule 53:

(a) The defendant Carolina Federal Savings Bank by virtue of a junior Mortgage in the amount of \$2,025,000.00 dated December 27, 2007, and recorded on December 27, 2007, in Book M647 at Page 104 in the Register of Deeds Office for Charleston County and by virtue of its Assignment of Leases and Rents recorded on December 27, 2007, in Book O647 at Page 567 in the Register of Deeds Office for Charleston County.

(b) The defendant Plantation Isle Equity Partners General Partnership by virtue of a junior Mortgage in the amount of \$1,604,000.00 dated January 8, 2008, and recorded January 9, 2008, in Book K648 at Page 272 in the Register of Deeds Office for Charleston County.

(c) The defendants Michael S. Aiello and Frank M. Harvey aka Francis M. Harvey by virtue of a junior Mortgage in the amount of \$561,321.58 dated January 8, 2008, and recorded

January 9, 2008, in Book K648 at Page 280 in the Register of Deeds Office for Charleston County.

(d) The defendant Brandon Advertising, Inc. by virtue of that certain Confession of Judgment, Case No. 2006-CP-10-4550, recorded on June 4, 2007, and filed in the Office of the Clerk of Court for Charleston County.

(e) The defendant Rubeling & Associates by virtue of that certain Order for Default Judgment and Reference to the Master, Case No. 2007-CP-10-3285, recorded October 22, 2007, and filed in the Office of the Clerk of Court for Charleston County.

(f) The defendant Carolina Custom Docks, LLC by virtue of that certain Lis Pendens, Case No. 2007-CP-10-1362, dated April 2, 2007, and filed in the Office of the Clerk of Court for Charleston County.

(g) The defendant Carolina Clearing & Grading, Inc. by virtue of that certain Order for Default Judgment and Reference to the Master, Case No. 2007-CP-10-2708, recorded October 1, 2007, and filed in the Office of the Clerk of Court for Charleston County.

FOR A SECOND CAUSE OF ACTION
(Suit on Guaranty)

23. Plaintiff reincorporates and realleges each of the foregoing allegations as fully as if repeated herein verbatim.

24. As set forth herein, to further induce Plaintiff to enter into the Note and Mortgage, and as additional security for the Note and the debt evidenced thereby, and for valuable consideration given, Defendant J. Mark Caldwell made, executed and delivered unto Plaintiff that certain Commercial Guaranty dated September 29, 2006.

25. As set forth herein, to further induce Plaintiff to enter into the Note and Mortgage, and as

additional security for the Note and the debt evidenced thereby, and for valuable consideration given, Defendant Michael S. Aiello made, executed and delivered unto Plaintiff that certain Commercial Guaranty dated September 29, 2006.

26. As set forth herein, to further induce Plaintiff to enter into the Note and Mortgage, and as additional security for the Note and the debt evidenced thereby, and for valuable consideration given, Defendant Frank M. Harvey aka Francis M. Harvey made, executed and delivered unto Plaintiff that certain Commercial Guaranty dated September 29, 2006.

27. Pursuant to the terms of the Guaranties, Defendants J. Mark Caldwell, Michael S. Aiello, and Frank M. Harvey aka Francis M. Harvey (collectively "Guarantors") guaranteed to Plaintiff the payment when due of the entire indebtedness evidenced by the Note.

28. Defendant Stonebridge is in default under the terms of the Note by reason of its failure to make payments under the Note when due.

29. Despite demand, neither Defendant Stonebridge nor Guarantors have made payments of the amounts due under the Note and Guaranties. Therefore, the Guaranties are in default.

30. The Guaranties guaranteed the full and faithful performance of the terms and obligations of Defendant Stonebridge under the terms of the Note.

31. Additionally, the Guaranties provide in part for an award of reasonable attorneys fees, plus the costs of collection.

32. Plaintiff has been forced to place the Guaranties with the undersigned attorneys for collection.

33. There is due and owing on the Note and the Guaranties, as of April 28, 2008, the total sum of Six Hundred Twenty Seven Thousand Seven Hundred Thirty-One and 20/100 (\$627,731.20) Dollars.

34. Guarantors has waived notice of presentment and demand for payment or performance,

and have waived notice of dishonor.

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

WHEREFORE, Plaintiff prays:

1. That the indebtedness due on the Note and Mortgage be computed, ascertained and established by this Court, together with all accrued interest, all costs of this action and other costs of collection incurred by Plaintiff, and reasonable attorneys' fees, and that Plaintiff be granted judgment of foreclosure against Defendant Stonebridge, J. Mark Caldwell, Michael S. Aiello, and Frank M. Harvey aka Francis M. Harvey in that amount;

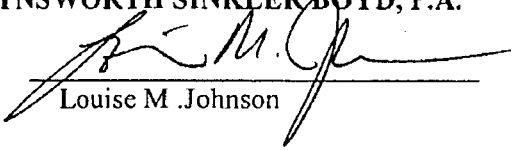
2. This Court issue its order:

- (a) Declaring Plaintiff's Mortgage to be a valid lien upon the Mortgaged Property;
- (b) Directing that Plaintiff's Mortgage described herein be foreclosed and the Mortgaged Property hereinabove described be sold in accordance with the law and practices of this Court, and that Defendant Stonebridge and all other persons claiming by, through or under them, be barred and forever foreclosed of all right, title, interest and equity of redemption in and to the said Mortgaged Property or any part thereof;
- (c) Directing that out of the proceeds of the sale of the Mortgaged Property, after the costs of this action and of such sale have been deducted, Plaintiff be paid in full the amount due on its Note and Mortgage with the interest thereon and attorneys' fees as set out above, and all amounts that it may hereafter and prior to such sale have to pay pursuant to the provisions of its Mortgage with the surplus, if any, to be distributed according to law; and

(d) Granting Plaintiff a personal judgment against Defendant Stonebridge J. Mark Caldwell, Michael S. Aiello, and Frank M. Harvey aka Francis M. Harvey for any deficiency amount; and

3. Granting Plaintiff such other and further relief as this Court may deem just and proper.

HAYNSWORTH SINKLER BOYD, P.A.

By: 

Louise M. Johnson

1201 Main Street, Suite 2200
Post Office Drawer 11889 (29211-1889)
Columbia, South Carolina 29201
(803) 779.3080 Tel
(803) 765.1243 Fax

Attorney for Regions Bank

May 6, 2008

LIST OF EXHIBITS TO COMPLAINT

Exhibit A	Notice Required by the Fair Debt Collection Practices Act
Exhibit B	Promissory Note
Exhibit C	Mortgage

NOTICE REQUIRED BY THE
FAIR DEBT COLLECTION
PRACTICES ACT, (THE ACT)
15 U.S.C. SECTION 1601 AS AMENDED

1. The amount of the debt is that as stated in the Complaint attached hereto.
2. The Plaintiff as named in the attached Summons and Complaint is the creditor to whom the debt is owned.
3. If the original creditor is different from the current creditor, the creditor's law firm will provide the debtor with the name and address of the original creditor if requested by the debtor, in writing, within thirty (30) days of the receipt of this notice.
4. The debt described in the Complaint attached hereto and evidenced by the Agreement and Mortgage described therein will be assumed to be valid by the creditor's law firm unless the debtor, within thirty (30) days after the receipt of this notice, disputes, in writing, the validity of the debt or some portion thereof.
5. If the debtor notifies the creditor's law firm in writing within thirty (30) days of the receipt of this notice that the debt or any portion thereof is disputed, the Current Creditor's law firm will obtain a verification of the debt, and a copy of the verification will be mailed to the debtor by the Current Creditor's law firm.
6. Written requests should be addressed to:

Louise M. Johnson, Esq.
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, SC 29211-1889

7. This notice should not be construed as a thirty (30) day grace period. Creditor, with the attached Complaint, is pursuing its collection efforts immediately and not waiting thirty (30) days.

This is an attempt to collect a debt and any information obtained will be used for that purpose.

EXHIBIT A

**PROMISSORY NOTE
(Continued)**

Loan No: 20400001(828001

Page 2

LENDER'S EXPENSES. This includes Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on this Note and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and legal expenses for bankruptcy proceedings including efforts to modify or waive any automatic stay or injunction, and appeals. If not prohibited by applicable law, Borrower also will pay any court costs, in addition to all other costs provided by law.

JURY WAIVER. Lender and Borrower hereby waive the right to any jury trial in any action, proceedings, or counterclaims brought by either Lender or Borrower against the other.

GOVERNING LAW. This Note will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflict of law provisions. This Note has been accepted by Lender in the State of South Carolina.

RIGHT OF SETOFF. To the extent permitted by applicable law, Lender reserves a right of setoff in all Borrower's accounts with Lender for other checking, savings, or other other accounts. This includes all accounts Borrower holds jointly with someone else and all accounts Borrower may open in the future. However, this does not include any IRA or Keogh accounts, or any trust accounts for which setoff would be prohibited by law. Borrower authorizes Lender, to the extent permitted by applicable law, to charge or debit all sums owing on the indebtedness against any and all such accounts, and, at Lender's option, to administratively freeze all such accounts to allow Lender to protect Lender's charge and setoff rights provided in this paragraph.

COLLATERAL. Borrower acknowledges this Note is secured by Real Estate Mortgage dated 8/28/00 from Borrower covering Real Property located at Lot 1 Barney Point Ct & Playerton Dr, North Charleston, SC 29440, CHARLESTON COUNTY.

ARBITRATION. Borrower and Lender agree that all disputes, claims and controversies between them whether incidental, joint, or else in nature, arising from this Note or otherwise, including various litigation concepts and law disputes, shall be submitted pursuant to the Rules of the American Arbitration Association in effect at the time the claim is filed, upon request of either party. No act to take or dispose of any collateral securing this Note shall constitute a violation of the arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, obtaining judgments or a temporary restraining order freezing a power of sale under any deed in trust or not subject obtaining a writ of attachment or injunction of a realtor or executing any rights relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the enforcement or satisfaction of any set, or exercise of any right, concerning any collateral securing this Note, including any claim to rescind, release, or otherwise modify any agreement relating to the collateral securing this Note, shall also be arbitrable, provided however that no arbitrator shall have the right or the power to enter a summary judgment or any other judgment upon any claim asserted by any arbitrator may be entered in any court having jurisdiction. Nothing in this Note shall preclude any party from seeking equitable relief from a court of competent jurisdiction. The terms of arbitration, excepted, waiver, release, and other documents which would otherwise be applicable in an action brought by a party shall be applicable in any arbitration proceedings, and the commencement of an arbitration proceeding shall be deemed the commencement of an action for these purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

REQUIREMENTS FOR SPECIAL SERVICES. In general, there are no borrower-paid fees associated with the routine servicing of a loan or line of credit. Borrower, however, may occasionally find it necessary to request services for which there is a charge. The services that fall outside of routine servicing include, without limitation, providing the following documents upon request: amortization schedules, duplicate year-end statements, copies of loan documents or periodic statements, payment histories, and replacement coupon books. Borrower agrees to pay the fees imposed by Lender in connection with providing the requested services, as in effect from time to time. Borrower also agrees to pay duplicate or other fees imposed by Lender if their services are requested on an expedited basis. All such fees shall be fully earned and non-refundable, and shall be paid upon Lender's demand provided, that Lender, in its discretion, may add the fees to the principal indebtedness due, and accrue interest thereon, and the same shall be due, if not sooner demanded by Lender, upon the maturity of the indebtedness without further demand. The fees shall not be deemed to be interest or charges for the use of money. If Borrower requests copies or documents as part of Lender's procedures for resolving a billing error on a line of credit, Lender will not impose, or will reverse, the fee.

NOTICE CONCERNING APPEAL WAIVER. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked pay within sixty days after the sale of the mortgaged property apply to the court for an order of appeal. The summary appraisal value as approved by the court would be substituted for the bid bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDETERMINED MORTGAGE WAIVER AND RELINQUISHES THE STATUTORY APPEAL RIGHTS WHICH WOULD BE THE MAIN BID AT THE JUDICIAL FORECLOSURE SALE WILL BE AFFIRMED TO THE NEXT NEARLY AS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

SUCCESSOR OBLIGATIONS. The terms of this Note shall be binding upon Borrower, and upon Borrower's heirs, personal representatives, successors and assigns, and shall have the benefit of Lender and its successors and assigns.

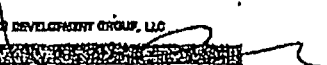
GENERAL PROVISIONS. If any part of this Note cannot be enforced, this part will not affect the rest of the Note. Lender may delay or forgo enforcing any of its rights or remedies under this Note without losing them. Borrower and any other person who signs, guarantees or endorses this Note, to the extent allowed by law, waive presentment, demand for payment, and notice of dishonor. Upon any change in the terms of this Note, and unless otherwise expressly stated in writing, no party who signs this Note, whether as maker, guarantor, accommodation maker or endorser, shall be released from liability. All such parties agree that Lender may renew or extend its maturity and for any length of time this loan or release any party or guarantor or co-maker or endorser, fail to make any or partial lender's security interest in the collateral and take any other action deemed necessary by Lender without the consent of or notice to anyone. All such parties also agree that Lender may modify this loan without the consent of or notice to anyone other than the party with whom the modification is made. The obligations under this Note are joint and several.

PRIOR TO SIGNING THIS NOTE, BORROWER READ AND UNDERSTOOD ALL THE PROVISIONS OF THIS NOTE INCLUDING THE VARIABLE INTEREST RATE PROVISIONS. BORROWER AGREES TO THE TERMS OF THE NOTE.

BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS PROMISSORY NOTE.

BORROWER:

STONEMASON DEVELOPMENT GROUP, LLC

BY: 
J. MARK CALDWELL, MEMBER OF STONEMASON
DEVELOPMENT GROUP, LLC

800/800

800/800 800/800 800/800 800/800 800/800 800/800 800/800 800/800 800/800 800/800

KORS File: 25400/09006

Commercial Loans (Correspondence Barcode)

COMM02174628

10/22/2008 10:10:10 AM

WHEN RECORDED MAIL TO:
 Alabama Loan Servicing Release
 P O Box 4297
 Montgomery, AL 36103

SPACE ABOVE THIS LINE IS FOR RECORDERS USE ONLY



00044800020400001635001000000

MORTGAGE

MAXIMUM LIEN. The amount of indebtedness secured by this Mortgage, including the outstanding amount of the Note and all future advances shall at no time exceed the principal amount of \$892,500.00, plus interest, reasonable attorneys' fees, court costs and the expenses to preserve and protect the Property. Interest under the Note will be deferred, accrued or capitalized, but Lender shall not be required to defer, accrue or capitalize any interest except as provided in the Note.

THIS MORTGAGE dated September 23, 2008, is made and executed between STONEBRIDGE DEVELOPMENT GROUP, LLC, whose address is 30858 CATCOTW RIDGE STREET, PAEONIAN SPRINGS, VA 20129 (referred to below as "Grantor") and REGIONS BANK, whose address is 1848 SAVANNAH HIGHWAY, CHARLESTON, SC 29407 (referred to below as "Lender").

GRANT OF MORTGAGE. For valuable consideration, Grantor mortgages, grants and conveys to Lender all of Grantor's right, title, and interest in and to the following described real property, together with all existing or subsequently created or added buildings, improvements and fixtures, all easements, rights of way, and appurtenances, all water, water rights, watercourses and ditch rights including stock in water with ditch or irrigation rights; and all other rights, royalties, and profits relating to the real property, including without limitation all minerals, oil, gas, petroleum and other matters, (the "Real Property") located in Charleston County, State of South Carolina:

See EXHIBIT "A", which is attached to this Mortgage and made a part of this Mortgage as if fully set forth herein.

The Real Property or its address is commonly known as Lot 1 Stoney Foyet Ct @ Plantation Isle, North Charleston, SC 29405.

CROSS-COLLATERALIZATION. In addition to the Note, this Mortgage secures all obligations, debts and liabilities, plus interest thereon, of either Grantor or Borrower to Lender, or any one or more of them, as well as all claims by Lender against Borrower and Grantor or any one or more of them, whether now existing or hereafter arising, whether related or unrelated to the purpose of the Note, whether voluntary or involuntary, whether due or not due, direct or indirect, determined or undetermined, checkable or non-checkable, liquidated or unliquidated, whether Borrower or Grantor may be liable individually or jointly with others, whether obligated as guarantor, surety, accommodation party or otherwise, and whether recovery upon such accounts may be or hereafter may become barred by any statute of limitations, and whether the obligation to repay such accounts may be or hereafter may become enforceable under applicable law.

Grantor presently claims to be the owner of all of Grantor's right, title, and interest in and to all present and future interests of the Property and all rights in the Property. In addition, Grantor grants to Lender a Uniform Commercial Code security interest in the Personal Property and Rights.

FUTURE ADVANCES. In addition to the Note, this Mortgage secures all future advances made by Lender to Grantor whether or not the advances are made pursuant to a commitment. Specifically, without limitation, the Mortgage secures, in addition to the advance specified in the Note, all future advances made by Lender to Grantor or Borrower, together with all interest thereon, in no event shall such future advances (including interest) exceed in the aggregate \$257,500.00. This Mortgage shall remain an open mortgage of record to secure future advances in accordance with Section 29-3-60, as amended, Code of Laws of South Carolina (1976) even in the event all sums secured by this Mortgage may be fully paid at any one time; however, upon request of Grantor, Lender will cause this Mortgage to be released and cancelled if record upon full payment of all indebtedness then owing, and upon such cancellation of this Mortgage of record, this Mortgage shall become null and void. Such release shall be without charge to Grantor; however, Grantor shall pay all costs of recordation, if any, and all documentary stamps due on the Note evidencing future advances secured by this Mortgage.

THIS MORTGAGE, INCLUDING THE ASSIGNMENT OF RIGHTS AND THE SECURITY INTEREST IN THE REAL AND PERSONAL PROPERTY, IS GIVEN TO SECURE (A) PAYMENT OF THE DEBTEDNESS AND (B) PERFORMANCE OF ANY AND ALL OBLIGATIONS UNDER THIS MORTGAGE. THIS MORTGAGE IS GIVEN AND ACCEPTED ON THE FOLLOWING TERMS:

GRANTOR'S WAIVERS. Grantor waives all rights or defenses arising by reason of any "one action" or "anti-deficiency" law, or any other law which may prevent Lender from bringing a claim against Grantor, including a claim for deficiency to the entire Lender is otherwise entitled to a claim for deficiency, before or after Lender's commencement of collection or any foreclosure action, either judicially or by exercise of a power of sale.

GRANTOR'S REPRESENTATIONS AND WARRANTIES. Grantor warrants that (a) this Mortgage is executed at Borrower's request and set at the request of Lender; (b) Grantor has the full power, right, and authority to enter into this Mortgage and to hypothecate the Property; (c) the provisions of this Mortgage do not conflict with or impair in a material way any agreement or other instrument binding upon Grantor and do not result in a violation of any law, regulation, court order or order applicable to Grantor; (d) Grantor has established adequate means of obtaining from Borrower all necessary information about Borrower's financial condition; and (e) Lender has made no representation to Grantor about Borrower (including without limitation the creditworthiness of Borrower).

PAYMENT AND PERFORMANCE. Except as otherwise provided in this Mortgage, Borrower and Grantor shall pay to Lender all indebtedness secured by this Mortgage as it becomes due, and Borrower and Grantor shall satisfy perform all Borrower's and Grantor's obligations under this Mortgage.

POSSESSION AND MAINTENANCE OF THE PROPERTY. Borrower and Grantor agree that Borrower's and Grantor's possession and use of the Property shall be governed by the following provisions:

Possession and Use. Until the occurrence of an Event of Default, Grantor may (1) remain in possession and control of the Property; (2) use, operate or lease the Property; and (3) collect the Rents from the Property.

Duty to Maintain. Grantor shall maintain the Property in tenable condition and promptly perform all repairs, replacements, and maintenance necessary to preserve its value.

Compliance With Environmental Laws. Grantor represents and warrants to Lender that: (1) During the period of Grantor's ownership of the Property, there has been no use, generation, manufacture, storage, treatment, disposal, release or threatened release of any hazardous substance by any person on, under, about or from the Property; (2) Grantor has no knowledge of, or reason to believe that there has been, except as previously disclosed to and acknowledged by Lender in writing; (3) any breach or violation of any Environmental Law,

K 120080906

Loan No: 20400001639001

MORTGAGE
(Continued)

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of any use, manufacture, maintenance, storage, treatment, disposal, release or threatened release of any Hazardous Substances on, under, about or from the Property by any prior owner or occupants of the Property, or (c) any record in the National Pollution Discharge or release of any kind by any person relating to such matters; and (2) except as previously disclosed in and acknowledged by Lender in writing, (a) neither Grantor nor any tenant, contractor, agent or other authorized user of the Property shall use, generate, manufacture, store, treat, dispose of or release any Hazardous Substances on, under, about or from the Property and (b) any such activity shall be conducted in accordance with all applicable federal, state, and local laws, regulations and ordinances, including without limitation all Environmental Laws. Grantor authorizes Lender and its agents to enter upon the Property to make such inspections and tests, at Grantor's expense, as Lender may deem appropriate to determine compliance of the Property with this section of the Mortgage. Any inspections or tests made by Lender shall be for Lender's purposes only and shall not be construed to create any responsibility or liability on the part of Lender to Grantor or to any other person. The representations and warranties contained herein are based on Grantor's due diligence in investigating the Property for Hazardous Substances. Grantor hereby (1) releases and waives any future claims against Lender for indemnity or contribution in the event Grantor becomes liable for cleanup or other costs under any such laws and (2) agrees to indemnify, defend, and hold harmless Lender against any and all claims, losses, liabilities, damages, penalties, and expenses which Lender may directly or indirectly incur or suffer resulting from a breach of this section of the Mortgage or as a consequence of any use, generation, manufacture, storage, disposal, release or threatened release occurring prior to Grantor's ownership or interest in the Property, whether or not the same were or should have been known to Grantor. The provisions of this section of the Mortgage, including the obligations to indemnify and defend, shall survive the payment of the indebtedness and the satisfaction and reconveyance of the lien of this Mortgage and shall not be affected by Lender's acquisition of any interest in the Property, whether by foreclosure or otherwise.

Stipulations, Waiver. Grantor shall not cause, conduct or permit any nuisance nor commit, permit, or suffer any stripping of or waste on or to the Property or any portion of the Property. Without limiting the generality of the foregoing, Grantor will not remove, or grant to any other party the right to remove, any timber, minerals including oil and gas, coal, clay, concrete, salt, gravel or rock products without Lender's prior written consent.

Removal of Improvements. Grantor shall not demolish or remove any improvements from the Real Property without Lender's prior written consent. As a condition to the removal of any improvements, Lender may require Grantor to make arrangements satisfactory to Lender to replace such improvements with improvements of at least equal value.

Lender's Right to Enter. Lender and Lender's agents and representatives may enter upon the Real Property at all reasonable times to attend to Lender's interests and to inspect the Real Property for purposes of Grantor's compliance with the terms and conditions of this Mortgage.

Compliance with Governmental Requirements. Grantor shall promptly comply with all laws, ordinances, and regulations, now in effect or hereinafter enacted, of all governmental authorities applicable to the use or occupancy of the Property, including without limitation, the Americans with Disabilities Act. Grantor may contest in good faith any such law, ordinance, or regulation and without compliance during any proceeding, including appropriate appeals, as long as Grantor has notified Lender in writing prior to doing so and as long as, in Lender's sole opinion, Lender's interests in the Property are not jeopardized. Lender may require Grantor to post adequate security of a surety bond, reasonably satisfactory to Lender, to protect Lender's interest.

Grant to Tenant. Grantor agrees not to abandon or leave unattended the Property. Grantor shall do all other acts, in addition to those acts set forth above in this section, which have the character and use of the Property are reasonably necessary to protect and preserve the Property.

COIN OR SALE - CONSENT BY LENDER. Lender may, at Lender's option, declare immediately due and payable all sums secured by this Mortgage upon the sale or transfer, without Lender's prior written consent, of all or any part of the Real Property, or any interest in the Real Property. A "sale or transfer" means the conveyance of Real Property or any right, title or interest in the Real Property whether legal, beneficial or equitable whether voluntary or involuntary whether by mortgage sale, deed, testamentary gift, contract, lease, contract for deed, installment contract with a term greater than three (3) years, lease-option contract, or by gift, assignment, or transfer of any beneficial interest in or to any land trust holding title to the Real Property, or by any other method of conveyance of an interest in the Real Property. If any Grantor is a corporation, partnership or limited liability company, transfer also includes any change in ownership of more than twenty-five percent (25%) of the voting stock, partnership interests or limited liability company interests, as the case may be, of such Grantor. However, this option shall not be exercised by Lender if such exercise is prohibited by federal law or by State Corporate law.

TAXES AND LIENS. The following provisions relating to the taxes and liens on the Property are part of this Mortgage:

Payments. Grantor shall pay when due and in full all taxes prior to delinquency of all taxes, payroll taxes, assessed taxes, water charges and sewage charges or on an installment basis as set forth in the Property and shall pay when due all claims for work done on or for services rendered or material furnished to the Property. Grantor shall maintain the Property free of any liens having priority over or equal to the interest of Lender under this Mortgage, except for those liens specifically agreed to in writing by Lender, and except for the lien of taxes and assessments not due as further specified in the Right to Contest paragraph.

Right to Contest. Grantor may withhold payment of any tax, assessment, or claim in connection with a good faith dispute over the obligation to pay, so long as Lender's interest in the Property is not jeopardized. If a tax return is filed as a result of bankruptcy, Grantor shall within fifteen (15) days after the tax return is filed, within fifteen (15) days after Grantor has notice of the filing, secure the discharge of the lien, or if requested by Lender, deposit with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender in an amount sufficient to discharge the lien plus any costs and reasonable attorneys' fees, or other charges that could accrue as a result of a foreclosure or sale under the lien. In any contest, Grantor shall defend itself and shall satisfy any adverse judgment before enforcement against the Property. Grantor shall name Lender as an additional obligee under any surety bond furnished in this contest proceeding.

Evidence of Payment. Grantor shall upon demand furnish to Lender satisfactory evidence of payment of the taxes or assessments and shall authorize the appropriate governmental officials to deliver to Lender at any time a written statement of the taxes and assessments against the Property.

Notice of Construction. Grantor shall notify Lender at least fifteen (15) days before any work is commenced, any services are furnished, or any materials are supplied to the Property, if any material's fee, subcontractor's fee, or other fee could be claimed on account of the work, services, or materials. Grantor will upon request of Lender furnish to Lender adequate assurances satisfactory to Lender that Grantor can and will pay the cost of such improvements.

PROPERTY DAMAGE INSURANCE. The following provisions relating to insuring the Property are a part of this Mortgage:

Maintenance of Insurance. Grantor shall procure and maintain policies of the insurance with standard extended coverage underpolicies on a replacement basis for the full insurable value covering all improvements on the Real Property in an amount sufficient to avoid application of any co-insurance clause, and with a standard mortgage clause in favor of Lender. Grantor shall also procure and maintain comprehensive general liability insurance in such coverage as Lender may request with Lender listed as additional insured in such liability insurance policies. Additionally, Grantor shall maintain such other insurance, including but not limited to fire, business interruption and boiler insurance as Lender may require. Policies shall be written by such insurance companies and in such form as may be reasonably acceptable to Lender. Grantor shall deliver to Lender certificates of coverage from each insurer containing a statement that coverage will not be cancelled or discontinued without a minimum of ten (10) days' prior written notice to Lender and not containing any disclaimer of the insurer's liability for failure to give such notice. Each insurance policy shall include an endorsement providing that coverage in favor of Lender will not be impeded in any way by any act, omission or default of Grantor or any other person. Except the Real Property be located in an area designated by the Director of the Federal Emergency Management Agency as a special flood hazard area, Grantor agrees to obtain and maintain Federal Flood Insurance, if available, within 45 days after notice is given by Lender that the Property is located in a special flood hazard area, for the full unpaid principal balance of the loan and any other sums on the property securing the loan, up to the maximum policy limits set under the National Flood Insurance Program, or as otherwise required by Lender, and to maintain such insurance for the term of the loan.

Application of Proceeds. Grantor shall promptly notify Lender of any loss or damage to the Property. Lender may make a loan if Grantor fails to do so within fifteen (15) days of the casualty, whether or not Grantor's equity is involved. Lender may, at Lender's election, inspect and verify the amount of any insurance and apply the proceeds of the settlement of the indebtedness, payment of any tax affecting the Property, or the restoration and repair of the Property, if Lender elects to apply the proceeds to restoration and repair. Grantor shall repair or replace the damaged or destroyed improvements in a manner satisfactory to Lender. Lender shall, upon satisfactory proof of such expenditure, pay or reimburse Grantor from the proceeds for the reasonable cost of repair or restoration if Grantor is not in default under this Mortgage. Any proceeds which have not been disbursed within 180 days after their receipt and which Lender has not authorized to the repair or restoration of the Property shall be used first to pay any amount owing to Lender under this Mortgage, then to pay accrued interest, and the remainder, if any, shall be applied to the principal balance of the indebtedness. If Lender holds any proceeds

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after payment in full of the indebtedness, such proceeds shall be paid to Grantee as Grantee's interest may appear.

Grantee's Report on Insurance. Upon request of Lender, however not more than once a year, Grantee shall furnish to Lender a report on each existing policy of insurance showing (1) the name of the insurer, (2) the risks insured, (3) the amount of the policy, (4) the property insured, the then current replacement value of such property, and the manner of determining that value and (5) the expiration date of the policy. Grantee shall, upon request of Lender, have an independent appraiser satisfactory to Lender determine the cash value replacement cost of the Property.

LENDER'S EXPENSES. If any action or proceeding is commenced that would materially affect Lender's interest in the Property or if Grantee fails to comply with any provision of this Mortgage or any Related Documents, including but not limited to Grantee's failure to discharge or pay when due any amounts Grantee is required to discharge or pay under this Mortgage or any Related Documents, Lender or Grantee's trustee may but shall not be obligated to take any action that Lender deems appropriate, including but not limited to discharging or paying all taxes, liens, security interests, encumbrances and other claims, or any fees levied or assessed on the Property and paying all costs for insuring, maintaining and preserving the Property. All such expenditures incurred or paid by Lender for such purposes will then bear interest at the rate charged under the Note from the date incurred or paid by Lender to the date of repayment by Grantee. All such expenses will become a part of the indebtedness and, at Lender's option, will (A) be payable as demand, (B) be added to the balance of the Note and be apportioned among and be payable with any installment payments to become due during either (1) the term of any applicable insurance policy or (2) the remaining term of the Note; or (C) be treated as a balance payment which will be due and payable at the Note's maturity. The Mortgage also will secure payment of these amounts. Such rights shall be in addition to all other rights and remedies to which Lender may be entitled upon Default.

WARRANTY OF TITLE. The following provisions relating to ownership of the Property are a part of this Mortgage:

Title. Grantee warrants that (a) Grantee holds good and marketable title or record to the Property in fee simple, free and clear of all taxes and encumbrances other than those set forth in the Real Property description or in any title insurance policy, title report, or final title opinion issued in favor of, and accepted by, Lender in connection with this Mortgage, and (b) Grantee has the full right, power, and authority to execute and deliver this Mortgage to Lender.

Defense of Title. Subject to the exception in the paragraph above, Grantee warrants and will forever defend the title to the Property against the lawful claims of all persons. In the event any action or proceeding is commenced to contest the Grantee's title or the interest of Lender under this Mortgage, Grantee shall defend the action at Grantee's expense. Grantee may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantee will deliver, or cause to be delivered, to Lender such instruments as Lender may request from time to time to permit such participation.

Compliance With Laws. Grantee warrants that the Property and Grantee's use of the Property comply with all existing applicable laws, ordinances, and regulations of governmental authorities.

Survival of Representations and Warranties. All representations, warranties, and agreements made by Grantee in this Mortgage shall survive the execution and delivery of this Mortgage, shall be continuing in nature, and shall remain in full force and effect until such time as Grantee's indebtedness shall be paid in full.

CONDEMNATION. The following provisions relating to condemnation proceedings are a part of this Mortgage:

Proceedings. If any proceeding is condemnation in fact, Grantee shall promptly notify Lender in writing, and Grantee shall promptly take such steps as may be necessary to defend the action and obtain the award. Grantee may be the nominal party in such proceeding, but Lender shall be entitled to participate in the proceeding and to be represented in the proceeding by counsel of Lender's own choice, and Grantee will deliver, or cause to be delivered, to Lender such instruments and documentation as may be requested by Lender from time to time to permit such participation.

Application of Net Proceeds. If all or any part of the Property is condemned by eminent domain proceedings or by any proceeding or purchase in lieu of condemnation, Lender may at its election require that all or any portion of the net proceeds of the award be applied to the indebtedness of the report or redemption of the Property. The net proceeds of the award shall cover the award after payment of all reasonable costs, expenses, and attorneys' fees incurred by Lender in connection with the condemnation.

DISPOSITION OF TAXES, FEES AND CHARGES BY GOVERNMENTAL AUTHORITIES. The following provisions relating to governmental taxes, fees and charges are a part of this Mortgage:

Current Taxes, Fees and Charges. Upon request by Lender, Grantee shall execute such documents in addition to this Mortgage and take whatever other action is required by Lender to perfect and maintain Lender's lien on the Real Property. Grantee shall reimburse Lender for all taxes, as described below, together with all expenses incurred in recording, perfecting or collecting this Mortgage, including without limitation all taxes, fees, documentary stamps, and other charges for recording or registering this Mortgage.

Taxes. The following shall constitute taxes to which this section applies: (1) a specific tax upon this type of Mortgage as upon all or any part of the indebtedness secured by this Mortgage; (2) a specific tax on Borrower which Borrower is authorized or required to deduct from payments on the indebtedness secured by this type of Mortgage; (3) a tax on this type of Mortgage chargeable against the Lender or the holder of the Note; and (4) a specific tax on all or any portion of the indebtedness or on payments of principal and interest made by Borrower.

Subsequent Taxes. If any tax to which this section applies is enacted subsequent to the date of this Mortgage, this award shall have the same effect as to taxes of Defect, and Lender may exercise any or all of its available remedies for as to taxes of Defect as provided below unless Grantee either (1) pays the tax before it becomes delinquent, or (2) contacts the tax as provided above in the Taxes and Liens section and deposits with Lender cash or a sufficient corporate surety bond or other security satisfactory to Lender.

SECURITY AGREEMENTS/PAIDMENT STATEMENTS. The following provisions relating to this Mortgage as a security agreement are a part of this Mortgage:

Security Agreement. This instrument shall constitute a Security Agreement to the extent any of the Property constitutes income, and Lender shall have all of the rights of a secured party under the Uniform Commercial Code as amended from time to time.

Security Interest. Upon request by Lender, Grantee shall take whatever action is requested by Lender to perfect and maintain Lender's security interest in the Real and Personal Property. In addition to recording this Mortgage in the real property records, Lender may, at any time and without further authorization from Grantee, file a statement, together with a copy of this Mortgage as a financing statement. Grantee shall reimburse Lender for all costs and expenses incurred in perfecting or maintaining this security interest. Upon default, Grantee shall not remove, cover or detach the Personal Property from the Property. Upon default, Grantee shall assemble any Personal Property not affixed to the Property in a manner and at a place reasonably convenient to Grantee and Lender and make it available to Lender within three (3) days after receipt of written demand from Lender to the extent permitted by applicable law.

Addresses. The mailing addresses of Grantee (borrower) and Lender (secured party) from which information concerning the security interest secured by this Mortgage may be obtained (such as required by the Uniform Commercial Code) are as stated on the first page of this Mortgage.

FURTHER ASSURANCES/ATTORNEY-IN-FACT. The following provisions relating to further assurances and attorney-in-fact are a part of this Mortgage:

Further Assurances. At any time, and from time to time, upon request of Lender, Grantee will make, execute and deliver, or will cause to be made, executed or delivered, to Lender or to Lender's designee, and when requested by Lender, cause to be filed, recorded, indexed, or re-recorded, as the case may be, at such times and in such offices and places as Lender may deem appropriate, any and all such mortgages, deeds of trust, security deeds, security agreements, financing statements, condemnation statements, instruments of further assurances, contracts, and other documents as may, in the sole opinion of Lender, be necessary or desirable in order to effectuate, complete, perfect, confirm, or preserve (1) Grantee's and Grantee's obligations under the Note, this Mortgage, and the Related Documents, and (2) the above and security interests created by this Mortgage as set out and set forth on the Property, whether now owned or hereafter acquired by Grantee. Unless prohibited by law or Lender agrees to the contrary in writing, Grantee shall reimburse Lender for all costs and expenses incurred in connection with the matters referred to in this paragraph.

Attorney-in-Fact. If Grantee fails to do any of the things referred to in the preceding paragraph, Lender may do so for and in the name of Grantee and of Grantee's heirs. For such purposes, Grantee hereby irrevocably appoints Lender as Grantee's attorney-in-fact for the purpose of making, executing, delivering, filing, recording, and doing all other things as may be necessary or desirable, in Lender's sole opinion, to accomplish the matters referred to in the preceding paragraph.

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FULL PERFORMANCE. If Borrower and Grantor pay all the indebtedness, including without limitation all taxes, interest, when due, and Grantor otherwise performs all the obligations imposed upon Grantor under this Mortgage, Lender shall execute and deliver to Grantor a suitable satisfaction of this Mortgage and suitable statements of satisfaction of any financing statement on the foregoing Lender's security interest in the PMSI and the Personal Property. Grantor will pay, if permitted by applicable law, any reasonable termination fee as determined by Lender from time to time.

EVENTS OF DEFAULT. Each of the following, at Lender's option, shall constitute an Event of Default under this Mortgage:

Payment Default. Borrower fails to make any payment when due under the Indebtedness.

Default on Other Payments. Failure of Grantor within the time required by this Mortgage to make any payment for taxes or insurance, or any other payment necessary to prevent filing of or to affect discharge of any lien.

Other Defaults. Borrower or Grantor fails to comply with or to perform any other term, obligation, covenant or condition contained in this Mortgage or in any of the Related Documents or to comply with or to perform any term, obligation, covenant or condition contained in any other agreement between Lender and Borrower or Grantor.

Default in Favor of Third Parties. Should Borrower or any Grantor default under any lease, extension of credit, security agreement, purchase or sales agreement, or any other agreement, in favor of any other creditor or person that may materially affect any of Borrower's or any Grantor's property or Borrower's ability to repay the Indebtedness or Borrower's or Grantor's ability to perform their respective obligations under this Mortgage or any related document.

Fake Statements. Any warranty, representation or statement made or furnished to Lender by Borrower or Grantor or on Borrower's or Grantor's behalf under this Mortgage or the Related Documents is false or misleading in any material respect, either now or at the time made or furnished or becomes false or misleading at any time thereafter.

Unlawful Collateralization. This Mortgage or any of the Related Documents ceases to be in full force and effect including return of any collateral document to create a valid and perfected security interest or lien at any time and for any reason.

Death or Insolvency. The dissolution of Grantor's or Borrower's or Grantor's business as a going business or the death of any member, the insolvency of Borrower or Grantor, the appointment of a receiver for any part of Borrower's or Grantor's property, any assignment for the benefit of creditors, any type of creditor workout, or the commencement of any proceeding under any bankruptcy or insolvency laws by or against Borrower or Grantor.

Creditor or Foreclosure Proceedings. Commencement of foreclosure or foreclosure proceedings, whether by judicial proceeding, self-help, repossession or any other method, by any creditor of Borrower or Grantor or by any governmental agency shall not by any property securing the Indebtedness. This includes a garnishment of any of Borrower's or Grantor's accounts, including deposit accounts, with Lender. However, the threat of Default shall not apply if there is a good faith dispute by Borrower or Grantor as to the validity or enforceability of the claim which is the basis of the creditor or foreclosure proceeding and if Borrower or Grantor gives Lender written notice of the dispute or forecloses proceeding and deposits with Lender monies or a surety bond for the creditor or foreclosure proceeding, in an amount determined by Lender, in its sole discretion, as being an adequate reserve or bond for the dispute.

Breach of Other Agreements. Any breach by Borrower or Grantor under the terms of any other agreement between Borrower or Grantor and Lender that is not remedied within any grace period provided therein, including without limitation any agreement concerning any indebtedness or other obligation of Borrower or Grantor to Lender, whether existing now or later.

Events Affecting Guaranty. Any of the preceding events occurs with respect to any Guaranty of any of the Indebtedness or any Guarantor due or becomes insupportable, or violates or breaches the validity of, or liability under, any Guaranty of the Indebtedness, in the event of a death, Lender, at its option, may, but shall not be required to, permit the Guarantor's estate to assume unconditionally the obligations arising under the Guaranty in a manner satisfactory to Lender, and, in doing so, cure any Event of Default.

Adverse Change. A material adverse change occurs in Grantor's financial condition, or Lender believes the prospect of payment or performance of the Indebtedness is impaired.

Insolvency. Lender in good faith believes that insolvency.

Right to Cure. If any default, other than a default in payment is curable and if Grantor has not been given a notice of a breach of the same provision of this Mortgage within the preceding twelve (12) months, it may be cured if Grantor, after receiving written notice from Lender demanding cure of such default: (1) cures the default within fifteen (15) days or (2) if the cure requires more than fifteen (15) days, immediately begins steps which Lender deems in Lender's sole discretion to be sufficient to cure the default and thereafter continues and completes all reasonable and necessary steps sufficient to produce compliance as soon as reasonably practical.

RIGHTS AND REMEDIES ON DEFAULT. Upon the occurrence of an Event of Default and at any time thereafter, Lender, at Lender's option, may exercise any one or more of the following rights and remedies, in addition to any other rights or remedies provided by law:

Acceleration Indebtedness. Lender shall have the right at its option without notice to Grantor to declare the entire Indebtedness immediately due and payable, including any prepayment penalty which Grantor would be required to pay.

UCC Remedies. With respect to all or any part of the Personal Property, Lender shall have all the rights and remedies of a secured party under the Uniform Commercial Code.

Collect Rents. Lender shall have the right, without notice to Borrower or Grantor, to take possession of the Property and, as mortgagee-in-possession, collect the Rents, including a current past due and unpaid, and apply the net proceeds, over and above Lender's costs, against the Indebtedness. In furtherance of this right, Lender may require any tenant or other user of the Property to make payments of rent or use fees directly to Lender. If the Rents are collected by Lender, then Grantor irrevocably designates Lender as Grantor's attorney-in-fact to undertake instruments involved in payment thereof to the name of Grantor and to negotiate the same and endorse the proceeds. Payments by tenants or other users to Lender in response to Lender's demand shall satisfy the obligations for which the payments are made, whether or not any proper grounds for the demand existed. Lender may exercise its rights under this subparagraph either in person, by agent, or through a member.

Appoint Receiver. Lender shall have the right to have a receiver appointed to take possession of all or any part of the Property, with the power to protect and preserve the Property, to operate the Property pending foreclosure or sale, and to collect the Rents from the Property and apply the proceeds, over and above the cost of the receivership, against the Indebtedness. The receiver may serve without bond if permitted by law. Lender's right to the appointment of a receiver shall exist whether or not the apparent value of the Property exceeds the Indebtedness by a substantial amount. Employment by Lender shall not disqualify a person from acting as a receiver.

Judicial Foreclosure. Lender may obtain a judicial decree foreclosing Grantor's interest in all or any part of the Property.

Nonjudicial Sale. If permitted by applicable law, Lender may foreclose Grantor's interest in all or in any part of the Personal Property or the Real Property by non-judicial sale.

Defaultary Judgment. If permitted by applicable law, Lender may obtain a judgment for any deficiency resulting in the Indebtedness due to Lender after application of all amounts received from the exercise of the rights provided in this section.

Agreement. Grantor hereby waives the right to assert any estate providing expanded rights which may reduce any deficiency judgment obtained by Lender against Borrower in the event of foreclosure under this Mortgage.

Tenancy in Common. If Grantor resides in possession of the Property after the Property is sold as provided above or Lender otherwise becomes entitled to possession of the Property upon default of Grantor, Grantor shall become a tenant at sufferance of Lender or the purchaser of the Property and shall, at Lender's option, either (1) pay a reasonable rental for the use of the Property, or (2) vacate the Property immediately upon the demand of Lender.

Other Remedies. Lender shall have all other rights and remedies provided in this Mortgage or the Note or available at law or in equity.

Sale of the Property. To the extent permitted by applicable law, Borrower and Grantor hereby waive any and all right to have the Property marketed, in exercising its rights and remedies, Lender shall be free to sell all or any part of the Property together or separately, in one sale or by separate sales. Lender shall be entitled to bid at any public sale on all or any portion of the Property.

Notice of Sale. Lender shall give Grantor reasonable notice of the time and place of any public sale of the Personal Property or of the Real Property within any grace period or other period applicable to the Personal Property to be made. Reasonable notice shall mean notice given at least ten (10) days before the day of the sale or disposition. Any sale of the Personal Property may be made in conjunction with

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Any Sale of the Real Property.

Exercise of Remedies. Lender by Lender to pursue any remedy shall not exclude pursuit of any other remedy, and an election to make superpriority or to take action to perform an obligation of Grantor under this Mortgage, after Grantor's failure to perform, shall not affect Lender's right to declare a default and exercise its remedies. Nothing under this Mortgage or otherwise shall be construed so as to limit or restrict the rights and remedies available to Lender following an event of default, in any way to limit or restrict the rights and ability of Lender to proceed directly against Grantor under Borrower and/or against any other co-borrower, guarantor, surety or endorser or another to proceed against any other collateral directly or indirectly securing the indebtedness.

Attorneys' Fees and Expenses. If Lender institutes any suit or action to enforce any of the terms of this Mortgage, Lender shall be entitled to recover such sum as the court may award reasonable attorneys' fees and costs upon any appeal. Whether or not any court action is brought, and to the extent not prohibited by law, all reasonable expenses Lender incurs that in Lender's opinion are necessary at any time for the protection of its interest in the indebtedness or its rights shall become a part of the indebtedness payable on demand and shall bear interest at the Note rate from the date of the expenditure until paid. Expenses covered by this paragraph include, without limitation, however subject to any limits under applicable law, Lender's reasonable attorneys' fees in an amount not less than fifteen percent (15%) of the amount owing on the indebtedness and Lender's legal expenses whether or not there is a lawsuit, including reasonable attorneys' fees and expenses for bankruptcy proceedings (including efforts to reach or vacate any automatic stay or injunction, appeal, and any anticipated post-judgment collection services), the cost of searching records, obtaining title reports including foreclosure reports, surveyors' reports, and appraisal fees and this instrument, to the extent permitted by applicable law. Grantor also will pay any court costs, in addition to all other costs provided by law.

NOTICES. Any notice required to be given under this Mortgage, including without limitation any notice of default and any notice of sale shall be given in writing, and shall be effective when actually delivered, when actually received by telephonic means (unless otherwise required by law), when deposited with a nationally recognized overnight courier, or, if mailed, when deposited in the United States mail, as first class, certified or registered mail postage prepaid, directed to the addresses shown later the beginning of this Mortgage. All copies of notices of foreclosure from the holder of any Lien which has priority over this Mortgage shall be sent to Lender's address, as shown near the beginning of this Mortgage. Any party may change its address for notices under this Mortgage by giving formal written notice to the other parties, specifying that the purpose of the notice is to change the party's address. For notice purposes, Grantor agrees to keep Lender informed at all times of Grantor's current address. Unless otherwise provided or required by law, if there is more than one Grantor, any notice given by Lender to any Grantor is deemed to be notice given to all Grantors.

MOTION CONCERNING APPRAISAL WAIVER. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or entered may within sixty days after the date of the judgment petition the court for an order of appraisal. The statutory appraisal value is approved by the court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RENOUNCES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUE OF THE MORTGAGED PROPERTY.

MISCELLANEOUS PROVISIONS. The following miscellaneous provisions are a part of this Mortgage:

Amendments. This Mortgage, together with any Related Documents, constitutes the entire understanding and agreement of the parties as to the matters set forth in this Mortgage. No alteration or amendment to this Mortgage shall be effective unless given in writing and signed by the party or parties sought to be changed or bound by the alteration or amendment.

Account Reports. If the Property is used for purposes other than Grantor's residence, Grantor shall furnish to Lender, upon request, a certified statement of net operating income retained from the Property during Grantor's previous fiscal year in such form and detail as Lender shall require. "Net operating income" shall mean all cash receipts from the Property less all cash expenditures made in connection with the operation of the Property.

Arbitration. Borrower and Grantor and Lender agree that all disputes, claims and controversies between them whether inchoate, joint, or otherwise, arising from this Mortgage or otherwise, including without limitation contract and tort claims, shall be arbitrated pursuant to the Rules of the American Arbitration Association in effect at the time the claim is first made known to either party. No set to take or dispose of any Property shall constitute a waiver of this arbitration agreement or be prohibited by this arbitration agreement. This includes, without limitation, entering into a deed of a temporary restraining order granting a power of sale under any deed of trust or mortgages or obtaining a writ of enforcement or inhibition of a receiver or conducting any claim relating to personal property, including taking or disposing of such property with or without judicial process pursuant to Article 9 of the Uniform Commercial Code. Any disputes, claims, or controversies concerning the lawfulness or reasonableness of any act, or exercise of any right, concerning any Property, including any claim as to whether, return, or otherwise modify any agreement relating to the Property, shall also be arbitrated, provided however that no arbitrator shall have the right or the power to arbitrate or restrict any part of any party. Judgment upon any matter submitted by any arbitrator may be entered in any court having jurisdiction. Nothing in this Mortgage shall prevent any party from seeking equitable relief from a court of competent jurisdiction. The statute of limitations, estoppel, waiver, laches, and similar doctrines which would otherwise be applicable in an action brought by a party shall be applicable to any arbitration proceeding, and the commencement of an arbitrator proceeding shall be deemed the commencement of an action for those purposes. The Federal Arbitration Act shall apply to the construction, interpretation, and enforcement of this arbitration provision.

Capable Mortgage. Capable Mortgage in this Mortgage are for convenience purposes only and are not to be used to interpret or define the provisions of this Mortgage.

Governing Law. This Mortgage will be governed by federal law applicable to Lender and, to the extent not preempted by federal law, the laws of the State of South Carolina without regard to its conflicts of law provisions. This Mortgage has been accepted by Lender in the State of South Carolina.

Joint and Several Liability. All obligations of Borrower and Grantor under this Mortgage shall be joint and several, and all references to Grantor shall mean each and every Grantor, and all references to Borrower shall mean each and every Borrower. This means that each Grantor signing below is responsible for all obligations in this Mortgage. Where any one or more of the parties is a corporation, partnership, limited liability company or similar entity, it is not necessary for Lender to locate into the powers of any of the officers, directors, partners, members, or other persons acting or purporting to act on the entity's behalf, and any obligations made or created in reliance upon the personal signature of each person shall be guaranteed under this Mortgage.

No Waiver by Lender. Lender shall not be deemed to have waived any rights under this Mortgage unless such waiver is given in writing and signed by Lender. No delay or omission on the part of Lender in exercising any right shall operate as a waiver of such right or any other right. A waiver by Lender of a provision of this Mortgage shall not prejudice or constitute a waiver of Lender's rights otherwise to demand strict compliance with that provision or any other provision of this Mortgage. No prior waiver by Lender, nor any course of dealing between Lender and Grantor, shall constitute a waiver of any of Lender's rights or of any of Grantor's obligations as to any future transactions. Whenever the consent of Lender is required under this Mortgage, the giving of such consent by Lender in any instance shall not constitute continuing consent to subsequent instances where such consent is required and in all cases such consent may be granted or withheld in the sole discretion of Lender.

Enforceability. If a court of competent jurisdiction finds any provision of this Mortgage to be illegal, invalid, or unenforceable as to any circumstance, that finding shall not make the remaining provisions illegal, invalid, or unenforceable as to any other circumstance. If, however, the enforceable provision shall be considered modified so that it becomes legal, valid and enforceable. If the enforceable provision cannot be so modified, it shall be considered deleted from this Mortgage. Unless otherwise required by law, the legality, validity, or unenforceability of any provision of this Mortgage shall not affect the legality, validity or unenforceability of any other provision of this Mortgage.

Miscellaneous. There shall be no merger of the interest or estate created by this Mortgage with any other interest or estate in the Property at any time held by or for the benefit of Lender in any capacity, without the written consent of Lender.

Successors and Assigns. Subject to any limitations stated in this Mortgage on transfer of Grantor's interest, this Mortgage shall be binding upon and inure to the benefit of the parties, their successors and assigns. If ownership of the Property becomes vested in a person other than Grantor, Lender, without notice to Grantor, may deal with Grantor's successors with reference to this Mortgage and the indebtedness by way of foreclosure or extension without releasing Grantor from the obligations of this Mortgage or liability under the indebtedness.

Time is of the Essence. Time is of the essence in the performance of this Mortgage.

Waiver of Joint. All parties to this Mortgage hereby waive the right to any joint or any action, proceeding, or compromise brought by any party against any other party.

Z 60006845

Loan No: 20400001829001

MORTGAGE
(Continued)

Z600P8846

Page 6

Waiver of Homestead Exemption. Grantor hereby releases and waives all rights and benefits of the homestead exemption laws of the State of South Carolina as to all indebtedness secured by this Mortgage.

DEFINITIONS. The following capitalized words and terms shall have the following meanings when used in this Mortgage. Unless specifically stated to the contrary, all references to dollar amounts shall mean amounts in lawful money of the United States of America. Words and terms used in the singular shall include the plural, and the plural shall include the singular, as the context may require. Words and terms not otherwise defined in this Mortgage shall have the meanings ascribed to such words in the Uniform Commercial Code.

Borrower. The word "Borrower" means STONERIDGE DEVELOPMENT GROUP, LLC and Michael E. Alejo and includes all co-signers and co-makers signing the Note and all their successors and assigns.

Default. The word "Default" means the Default set forth in this Mortgage in the section titled "Default".

Environmental Laws. The words "Environmental Laws" mean any and all state, federal and local statutes, regulations and ordinances relating to the protection of human health or the environment, including without limitation the Comprehensive Environmental Response, Compensation, and Liability Act of 1980, as amended, 42 U.S.C. Section 9601, et seq. ("CERCLA"), the Superfund Amendments and Reauthorization Act of 1986, Pub. L. No. 99-480 ("SARA"), the Hazardous Materials Transportation Act, 49 U.S.C. Section 1601, et seq., the Resource Conservation and Recovery Act, 42 U.S.C. Section 9601, et seq., or other applicable state or federal laws, rules, or regulations adopted pursuant thereto.

Event of Default. The words "Event of Default" mean any of the events of default set forth in this Mortgage in the event of default section of this Mortgage.

Grantor. The word "Grantor" means STONERIDGE DEVELOPMENT GROUP, LLC.

Guarantor. The word "Guarantor" means any guarantor, surety, or accommodation party of any or all of the Indebtedness.

Guaranty. The word "Guaranty" means the guaranty from Guarantor to Lender, including without limitation a guaranty of all or part of the Note.

Hazardous Substances. The words "Hazardous Substances" mean materials that, because of their quantity, concentration or physical, chemical or infectious characteristics, may once or pose a present or potential hazard to human health or the environment when improperly used, treated, stored, disposed of, generated, manufactured, transported or otherwise handled. The words "Hazardous Substances" are used in this very broadest sense and include without limitation any and all hazardous or toxic substances, materials or waste as defined by or listed under the Environmental Laws. The term "Hazardous Substances" also includes, without limitation, petroleum and petroleum byproducts or any fraction thereof and asbestos.

Improvements. The word "Improvements" means all existing and future improvements, buildings, structures, mobile homes attached to the Real Property, fixtures, furniture, furnishings and other contents on the Real Property.

Indebtedness. The word "Indebtedness" means all present and future, and other amounts, sums and expenses payable under the Note or Related Documents, together with all renewal of, extensions of, modifications of and substitutions for the Note or Related Documents and any amounts expended or advanced by Lender to discharge Grantor's obligation as co-maker or co-signer of the Note or Related Documents, together with interest on such amounts as provided in this Mortgage. Specifically, without limitation, Indebtedness includes the future advances set forth in the Future Advances provision, together with all interest thereon and all amounts that may be indirectly covered by the Cross-Default/acceleration provision of this Mortgage.

Lender. The word "Lender" means REGIONAL BANK, its successors and assigns.

Mortgage. The word "Mortgage" means this Mortgage between Grantor and Lender.

Note. The word "Note" means the promissory note dated September 23, 2004, in the original principal amount of \$885,000.00 from Borrower to Lender, together with all renewals of, extensions of, modifications of, substitutions for, and assignments for the promissory note or agreement. The maturity date of this Mortgage is October 10, 2007. NOTICE TO GRANTOR: THE NOTE CONTAINS A VARIABLE INTEREST RATE.

Personal Property. The words "Personal Property" mean all equipment, fixtures, and other articles of personal property now or hereafter owned by Grantor, and now or hereafter attached or affixed to the Real Property together with all accessories, parts, and additions to, all replacements of, and all substitutions for, any of such property and together with all proceeds including without limitation all insurance proceeds and moneys of proceeds from any sale or other disposition of the Property.

Property. The word "Property" means collectively the Real Property and the Personal Property.

Real Property. The words "Real Property" mean the real property, interests and rights, as further described in this Mortgage.

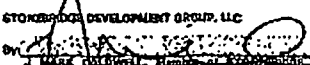
Related Documents. The words "Related Documents" mean all promissory notes, credit agreements, loan agreements, environmental agreements, purchase, security agreements, mortgages, deeds of trust, security deeds, collateral mortgages, and all other instruments, agreements and documents, whether now or hereafter existing, executed in connection with the Indebtedness.

Receivables. The word "Receivables" means all present and future rents, revenues, income, loans, royalties, profits, and other benefits derived from the Property.

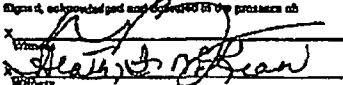
GRANTOR ACKNOWLEDGES HAVING READ ALL THE PROVISIONS OF THIS MORTGAGE, AND GRANTOR AGREES TO ITS TERMS.

GRANTOR:

STONERIDGE DEVELOPMENT GROUP, LLC

By: 
J. MARK GOLDWELL, Member of STONERIDGE
DEVELOPMENT GROUP, LLC

Signs, acknowledged and delivered in the presence of:

By: 
Michael E. Alejo
Witness

Loan No: 20400001638001	MORTGAGE (Continued)	Page 7
-------------------------	---------------------------------	--------

LIMITED LIABILITY COMPANY ACKNOWLEDGMENT

STATE OF SOUTH CAROLINA)
COUNTY OF CHARLESTON) ss. W Z600PG847

PERSONALLY appeared before me and made oath that he or she saw the within-named Grantee(s) sign, seal, and, as his or her act and deed, deliver the within-written Mortgage for the uses and purposes therein mentioned, and that he or she with the other witnesses subscribed above witnessed the execution thereof.

Henry J. McLean
(Witness)

SWORN to before me this 28th
day of September, A.D. 2006
Henry J. McLean (Seal)
My Commission expires 2/17/10

NOTARY PUBLIC, STATE OF SOUTH CAROLINA, My Comm. Expires 2/17/10, My Exp. Date 2/17/10, My Exp. Date 2/17/10

EXHIBIT "A"

BOOK Z600PG848

ALL that certain piece, parcel or lot of land, lying and being in the State of South Carolina, County of Charleston, being shown and designated as Lot No. 1 on a plat of Plantation Isle, Sheet 3 of 4 prepared by David & Floyd, Inc. dated September 29, 1998 filed in the RMC Office for Charleston County, S.C. in Plat Book ED, Page 437, reference being made to said plat for a more complete metes and bounds description hereof.

BEING the same property conveyed to Mortgagor herein by Deed of Lewis Bartles dated May 23, 2005 and recorded May 25, 2005 in Book D-538, Page 770, in the Charleston County RMC Office.

For reference see TMS: 410-00-00-067

EX Z600PG849

RECORDER'S PAGE

NOTE: This page MUST remain with the original document



Filed By:

Nelson Mullins Riley & Scarborough

Post Office Box 1806
Charleston

SC 29402

QW

FILED

October 5, 2006

3:11:22 PM

EX Z600PG841

Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION	AMOUNT
	\$ 14.00
Postage	
TOTAL	\$ 14.00

DRAWER:

A- bmm

DO NOT STAMP BELOW THIS LINE

843-858-4800 101 MEETING STREET CHARLESTON, SC 29401 www.charlestoncounty.org

Affidavit of Service as
to Frank Harvey (Sept.
2, 2008)

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: 2008-CP-2513

Plaintiff:

Regions Bank

vs.

Defendant:

Stonebridge Development Group, LLC, et al.

For: Carol Shaffer

Haynsworth Sinkler Boyd, P.A.

Received by SERVE-ONE, INC. to be served on Frank M Harvey aka Francis M Harvey, 2109 Forestall Court, Reisterstown, MD 21136. I, William A. Brown, being duly sworn, depose and say that on the 14 day of AUG, 2008 at 7:30 a.m., executed service by delivering a true copy of the Civil Action Cover Sheet, Summons, Complaint to Foreclose Mortgage and Exhibits in accordance with state statutes in the manner marked below:

☒ INDIVIDUAL SERVICE: Served personally to the within-named.

() SUBSTITUTE SERVICE: By delivering to: _____, as _____, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

() OTHER SERVICE: As described in the Comments below by serving _____ as _____.

() NON SERVICE: Due to reasons detailed in Comments below.

() MILITARY STATUS: Y ☒ If Yes, what branch: _____

COMMENTS: _____

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 18th day of August by the affiant who is personally known to me.

Sheila F. Cohen
NOTARY PUBLIC

My Commission Expires: 6/5/2010

William A. Brown
PROCESS SERVER # _____
Appointed in accordance
with State Statutes

SERVE-ONE, INC.
P.O. Box 2584
Greenville, SC 29602-2584
(864) 235-7766

Our Job Serial Number: 2008008163

SHEILA F. COHEN
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires June 5, 2010

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Record on Appeal, Page 117

APX118

Affidavit of Service as
to Michael Aiello (Sept.
8, 2008)

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Case Number: 2008-CP-2513

Plaintiff:

Regions Bank

vs.

Defendant:

Stonebridge Development Group, LLC, et al.

For: Carol Shaffer

Haynsworth Sinkler Boyd, P.A.

Received by SERVE-ONE, INC. to be served on Michael Aiello, 906 Cold Bottom Road, Sparks, MD 21152. I, BILL AMOS, being duly sworn, depose and say that on the 16 day of AUG, 2008 at 2:00 PM, executed service by delivering a true copy of the Civil Action Cover Sheet, Summons, Complaint to Foreclose Mortgage and Exhibits in accordance with state statutes in the manner marked below:

☒ INDIVIDUAL SERVICE: Served personally to the within-named.

() SUBSTITUTE SERVICE: By delivering to: MICHAEL AIELLO, as a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

() OTHER SERVICE: As described in the Comments below by serving _____ as _____

() NON SERVICE: Due to reasons detailed in Comments below.

() MILITARY STATUS: Y ☒ If Yes, what branch: _____

COMMENTS: _____

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 27th day of August 2008 by the affiant who is personally known to me

NOTARY PUBLIC

My Commission Expires June 5, 2010

PROCESS SERVER # _____
Appointed in accordance
with State Statutes

SERVE-ONE, INC.
P.O. Box 2584
Greenville, SC 29602-2584
(864) 235-7766

Our Job Serial Number: 2008008162

SHEILA F. COHEN Copyright © 1992-2006 Database Services, Inc. - Process Server's Toolbox V6.2v
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires June 5, 2010

Record on Appeal, Page 119

APX120

Date: 8/27/2008 Time: 12:33 PM Page: 3 of 3

Notice of Hearing (Apr. 26, 2010)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-10-2513

Regions Bank,

Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.,

Defendants.

NOTICE OF HEARING

FILED
2010 APR 26 PM 3:59
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**TO PLANTATION ISLE EQUITY GROUP, LLC, A MARYLAND LIMITED LIABILITY
COMPANY, PLANTATION ISLE EQUITY PARTNERS GENERAL PARTNERSHIP,
MICHAEL AIELLO, FRANK M. HARVEY AKA FRANCIS M. HARVEY, AND
CAROLINA CUSTOM DOCKS, LLC, *PRO SE* DEFENDANTS, CHARLES S. ALTMAN,
ATTORNEY FOR DEFENDANTS STONEBRIDGE DEVELOPMENT GROUP, LLC AND
J. MARK CALDWELL, INDIVIDUALLY, AND MARK W. MCKNIGHT, ATTORNEY
FOR DEFENDANT CAROLINA FEDERAL SAVINGS BANK:**

NOTICE IS HEREBY GIVEN that a hearing on the following matters will be held before
The Honorable Mikell R. Scarborough, Master in Equity for Charleston County, in the above

captioned matter on Tuesday, May 11, 2010, at 2:00 P.M., at the Charleston County Courthouse,
100 Broad Street, Courtroom 2A, Charleston, South Carolina 29401:

1) Plaintiff's Motion for Summary Judgment on priority of title/lien against Defendant
Carolina Federal Savings Bank; and

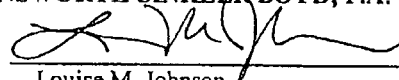
2) Plaintiff's foreclosure action.

You are requested to notify Louise M. Johnson at (803) 540-7863 of your intention to
appear.

YOU ARE INVITED TO ATTEND AS YOU SEE FIT.

HAYNSWORTH SINKLER BOYD, P.A.

By:


Louise M. Johnson

Post Office Box 11889
Columbia, South Carolina 29211-1889
(803) 779.3080 Tel
(803) 765.1243 Fax
Attorneys for Regions Bank

Motion of Defendant
Frank M. Harvey for
Relief from Judgment
(Aug. 4, 2010)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

REGIONS BANK,

☐ Plaintiff

v.

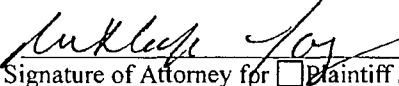
Stonebridge Development Group, Llc, Et Al.

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2008-CP-10-2513

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Loiuse M. Johnson, Bar No. Address: Haynsworth Sinkler Boyd PA 1201 Main St, Suite 2200 Columbia, SC 29201 phone: fax: e-mail: other:	Defendant's Attorney: J. Rutledge Young Iii, Bar No. 14132 Address: 96 Broad Street Charleston, SC 29401 phone: 843-720-2044 fax: 843-720-2047 e-mail: ryoung@duffyandyoung.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for Relief from Judgment Estimated Time Needed: 20 Minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☒ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order.  Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted: 8/4/010	
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRPC) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE _____ CODE: _____ Date: _____
CLERK'S VERIFICATION Collected by: _____ Date Filed: _____	

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2008-CP-10-2513

Regions Bank,

Plaintiff,

v.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc; Rubeling & Associates, Inc.; Carolina
Custom Docks, LLC; J. Mark Caldwell,
individually; Carolina Clearing & Grading,
Inc.,

Defendants.

**MOTION OF DEFENDANT FRANK M.
HARVEY FOR RELIEF FROM JUDGMENT**

FILED
2010 AUG-4 PM 1:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

10-13283

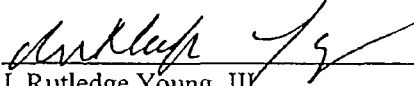
COMES NOW Defendant Frank M. Harvey ("Harvey"), by and through counsel, and moves this Court for relief pursuant to Rule 60(b)(1) of the South Carolina Rules of Civil Procedure from the Court's February 18, 2010 Order of Default and May 14, 2010 Order and Judgment of Foreclosure and Sale on the primary ground that the affidavit of service is fraudulent and there is insufficient service of process. Harvey further requests a delay of the currently scheduled foreclosure sale until such time as he may be heard.

The foreclosure sale in this action is scheduled for August 5, 2010. As stated in the Affidavit of Frank M. Harvey (Exhibit A), the Plaintiff's affidavit of service is false and Harvey was not personally served or properly served.

WHEREFORE, based on the law of the State of South Carolina, the grounds set forth above, and such further materials as may be properly submitted to the Court, Harvey respectfully prays this Honorable Court to enter an order as follows:

1. Delaying the scheduled foreclosure sale;
2. Relieving Harvey from the default judgment against him;
3. Awarding Harvey such further relief as it may deem just and proper.

This 4 day of August, 2010 at Charleston, South Carolina.



J. Rutledge Young, II
Seth W. Whitaker
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)

Attorneys for Defendant Frank Harvey

EXHIBIT A

AFFIDAVIT OF FRANK M. HARVEY

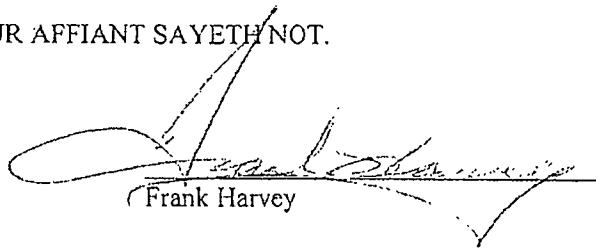
1. That he is a citizen of Maryland residing in Baltimore County.
2. That he is over eighteen years of age and competent to make this affidavit.
3. That the matters stated herein are based upon his personal knowledge.
4. Exhibit A attached hereto is a Copy of the Affidavit of Service on file with the Clerk of Court for Charleston County South Carolina which indicates that I was personally served with a copy of the Summons, Complaint to Foreclose Mortgage and Exhibits on August 14 2009 at my home at 2109 Fox Trail Court in Reisterstown Maryland.
5. Exhibit A is false in that I was not personally served on August 14, 2008 with a copy of the Summons, Complaint to Foreclose Mortgage and Exhibits.
6. On August 14, 2008, I know as a matter of fact that I was not in Reistertown Maryland, because at that time I was in Berlin, Maryland with my family at the shore.
7. I have never been personally served with a copy of the Summons, Complaint to Foreclose Mortgage and Exhibits in Civil Action Number 2008-CP-2513 involving Stonebridge Development Group in which I am a partner.
8. Until recently I was not aware that I had been named as an individual Defendant in Civil Action Number 2008-CP-2513 involving Stonebridge Development Group.
9. I first found out that I was involved in Civil Action Number 2008-CP-2513 approximately two years ago when I received a copy of the lawsuit because it involved a

company of which I am a member.

10. Since that time I have retained counsel and learned that a default judgment has been entered against me based upon Exhibit A attached hereto and that I am at risk to have a deficiency judgment entered against me personally.

11. I have given my counsel authority to accept service on my behalf so that I might fully and fairly respond to the allegations being made against me by Regions Bank.

FURTHER YOUR AFFIANT SAYETH NOT.



Frank Harvey

SWORN to before me this
4th day of August 2010.

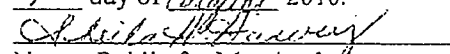

Notary Public for Maryland
My Commission Expires: 5/9/14

EXHIBIT A

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: 2008-CP-2513

Plaintiff:

Regions Bank

vs.

Defendant:

Stonebridge Development Group, LLC, et al.

For: Carol Shaffer

Haynsworth Sinkler Boyd, P.A.

Received by SERVE-ONE, INC. to be served on Frank M Harvey aka Francis M Harvey, 2109 Foxhall Court, Reisterstown, MD 21136. I, William L. Brown, being duly sworn, depose and say that on the 14 day of AUG, 2008 at 7:30 a.m., executed service by delivering a true copy of the Civil Action Cover Sheet, Summons, Complaint to Foreclose Mortgage and Exhibits in accordance with state statutes in the manner marked below:

☒ INDIVIDUAL SERVICE: Served personally to the within-named.

() SUBSTITUTE SERVICE: By delivering to: _____, as _____, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

() OTHER SERVICE: As described in the Comments below by serving _____ as _____

() NON SERVICE: Due to reasons detailed in Comments below.

() MILITARY STATUS: Y ☒ If Yes, what branch: _____

COMMENTS: _____

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 18th day of August by the affiant who is personally known to me:

Sheila F. Cohen
NOTARY PUBLIC

My Commission Expires: 6/5/2010

William L. Brown

PROCESS SERVER # _____
Appointed in accordance
with State Statutes

SERVE-ONE, INC.
P.O. Box 2584
Greenville, SC 29602-2584
(864) 235-7766

Our Job Serial Number: 2008008163

SHEILA F. COHEN
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires June 5, 2010

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Record on Appeal, Page 131

APX132

Motion [Memorandum]
of Defendant Frank M.
Harvey for Relief from
Judgment (Aug. 20,
2010)

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

REGIONS BANKS

☐ Plaintiff

v.

Stonebridge Development Group, Llc

☒ Defendant.

IN THE COURT OF COMMON PLEAS

CASE NO.
2008-CP-10-2513

MOTION AND ORDER INFORMATION
FORM AND COVER SHEET

Plaintiff's Attorney: Louise M. Johnson, Bar No. Address: 1201 Mains Street, Suite 2200 Columbia, SC 29201 phone: fax: e-mail: other:	Defendant's Attorney: J. Rutledge Young, Iii, Bar No. 14132 Address: 96 Broad Street Charleston, SC 29401 phone: 843-720-2044 fax: e-mail: ryoung@duffyandyoung.com other:
☒ MOTION HEARING REQUESTED (attach written motion and complete SECTIONS I and III) ☐ FORM MOTION, NO HEARING REQUESTED (complete SECTIONS II and III) ☐ PROPOSED ORDER/CONSENT ORDER (complete SECTIONS II and III)	
SECTION I: Hearing Information Nature of Motion: Motion for Relief from Judgment Estimated Time Needed: 30 minutes Court Reporter Needed: ☒ YES / ☐ NO	
SECTION II: Motion/Order Type ☐ Written motion attached ☐ Form Motion/Order I hereby move for relief or action by the court as set forth in the attached proposed order. Signature of Attorney for ☐ Plaintiff / ☐ Defendant Date submitted	
SECTION III: Motion Fee ☒ PAID - AMOUNT: 25.00 ☐ EXEMPT: ☐ Rule to Show Cause in Child or Spousal Support (check reason) ☐ Domestic Abuse or Abuse and Neglect ☐ Indigent Status ☐ State Agency v. Indigent Party ☐ Sexually Violent Predator Act ☐ Post-Conviction Relief ☐ Motion for Stay in Bankruptcy ☐ Motion for Publication ☐ Motion for Execution (Rule 69, SCRCP) ☐ Proposed order submitted at request of the court; or, reduced to writing from motion made in open court per judge's instructions Name of Court Reporter: ☐ Other:	
JUDGE'S SECTION ☐ Motion Fee to be paid upon filing of the attached order. ☐ Other:	JUDGE CODE: Date:
CLERK'S VERIFICATION Collected by: _____ Date Filed: ☐ MOTION FEE COLLECTED: _____ ☐ CONTESTED - AMOUNT DUE: _____	

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT
CIVIL ACTION NO. 2008-CP-10-2513

Regions Bank,

Plaintiff,

v.

10-014369
Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc; Rubeling & Associates, Inc.; Carolina
Custom Docks, LLC; J. Mark Caldwell,
individually; Carolina Clearing & Grading,
Inc.,

Defendants.

FILED
2010 AUG 20 PM 4:17
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

**MOTION OF DEFENDANT FRANK M.
HARVEY FOR RELIEF FROM JUDGMENT**

COMES NOW Defendant Frank M. Harvey ("Harvey"), by and through counsel, and pursuant to Rule 55 and Rule 60(b) of the South Carolina Rules of Civil Procedure moves this Court for relief from the Court's February 18, 2010 Order of Default on the primary ground that the affidavit of service is fraudulent and there is insufficient service of process entitling Harvey to relief pursuant to Rule 60(b)(4), SCRCPP. As stated in the Affidavit of Frank M. Harvey (Exhibit A), the Plaintiff's affidavit of service is false and Harvey was not personally served or properly served.

Harvey is entitled to relief pursuant to Rule 60(b) of the Rules of Civil Procedure. Rule 60(b) provides in pertinent part as follows:

On motion and upon such terms as are just, the court may relieve a party or his legal representative from a final judgment, order, or proceeding for the following reasons:

- (1) Mistake, inadvertence, surprise or excusable neglect;
- ...
- (3) Fraud, misrepresentation, or other misconduct of an adverse party;
- (4) The judgment is void;

Harvey is entitled to relief pursuant to Rule 60(b)(4) because the judgment against him is void due to lack of proper service. The proper ground to set aside a default judgment due to ineffective service of process is a Rule 60(b)(4) motion that the judgment is void for lack of personal jurisdiction over the alleged party. Fassett v. Evans, 610 S.E.2d 841, 845, fn 4 (2005); see McDaniel v. U.S. Fidelity Guar. Co., 478 S.E.2d 868, 871 (Ct. App. 1996) (noting that a judgment is void for Rule 60(b)(4) purposes where the court failed to provide proper due process or where the court lacked subject matter or personal jurisdiction.) The requirements generally applicable to Rule 60(b) motions are not applicable to Rule 60(b)(4) motions. See Vinten v. Jeantot Marine Alliances, S.A., 191 F.Supp.2d 642, 649 (D.S.C. 2002); see also Garcia Financial Group, Inc. v. Virginia Accelerators Corp., 3 Fed.Appx. 86, 2001 WL 117497, * 2 (4th Cir.2001) (unpublished) (noting a party does not need to establish the threshold requirements of timeliness or a meritorious defense for a motion under Rule 60(b)(4)).

As stated in the Affidavit of Frank Harvey (Exhibit A), Mr. Harvey was never served with a copy of the Summons and Complaint in Civil Action Number 2008-CP-2513. "Rule 4, SCRCF serves at least two purposes. It confers personal jurisdiction on the court and assures the defendant of reasonable notice of the action." Moore v. Simpson, 322 S.C. 518, 523 (Ct. App. 1996). Although there is a presumption of proper service when the civil rules are followed, Harvey can rebut that presumption through proof establishing that service was not proper.

In the alternative, Harvey is entitled to relief pursuant to Rule 60(b)(1) and 60(b)(3) based on excusable neglect and misrepresentation. In determining whether to set aside a default judgment under Rule 60(b)(1) or 60(b)(3), the trial judge may consider the following factors: (1) the promptness with which relief is sought, (2) the reasons for the failure to act promptly, (3) the existence of a meritorious defense, and (4) the prejudice to the other parties. See McClurg v. Deaton, 380 S.C. 563, 573 (2008), cert. granted March 5, 2010. Relief under this section is in the sound discretion of the trial judge. This motion was filed within six months of the default judgment. Harvey has set forth the ultimate meritorious defense – lack of jurisdiction. See Vinten v. Jeantot Marine Alliances, S.A., 191 F.Supp.2d 642, 649 (D.S.C. 2002).

WHEREFORE, based on the law of the State of South Carolina, the grounds set forth above, and such further materials as may be properly submitted to the Court, Harvey respectfully prays this Honorable Court to enter an order as follows:

1. Relieving Harvey from the default judgment against him;
2. Order that any default judgment against him is null and void.

This 20th day of August, 2010 at Charleston, South Carolina.



J. Rutledge Young, III
Lee Anne Walters
DUFFY & YOUNG, LLC
96 Broad Street
Charleston, South Carolina 29401
(843) 720-2044 (phone)
(843) 720-2047 (fax)

Attorneys for Defendant Frank Harvey

Exhibit A

FILED

STATE OF MARYLAND)

COUNTY OF Baltimore) 2010 AUG 16 PM 2: 26 AFFIDAVIT OF FRANK M. HARVEY

JULIE J. ARMSTRONG
CLERK OF COURT

PERSONALLY appeared before me, Frank M. Harvey, who, being first duly sworn,
BY _____

deposes and says:

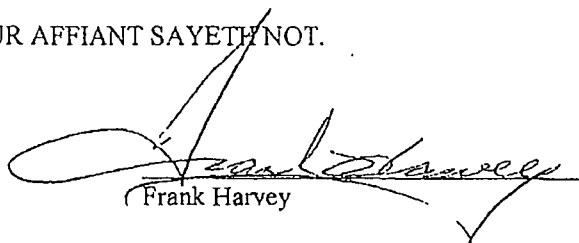
1. That he is a citizen of Maryland residing in Baltimore County.
2. That he is over eighteen years of age and competent to make this affidavit.
3. That the matters stated herein are based upon his personal knowledge.
4. Exhibit A attached hereto is a Copy of the Affidavit of Service on file with the Clerk of Court for Charleston County South Carolina which indicates that I was personally served with a copy of the Summons, Complaint to Foreclose Mortgage and Exhibits on August 14 2009 at my home at 2109 Fox Trail Court in Reisterstown Maryland.
5. Exhibit A is false in that I was not personally served on August 14, 2008 with a copy of the Summons, Complaint to Foreclose Mortgage and Exhibits.
6. On August 14, 2008, I know as a matter of fact that I was not in Reistertown Maryland, because at that time I was in Berlin, Maryland with my family at the shore.
7. I have never been personally served with a copy of the Summons, Complaint to Foreclose Mortgage and Exhibits in Civil Action Number 2008-CP-2513 involving Stonebridge Development Group in which I am a partner.
8. Until recently I was not aware that I had been named as an individual Defendant in Civil Action Number 2008-CP-2513 involving Stonebridge Development Group.
9. I first found out that I was involved in Civil Action Number 2008-CP-2513 approximately two years ago when I received a copy of the lawsuit because it involved a

company of which I am a member.

10. Since that time I have retained counsel and learned that a default judgment has been entered against me based upon Exhibit A attached hereto and that I am at risk to have a deficiency judgment entered against me personally.

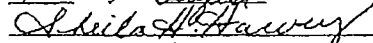
11. I have given my counsel authority to accept service on my behalf so that I might fully and fairly respond to the allegations being made against me by Regions Bank.

FURTHER YOUR AFFIANT SAYETH NOT.


Frank Harvey

SWORN to before me this

4th day of August 2010.



Notary Public for Maryland

My Commission Expires: 5/9/14

Plaintiffs'
Memorandum in
Opposition to Motion
of Defendant Frank M.
Harvey for Relief from
Judgment (with all
attachments) (Sept. 17,
2010)

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No. 2008-CP-10-2513

Regions Bank,

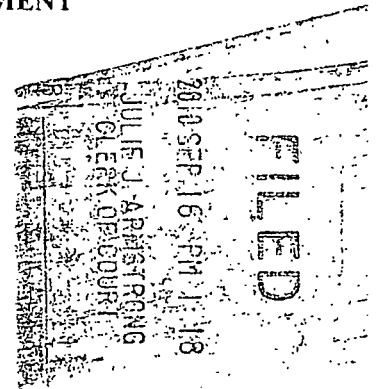
Plaintiff,

vs.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.

Defendants.

**PLAINTIFF'S MEMORANDUM
IN OPPOSITION TO MOTION OF
DEFENDANT FRANK M. HARVEY FOR
RELIEF FROM JUDGMENT**



**PLAINTIFF'S MEMORANDUM IN OPPOSITION TO
MOTION OF DEFENDANT FRANK M. HARVEY FOR RELIEF FROM JUDGMENT**

Plaintiff, Regions Bank, through its undersigned counsel, respectfully submits this Memorandum in Opposition to Motion of Defendant Frank M. Harvey For Relief From Judgment, filed August 4, 2010, as supplemented on August 20, 2010 (collectively "Motion").

PROCEDURAL HISTORY

In the above-referenced action, Plaintiff sought foreclosure of the subject note and mortgage, with deficiency demanded, and sought personal judgment against defendant Frank M. Harvey ("Harvey") pursuant to his unconditional personal guaranty of the debt.

In this foreclosure case, Plaintiff filed the original Civil Action Coversheet, Certificate of Exemption from ADR, Summons and Complaint ("Foreclosure Action") with Exhibits (collectively hereinafter referred to as "Pleadings") in the Office of the Clerk of Court for Charleston County on May 7, 2008.

Said Pleadings were served upon Harvey via personal service on August 14, 2008, as evidenced by the Affidavit of Service ("Affidavit") filed with the Court on September 2, 2008, a copy of which is attached hereto as **Exhibit A**. After a period of more than thirty (30) days, no notice, motion, or other pleading was filed by or on behalf of the Harvey, and an Order of Default as to Harvey was entered on February 24, 2010 ("Order of Default").

After notice and a hearing, the Master in Equity's Order and Judgment of Foreclosure and Sale was entered on May 18, 2010 ("Foreclosure Decree") in which, in addition to other relief granted to Plaintiff, the Court awarded personal judgment to Plaintiff against Harvey in the amount of \$733,694.66, with a credit against the judgment to be given for the net proceeds received by Plaintiff for the sale. Pursuant to the Foreclosure Decree, the property was offered for sale at the initial foreclosure sale held on July 6, 2010, and at the deficiency sale on August 5, 2010. Woodrow W. Blizzard was the high bidder at the conclusion of the deficiency sale with a bid in the amount of \$260,000.00.

Harvey filed this Motion, claiming that the Foreclosure Decree is void due to lack of personal jurisdiction.

ARGUMENT

The South Carolina Supreme Court has held that, "A presumption of proper service exists when the rules governing service are followed. *BB&T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501 (2006). In this case, Plaintiff followed the rules governing service of process by employing a

process server ("Process Server") to hand deliver the Pleadings to Harvey. After personally serving Harvey, the Process Server executed the Affidavit which included a physical description of Harvey in addition to the time, date, and location of service upon Harvey. Therefore, the presumption of proper service upon Harvey exists in favor of Plaintiff.

Harvey contends that the presumption of proper service is rebutted by the Affidavit of Frank M. Harvey filed on August 26, 2010, in which he asserts that the service Affidavit is false, and that he was not personally or properly served ("Harvey Affidavit"). Even if the Court were to find that the Harvey Affidavit adequately rebuts the presumption of service, which Plaintiff expressly denies, Harvey's Motion should be denied because Harvey had actual notice of the Foreclosure Action approximately 20 months ago. *Roche v. Young*, 318 S.C. 207, 456 S.E.2d 897 (1995).

In a separate civil action (*J. Mark Caldwell et al. v. Michael Aiello, Francis M. Harvey, et al.*, C/A No. 2008-CP-10-2169) ("Caldwell Case"), Harvey filed an Answer and Counterclaim ("Counterclaim in Caldwell Case") on June 13, 2008, a copy of which is attached hereto as **Exhibit B**, in which he stated that:

119. ...Regions Bank has filed a foreclosure action against SDG and against Aiello, Harvey, and Caldwell individually based on their guarantee of the note and mortgage in the case captioned Regions Bank v. Stonebridge Development Group, LLC; Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company; Carolina Federal Savings Bank; Plantation Isle Equity Partners General Partnership; Michael Aiello; Frank M. Harvey aka Francis M. Harvey; Brandon Advertising, Inc.; Rubeling & Associates, Inc.; Carolina Custom Docks, LLC; J. Mark Caldwell, individually; Carolina Clearing & Grading, Inc., Case No. 2008-CP-10-2513, filed in the Charleston County Court of Common Pleas.

120. Aiello and Harvey have been in contact with Regions Bank in an effort of address the foreclosure action. Caldwell has made no effort of any kind to address this debt obligation.

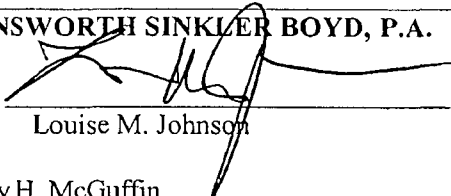
121. SDG, Aiello, and Harvey will suffer a permanent and irreparable harm if Stoney Point court Lot 1 is not sold so that the proceeds from the sale can be used

to payoff SDG's note and mortgage to Regions Bank.

The statements contained in Harvey's Counterclaim in Caldwell Case cited above are in direct conflict with Harvey's sworn statements contained in paragraphs 8 and 9 of the Harvey Affidavit in this case. In addition, Harvey's Counterclaim in Caldwell Case establishes that this Motion was not timely filed because Harvey had actual notice of the Foreclosure Action approximately 20 months prior to the entry of the Order of Default and approximately two years prior to Harvey's filing of the Motion.

CONCLUSION

For the reasons stated above, Harvey is not entitled to an order relieving him from the Foreclosure Decree entered against him and/or declaring that the Foreclosure Decree is null and void as to him.

September 15, 2010	HAYNSWORTH SINKLER BOYD, P.A. By:  Louise M. Johnson Stanley H. McGuffin Haynsworth Sinkler Boyd, P.A. Post Office Box 11889 Columbia, SC 29211-1889 (803) 779-3080 Attorneys for Regions Bank
---------------------------	---

AFFIDAVIT OF SERVICE

State of South Carolina

County of Charleston

Common Pleas Court

Case Number: 2008-CP-2513

Plaintiff:

Regions Bank

vs.

Defendant:

Stonebridge Development Group, LLC, et al.

For: Carol Shaffer

Haynsworth Sinkler Boyd, P.A.

Received by SERVE-ONE, INC. to be served on Frank M Harvey aka Francis M Harvey, 2109 Fox Trail, Columbia, SC 29912. I, William H. Brown, being duly sworn, depose and say that on the 14th day of August, 2010 at 7:00 a.m., executed service by delivering a true copy of the Civil Action Cover Sheet, Summons, Complaint to Foreclose Mortgage and Exhibits in accordance with state statutes in the manner marked below:

☒ INDIVIDUAL SERVICE: Served personally to the within-named.

() SUBSTITUTE SERVICE: By delivering to: _____, as _____, a person authorized to accept service and a person of discretion and appropriate age, residing at the residence of the within named person and present at said residence at the time of service.

() OTHER SERVICE: As described in the Comments below by serving _____ as _____.

() NON SERVICE: Due to reasons detailed in Comments below.

() MILITARY STATUS: Y ☒ If Yes, what branch: _____

COMMENTS: _____

I certify that I have no interest in the above action, am of legal age and have proper authority in the jurisdiction in which this service was made.

Subscribed and Sworn to before me on the 18th day of August by the affiant who is personally known to me.

Sheila F. Cohen
NOTARY PUBLIC

My Commission Expires: 6/5/2010

William H. Brown
PROCESS SERVER # _____
Appointed in accordance with State Statutes

SERVE-ONE, INC.
P.O. Box 2584
Greenville, SC 29602-2584
(864) 235-7768

Our Job Serial Number: 2008008163

SHEILA F. COHEN
NOTARY PUBLIC STATE OF MARYLAND
My Commission Expires June 5, 2010

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APX146

Record on App

EXHIBIT

A

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

J. Mark Caldwell, and Stonebridge
Development Group, LLC,

Plaintiffs,

vs.

Michael Aiello, Francis M. Harvey, Carolina
Federal Savings Bank, Regions Bank,
Plantation Isle Equity Partners General
Partnership, Rubeling & Associates, Inc.,
Plantation Isle, LLC, Brandon Advertising,
Inc., Palmetto Premium Investments, LLC, and
Plantation Isle Equity Group, LLC,

Defendants.

and

Michael Aiello and Francis M. Harvey,
individually and on behalf of Stonebridge
Development Group, LLC and Stonebridge
Ashley Pointe, LLC,

Third-Party Plaintiffs,

vs.

J. Mark Caldwell, Stonebridge Ripley LLC,
and Stonebridge Ripley II, LLC,

Third-Party Defendants.

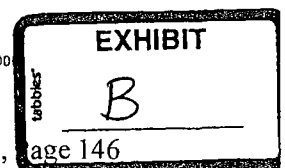
IN THE CIRCUIT COURT

Case No. 2008-CP-10-2169

ANSWER, COUNTERCLAIM, AND
THIRD-PARTY COMPLAINT

FILED
2008 JUN 13 PM 4:56
JULIE J. ARMSTRONG
CLERK OF COURT

Defendants **MICHAEL AIELLO** ("Aiello"), **FRANCIS M. HARVEY** ("Harvey"),
PLANTATION ISLE EQUITY PARTNERS GENERAL PARTNERSHIP, and
PLANTATION ISLE EQUITY GROUP, LLC, answer Plaintiffs Complaint's and assert
Counterclaim and Third-Party Claims as follows:



PRELIMINARY STATEMENT
(as to Plantation Isle, LLC)

1. The caption of Plaintiff's Complaint lists "Plantation Isle, LLC" as a defendant. That entity is not identified in the Complaint, the Complaint does not assert any claims related to that entity, and the Complaint does not contain a prayer for relief as to that entity. The Charleston County Property records reflects that entity as owning the parcels identified as TMS # 410-00-00-076, which is Lot 76 on Riverwalk Drive, and TMS # 410-00-00-041, which has been platted as a street identified as Riverwalk Drive. Neither of those parcels is at issue in this lawsuit and the Defendants in this lawsuit have no connection with that entity or the parcels it owns.

FOR A #1 DEFENDANT
(denial)

2. Every allegation in the Complaint not specifically admitted herein is denied and strict proof thereof is demanded.

3. Paragraph 1 is admitted based on information and belief.

4. Paragraph 2 is admitted.

5. Paragraphs 3 – 5 are admitted.

6. Answering paragraphs 6 and 7, Defendants admit jurisdiction and venue is proper in this Court.

7. Paragraphs 8 and 9 are denied.

8. Paragraph 10 is admitted.

9. Paragraph 11 recites provision in the Operation Agreement, the terms of which speak for themselves.

10. Paragraph 12 is admitted to the extent it alleges Caldwell was initially the manager of Stonebridge, the paragraph is denied to the extent it alleges Caldwell is still the manager of SDG.

11. Paragraphs 13 – 15 are admitted.

12. Paragraph 16 is denied as stated. Caldwell was removed as the manager at a duly noticed meeting held in accordance with the SDG Operating Agreement.

13. Paragraph 17 is denied as stated. SDG deeded the Riverwalk Tract and Stoney Point Tract and to Plantation Isle Equity Group, LLC pursuant to a deed recorded in Book K647-Page765 in the Charleston County RMC Office, and Plantation Isle Equity Group, LLC is the lawful owner of the property.

14. Paragraph 18 is admitted upon the qualification that the information has been withheld based on Caldwell's refusal to provide the books, records, financial information, and an accounting of the operations of SDG while he was manager, which books and records are in his possession, custody, and control.

15. Paragraph 19 is denied as stated. Plantation Isle Equity Group, LLC is the lawful owner of the property. Regions Bank, Carolina Federal Savings Bank, and Plantation Isle Equity Partners General Partnership all have valid and lawfully recorded mortgages on the property. Further, a satisfaction of the Brandon Advertising, Inc. judgment was filed on 5/6/2008.

16. Answering paragraph 20, the previous paragraphs are incorporated by reference.

17. Paragraph 21 is admitted.

18. Paragraph 22 recites provision in the SDG Operating Agreement, the terms of which speak for themselves.

19. Paragraph 23 is denied as stated. Caldwell was removed as the manager at a duly noticed meeting held in accordance with the Stonebridge Operating Agreement.

20. Paragraph 24 is denied as stated.

21. Paragraph 25 is denied. Caldwell was removed as the manager at a duly noticed meeting held in accordance with the Stonebridge Operating Agreement.

22. Paragraph 26 is denied as stated. Aiello and Harvey were appointed as managers of the SDG following Caldwell's removal as manager at a duly noticed meeting held in accordance with the Stonebridge Operating Agreement.

23. Paragraph 27 is denied as stated.

24. Paragraph 28 is admitted upon the qualification that the information has been withheld based on Caldwell's refusal to provide the books, records, financial information, and an accounting of the operations of SDG while he was manager, which books and records are in his possession, custody, and control.

25. Paragraph 29 is admitted.

26. Paragraphs 30 and 31 are denied.

27. Answering paragraph 32, the previous paragraphs are incorporated by reference.

28. Paragraph 33 is denied.

29. Paragraph 34 is admitted.

30. Paragraphs 36 – 39 are denied.

31. Answering paragraph 40, the previous paragraphs are incorporated by reference.

32. Paragraph 41 is denied.

33. Answering paragraph 42, the terms of the applicable statutes speak for themselves and the paragraph is denied to the extent the paragraph fails to recite all portions of the applicable statutes.

34. Paragraphs 43 – 46 are denied.

35. Answering paragraph 47, the previous paragraphs are incorporated by reference.

36. Paragraphs 48 is denied. The paragraph does not completely and accurately recite the applicable statute(s).

37. Paragraph 49 is denied as stated. SDG did in fact convey the property to Plantation Isle Equity Group, LLC, which is the lawful owner of the property.

38. Paragraphs 50 and 51 are denied.

39. Paragraph 52 is denied. At the date of transfer Caldwell was a Delinquent Member of SDG, and the remaining portions of the paragraph are specifically denied.

40. Paragraph 53 is denied and is further denied to the extend it alleges Caldwell's consent was required.

41. Paragraphs 55 - 58 are denied as stated.

42. Answering Paragraph 59, the terms of the contract with Palmetto Premium Investments, LLC speak for themselves. The remaining portions of the paragraph are denied.

43. Paragraph 60 is denied as stated.

44. Paragraphs 61 – 65 are denied.

45. Answering paragraph 66, the previous paragraphs are incorporated by reference.

46. Paragraph 67 is admitted.

47. Paragraph 68 is denied. The money advanced by Aiello and Harvey was used to obtain a forbearance of BB&T's note and mortgage on SDG's property, which was in default and foreclosure.

48. Paragraph 69 is admitted

49. Paragraphs 70 – 76 are denied.

50. Answering paragraph 77, the previous paragraphs are incorporated by reference.

51. Paragraph 78 is admitted upon the qualification that the information has been withheld based on Caldwell's refusal to provide the books, records, financial information, and an accounting of the operations of SDG while he was manager, which books and records are in his possession, custody, and control.

52. Paragraphs 79 – 81 are denied.

53. Answering paragraph 82, the previous paragraphs are incorporated by reference.

54. Paragraph 83 is denied. The paragraph does not completely and accurately recite the applicable statute(s).

55. Paragraph 84 is denied. Caldwell is a Delinquent Member based on his failure to provide his share of an additional capital contribution required to pay SDG's lenders and creditors.

56. Answering paragraphs 85 and 86, Aiello and Harvey are informed and believe that Caldwell's interest in SDG is zero or a negative amount based on the bank notes and other debts of SDG and based on Caldwell's failure to provide any capital contribution to payment of SDG's lenders and creditors.

57. Paragraphs 87 -88 are denied.

FOR A #2 DEFENSE
(failure to state claim)

58. The Complaint, and each and every allegation therein, fails to state a claim against Defendants upon which relief can be granted and should be dismissed pursuant to Rule 12(b)(6), SCRPC.

FOR A #3 DEFENSE
(waiver and estoppel)

59. Plaintiffs' claims against Defendants are barred by the doctrines of waiver and estoppel.

FOR A #4 DEFENSE
(unclean hands)

60. This action is barred by Plaintiffs' unclean hands.

FOR A #5 DEFENSE
(laches)

61. Plaintiffs' claims are barred by the doctrine of laches.

FOR A #6 DEFENSE
(failure to mitigate damages)

62. Plaintiffs have failed to mitigate their alleged damages, these existence of which is specifically denied.

FOR A #7 DEFENSE
(unjust enrichment)

63. Plaintiffs' claims are barred by the doctrine of unjust enrichment.

FOR A #8 DEFENSE
(insufficient allegations of fraud)

64. This action should be dismissed on the ground that the allegations against Defendants are not stated with sufficient particularity to constitute a cause of action for fraud, fraudulent concealment, concert of action, conspiracy or the like which would meet the requirement of Rule 9(b), SCRPC.

FOR A #9 DEFENSE
(unconstitutionality of punitive damages)

65. An award of punitive damages would violate the Fifth Amendment and the Due Process and Equal Protection Clauses of the Fourteenth Amendment to the United States Constitution, and Article 1, Section 3 of the South Carolina Constitution, in that there is no objective standard to gauge or limit the amount of punitive damages that can be awarded with sufficient instruction provided in determining the amount of punitive damages that should be awarded. Further, any award of punitive damages serving a compensatory function is inconsistent with due process guarantees; any award of punitive damages based upon the wealth of the Defendant violates due process and equal protection guarantees; the jury's unfettered power to award punitive damages in a discretionary amount completely lacks meaningful standards, is unconstitutionally vague, and is inconsistent with due process guarantees; and even if a standard governing the imposition of punitive damages exists, such "standard" is void for vagueness.

FOR A #10 DEFENSE
(incorporation of defenses raised by other defendants)

66. Defendants incorporate the defenses of any other defendants as they may be applicable to these Defendants.

FOR A #11 DEFENSE
(abandonment of contract)

67. Plaintiffs abandoned the contract to purchase SDG's property.

FOR A #12 DEFENSE
(accounting as a condition precedent)

68. Plaintiffs should be required to provide Defendants with a complete and detailed accounting as a condition precedent to the Plaintiffs' right to proceed with all other claims and causes of action asserted by the Plaintiffs.

FOR A #13 DEFENSE
(business judgment rule)

69. The decisions and actions of Defendants were made in good faith and the absence of any fraud, self-dealing, or unconscionable conduct. Accordingly, the Plaintiffs claims are barred by the business judgment rule as set forth in the applicable Code of Laws of the State of South Carolina.

FOR A #14 DEFENSE
(reservation of right to add defenses)

70. Defendants reserve the right to allege additional defenses and additional facts and circumstances in support of its defenses as the facts become available.

COUNTERCLAIMS AND THIRD-PARTY CLAIMS

- 71. Michael S. Aiello ("Aiello") is a citizen and resident of Maryland.
- 72. Frank M. Harvey ("Harvey") is a citizen and resident of Maryland.
- 73. J. Mark Caldwell ("Caldwell") is a citizen and resident of Virginia.

74. Stonebridge Development Group, LLC ("SDG") is a South Carolina Limited Liability Company.

75. Stonebridge Ashley Pointe, LLC ("SAP") is a South Carolina Limited Liability Company.

76. Plantation Isle Equity Partners General Partnership is general partnership created under the laws of Maryland.

77. Plantation Isle Equity Group, LLC is a South Carolina Limited Liability Company.

78. Stonebridge Ripley, LLC is a South Carolina Limited Liability Company, of which Caldwell is the sole member and manager.

79. Stonebridge Ripley II, LLC is a South Carolina Limited Liability Company, of which Caldwell is the sole member and manager.

80. This Court has jurisdiction over the parties and subject matter of this action, and venue is proper in this Court.

FACTS

81. SDG was formed for the purposes of engaging in real estate and real estate development projects.

82. A copy of the operating agreement of SDG is attached as Exhibit A and is incorporated by reference.

83. Aiello, Harvey, and Caldwell are the sole members of SDG.

84. Under the SDG operating agreement, Caldwell was the managing member of SDG and was responsible for managing the day-to-day operations of SDG, including without limitation keeping all books and records of the company.

Ashley River Townhome Project
(Riverwalk Drive Townhome Tract and Stoney Point Court Lot 1)

85. SDG purchased an approximately 12 acre tract of undeveloped land located on Riverwalk Drive in North Charleston (Charleston County), TMS # 410-00-00-025, as reflected in the deed dated 5/19/2005 and recorded in Book D0537–Page696 in the Charleston County RMC office. This tract is hereinafter referred to as the “Riverwalk Drive Townhome Tract.”

86. The Riverwalk Drive Townhome Tract is located on the Ashley River as reflected on the plat recorded in Book ED–Page435 in the Charleston County RMC Office, a copy of which is attached as Exhibit B and incorporated by reference.

87. SDG purchased the Riverwalk Drive Townhome Tract for the purpose of building townhomes on the tract and selling them for a profit.

88. Around the time SDG purchased the Riverwalk Drive Townhome Tract, SDG also purchased an approximately 1.63 acre tract of undeveloped land known as Lot 1 on Stoney Point Court in North Charleston (Charleston County), TMS # 410-00-00-067, as reflected in the deed dated 5/25/2007 and recorded in Book D538–Page770 in the Charleston County RMC office. This lot is hereinafter referred to as “Stoney Point Court Lot 1.”

89. As reflected on the plat recorded in Plat Book ED–Pages 435 (Exhibit B), Stoney Point Court Lot 1 is located on the Ashley River and adjacent to the Riverwalk Drive Townhome Tract.

90. SDG funded the purchase of the Riverwalk Drive Townhome Tract via a loan provided by Branch Banking and Trust Company (BB&T). The loan was secured by SDG giving BB&T a note and mortgage the property. Aiello, Harvey, and Caldwell personally guaranteed the repayment of the note and mortgage.

91. SDG funded the purchase of Stoney Point Court Lot 1 via a loan provided by Regions Bank. The loan was secured by SDG giving Regions Bank a note and mortgage the property. Aiello, Harvey, and Caldwell personally guaranteed the payment of the note and mortgage.

92. SDG purchased Stoney Point Court Lot 1 for the purposes of providing a means of increasing the amount waterfront access for the Riverwalk Drive Townhome Tract. SDG adjusted the property line between the two properties to increase the waterfront footage of the Riverwalk Drive Townhome Tract on the Ashley River to accommodate construction of a dock and boating landing for that tract. The property line adjustment between the Riverwalk Drive Townhome Tract and Stoney Point Court Lot 1 is shown on the plat recorded in Plat Book DE-Page954 in the Charleston County RMC Office, a copy of which is attached as Exhibit C and incorporated by reference.

93. After acquiring the properties, SDG began working on plans to develop townhomes on the Riverwalk Drive Town Home Tract, and SDG incurred loan carrying expenses, engineering and planning expenses, and other planning and development expenses.

94. Aiello and Harvey gathered a group of investors who could provide the cash needed to fund the development costs of the project. The investors formed a partnership, Plantation Isle Equity Partners General Partnership, which provided \$800,000 cash to SDG in exchange for receiving a \$1.6 Million return on its investment, which was secured by SDG granting Plantation Isle Equity Partners General Partnership a mortgage on the properties in that amount,

95. While acting a manager of SDG in connection with the Riverwalk Drive Townhome Tract development project, Caldwell repeatedly engaged in acts that constituted a

breach of his obligations as a manager and member of SDG, mismanagement, breach of his fiduciary obligations, a usurp of SDG's opportunities, self dealing, and fraud and deceit, including without limitation the followings:

- (a) Caldwell failed to pay contractors and others for labor, materials, and services supplied for the project, resulting in liens being filed on the property.
- (b) Caldwell set up separate profit centers to divert development funds and revenues to himself at the expense of the Defendants.
- (c) Caldwell acted as the broker and realtor for the project using a separate real estate company owned solely by him so he could retain all commissions from sales.
- (d) Caldwell informed Aiello and Harvey that he would pay the cost for advertising and marketing the project from his own real estate company, but he then executed a contract on behalf of SDG that obligated SDG to pay Brandon Advertising, Inc. \$200,000 to provide such services. Caldwell failed to pay the amounts owed to Brandon Advertising, Inc., which resulted in it filing a lien and obtaining a judgment against the project property. Plantation Isle Equity Partners General Partners paid the lien and judgment.
- (e) Caldwell failed to account for his expenditure of project funds.
- (f) BB&T provided a \$600,000 development loan to fund development costs. Caldwell drew \$419,000 in funds, but paid out only \$200,000 in costs. Caldwell has failed to account for the balance of the funds.
- (g) Plantation Isle Equity Partners General Partners provided an additional \$800,000 for the project. Approximately \$300,000 of the \$800,000 was applied to the purchase price of the property. Caldwell has failed to account for the balance of the funds.
- (h) Caldwell refused repeated requests by Aiello and Harvey to provide an accounting and copies of the books and records related to the project.
- (i) Upon information and belief, Caldwell diverted funds from this project to his personal use.
- (j) Upon information and belief, Caldwell took funds from this project and used those funds to support a project of his in Virginia that was having financial problems.

96. In early 2007, as planning and site work for the Riverwalk Drive Townhome Tract was proceeding, Caldwell approached Aiello and Harvey and demanded that SDG use a construction company solely owned by Caldwell (Stonebridge-Charleston Homes, LLC) to construct the townhouses on the site.

97. Aiello and Harvey objected to SDG using Caldwell's construction company (Stonebridge-Charleston Homes, LLC) based on the conflict of interest, based on their concern over the reputation and ability of his company to perform the work, based on Caldwell's failure and refusal to provide an accounting expenses on the project, and based on his performance as manager on the project.

98. By that point, SDG did not have the funds to continue paying the carrying costs on the notes and mortgages on the Riverwalk Drive Townhome Tract and Stoney Point. The notes and mortgages were in default and SDG's lenders were threatening to file or had filed foreclosure actions.

99. Caldwell informed Aiello and Harvey that he did not have the ability to provide a capital contribution to fund payment of his share of SDG's ongoing loan obligations as he was required to provide under the SDG operating agreement. Instead, Caldwell proposed that he would buyout the interests of SDG in the Riverwalk Drive Townhome Tract project and he would proceed to develop the project himself.

100. In May 2007 Aiello and Harvey paid \$561,321.68 to BB&T to obtain a three month forbearance of SDG's debt to BB&T in order to give Caldwell time to buy the Riverwalk Drive Townhome Tract and Stoney Point Court Lot 1. They secured their payment by placing a mortgage on the Riverwalk Drive Townhome Tract, on Stoney Point Court Lot 1, and on some other property (boat slips, which are discussed below) in which the parties had an

interest, as reflected in the deed date May 15, 2007, and recorded in Book F626-Page286 in the Charleston County RMC office, a copy of which is attached as Exhibit D and incorporated by reference.

101. On June 15, 2007, Aiello, Harvey, and Caldwell executed a document titled "Written Consent, Resolutions, and Agreements of Stonebridge Development Group, LLC," in which they authorized SDG to enter into a contract to sell the Riverwalk Drive Townhome Tract to Caldwell's company, Stonebridge-Charleston Homes, LLC. A copy of the Written Consent is attached as Exhibit E and is incorporated by reference. The purchase contract is included as an exhibit to the Written Consent.

102. In the purchase contract, Caldwell, through his company, Stonebridge-Charleston Home, LLC, agreed to purchase the Riverwalk Drive Townhome Tract and Stoney Point Court Lot 1 from SDG for \$4.5 million, which price include assumption of the \$1.6 million mortgage that Plantation Isle Equity Partnership General Partnership had on the properties.

103. The contract required a closing date of July 16, 2007. Caldwell failed to close on the contract by the closing date.

104. In or around August 2007 Caldwell informed Aiello and Harvey that he could not obtain funding to close the contract and purchase the property.

105. In or around August 2007, BB&T filed an action to foreclose the Riverwalk Drive Townhome Tract based on SDG's failure to pay its note and mortgage on the property. By that time SDG's was also in default on its note and mortgage to Regions Bank on the Stoney Point Court Lot 1.

106. SDG did not have the funds to pay the loans, and Caldwell informed Aiello and Harvey that he did not have any funds to provide his share of a capital contribution to fund SDG's loan obligations. As a result, SDG was getting ready to lose both properties in foreclosure.

107. On September 5 2007, Aiello and Harvey called a special meeting of the SDG members to discuss their options in light of BB&T's pending foreclosure action on the Riverwalk Tract and SDG's default on the Regions Bank note and mortgage on Stoney Point Court Lot 1. The meeting was held on the office of SDG's corporate counsel in Charleston.

108. Caldwell was provided notice of the meeting and its purpose, and he sent an email informing Aiello and Harvey that he would not attend.

109. At the September 5, 2007, and with the assistance and advice of SDG's corporate counsel, Aiello and Harvey adopted a Special Resolution, a copy of which is attached as Exhibit F and incorporated by reference, in which: Aiello and Harvey's capital accounts were adjusted to reflect their capital contributions in the form of their \$561,321.68 forbearance payment to BB&T; Caldwell was declared a Delinquent Member under the SDG Operating Agreement based on his failure to contribute his proportional share of a capital contribution to fund SDG's debt service; Aiello and Harvey voted to remove Caldwell as the manager of SDG; Aiello and Harvey were elected as managers of SDG.

110. Aiello and Harvey determined that SDG should sell Stoney Point Court Lot 1 and use the proceeds to pay off the Regions Bank note and mortgage on the property. They made this decision based on the fact that, as a result of the boundary adjustment between the properties, Riverwalk Drive Townhome Tract now had sufficient frontage on the Ashley River and Stoney Point Court Lot 1 was no longer needed for the development of the Riverwalk

Drive Townhome Tract. Therefore, Stoney Point Court Lot 1 could be sold to reduce SDG's debt burden without impeding the Riverwalk Townhome Tract project.

111. Aiello and Harvey located a buyer for Stoney Point Court Lot 1, and they, acting as manager of SDG, caused SDG to execute a contract to sale the lot to a third-party buyer, Palmetto Premium Investments, LLC. A copy of that contract is attached as Exhibit G and incorporated by reference.

112. The contract for the sale of Stoney Point Court Lot 1 to Palmetto Premium Investments, LLC is an arms-length transaction with an independent third-party buyer. The contract is for the fair market value of the property, and the contract price was an amount sufficient (at the time of the contract) to payoff SDG's outstanding note and mortgage owed to Regions Bank on that property.

113. Around that same time, and in order to avoid the BB&T's pending foreclosure action on the Riverwalk Drive Townhome Tract, Aiello and Harvey negotiated a deal with the investors in the Plantation Isle Equity General Partnership to provide the financial backing required to deal with the pending BB&T foreclosure and proceed with development of the Riverwalk Drive Townhome Tract project. The investors, together with Aiello and Harvey, formed Plantation Isle Equity Group, LLC to assume ownership and financing of the project.

114. As reflected in the deed dated December 27, 2007, and recorded in Book K647-Page766 in Charleston County RMC Office, a copy of which is attached as Exhibit H and incorporated by reference, Aiello and Harvey caused SDG to deed the Riverwalk Drive Townhome Tract and Stoney Point Court Lot 1 to Plantation Isle Equity Group, LLC.

115. In connection with the transfer of the property to Plantation Isle Equity Group, LLC, Plantation Isle Equity Group, LLC obtained a land acquisition loan from Carolina

Federal Saving Bank to purchase the Riverwalk Drive Townhome Tract and payoff the existing BB&T note and mortgage on the property. The Carolina Federal Saving Bank mortgage was recorded on the property on 12/27/2007 as reflected in the mortgage recorded in Book M647-Page104 in the Charleston County RMC Office, a copy of which is attached as Exhibit I.

116. Plantation Isle Equity Group, LLC then recorded a mortgage in Book K648-Page272 in the Charleston County RMC Office (a copy of which is attached as Exhibit J) to recognize the existing obligation owed by SDG under its prior note and mortgage to Plantations Isle Equity Partners General Partnership.

117. As a result of the foregoing, by early 2008 Plantation Isle Equity Group, LLC had acquired title to the Riverwalk Drive Townhome Tract and Stoney Point Court Lot 1 from SDG, had obtained financing from Carolina Federal Savings Bank, had paid off SDG's note and mortgage to BB&T, had assumed SDG's obligation to Plantation Isle Equity Partners General Partnership, and had a contract pending to sell the now un-need Stoney Point Court Lot 1 to Palmetto Premium Investments, LLC in an amount that would payoff SDG's note and mortgage to Regions Bank on that lot. At that same point, Caldwell had invested little or none of his own money in the project and he had failed to account for his expenditure of project funds and had diverted funds to his personal use.

118. Around March 2008 Caldwell filed a lis pendens on the Riverwalk Drive Townhome Tract and on Stoney Point Court Lot 1.

119. The lis pendens that Caldwell filed on Stoney Point Court Lot 1 has stopped the sale of that property to Palmetto Premium Investments, LLC. As result, no proceeds have been generated to payoff the note and mortgage owed by SDG to Regions Bank on that

property. Regions Bank has filed a foreclosure action against SDG and against Aiello, Harvey, and Caldwell individually based on their guarantee of the note and mortgage in the case captioned *Regions Bank v. Stonebridge Development Group, LLC; Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company; Carolina Federal Savings Bank; Plantation Isle Equity Partners General Partnership; Michael Aiello; Frank M. Harvey aka Francis M. Harvey; Brandon Advertising, Inc; Rubeling & Associates, Inc.; Carolina Custom Docks, LLC; J. Mark Caldwell, individually; Carolina Clearing & Grading, Inc.*, Case No. 2008-CP-10-2513, filed in the Charleston County Court of Common Pleas.

120. Aiello and Harvey have been in contact with Regions Bank in an effort to address the foreclosure action. Caldwell has made no effort of any kind to address this debt obligation.

121. SDG, Aiello, and Harvey will suffer a permanent and irreparable harm if Stoney Point Court Lot 1 is not sold so that the proceeds from the sale can be used to payoff SDG's note and mortgage to Regions Bank.

122. The lis pendens that Caldwell filed on the Riverwalk Drive Townhome Tract has prevented Plantation Isle Equity Group, LLC from obtaining a development loan for the project. As a result, the lis pendens is impeding work on the project. The Carolina Federal Loan on the property is accruing interest at the rate of approximately \$13,000 per month while the project remains stalled in light of Caldwell's lis pendens.

123. The Defendants will suffer a permanent and irreparable harm if the lis pendens is not removed so that development of the Riverwalk Drive Townhome Tract can proceed.

Ripley Marina Condominium Project and Boat Slips

124. Stonebridge Ashley Pointe, LLC ("SAP") is a South Carolina limited liability company.

125. SAP has 12 members, including Aiello, Harvey, and Caldwell.

126. An unsigned but otherwise true and accurate copy of the SAP Operating Agreement and First Amendment to the SAP Operating Agreement is attached as Exhibit K and incorporated by reference.

127. SDG is the manager of SAP, though SDG has no membership interest in SAP.

128. Caldwell, acting as manger of SAP via his role as manager of SDG, caused SAP to purchase an approximately 1.6 acre tract of undeveloped land known as Lot MF-1 located at 25 Mizzen Mast Drive (TMS # 421-11-00-272) near the Ripley Light Marina in Charleston (Charleston County), as is reflected in the deed dated 5/19/2005 and recorded in Book D0537-Page696 in the Charleston County RMC office. That tract is hereinafter referred to as the "Ripley Marina Condominium Tract."

129. The Ripley Marina Condominium Tract is shown on the plat recorded in Plat Book EH-Page581 recorded in the Charleston County RMC Office, as copy of which is attached as Exhibit L and incorporated by reference.

130. SAP purchased the Ripley Marina Condominium Tract to develop and build condominiums on the property.

131. SAP funded the purchase of the Ripley Marina Condominium Tract via a land acquisition loan provided by Carolina First Bank. The loan was secured by SAP giving Carolina First Bank a note and mortgage the property. Aiello, Harvey, and Caldwell personally guaranteed the payment of the note and mortgage.

132. Around the time SAP purchased the Ripley Marina Condominium Tract, Caldwell caused SDG to purchase 13 boat slips in the Ripley Marina. At the same time Caldwell, acting through Stonebridge Ripley, LLC, a company owned solely by him, purchased 14 boat slips. The boat slips are identified in detailed on attached Exhibit L, which is incorporated by reference, and the boat slips are hereinafter collectively referred to as the "boat slips."

133. The boats slips were a vital part of SAP's Ripley Marina condominium project because the boat slips would be sold as a part of each condominium and thus increase the desirability and potential selling price of the condominiums. The value of the condominiums and feasibility of SAP's Ripley Marina condominium project were based on the boat slips being sold with the condominiums.

134. In addition the boat slips were required to provide a means of addressing parking requirements for the marina and condominium property. Because of covenants imposed on the property, if the boat slips were sold separately from the condominiums, then the Ripley Marina Condominium Tract purchased by SAP was burdened with a requirement to reserve 29 "public" parking spaces to provide boat slip owners with a place to park while visiting their boat slips. On the other hand, if the boat slips were sold as a part of each condominium, then the "public" parking space burden imposed on the tract could be reduced by up to one-half parking space for each boat slip sold with a condominium, because the condominium owners could park at their condominium and walk to their boat slips without the need for additional parking.

135. The plan was to sell the boat slips to condominium buyers for \$150,000 each or at such higher price as could be obtained.

136. While acting a manager of SDG and SAG in connection with SAG's Ripley Marina project, Caldwell repeatedly engaged in acts that constituted a breach of his obligations as a manager and member of SDG and SAG, mismanagement, breach of his fiduciary obligations, a usurp of company opportunities, self dealing, and fraud and deceit, including without limitation the followings:

- (a) Caldwell set up separate profit centers to divert development funds to him.
- (b) Caldwell purchased 13 of the boat slips required for the project in the name of SDG at a cost of \$125,000 each. SDG funded the purchase of the boat slips via a loan provided by BB&T. The loan was secured by SAP giving BB&T a note and mortgage the property. Aiello, Harvey, and Caldwell personally guaranteed the payment of the note and mortgage. Although Caldwell never loaned any money to SDG, he recorded a \$325,000 mortgage against SDG's boat slips.
- (c) Caldwell purchased 14 boats slips in the name of his solely owned company, Stonebridge-Ripley, LLC. He purchased those slips at a lower price and based on a two-year balloon note at no out-of-pocket cost to him. The seller of the boat slips agreed to the lower price and balloon note in consideration of the fact that Caldwell caused SAP to pay a premium price for the Ripley Marina Condominium Tract.
- (d) Caldwell purchased the slips in his name, but he represented that they were assets of SAP's condominium project, and Caldwell received letters from the City of Charleston requiring that the boat slips be sold with the condominiums to satisfy parking requirements. Upon information and belief, Caldwell is now attempting to sell the boat slips well below fair market price so he can quickly pocket the proceeds from the sale.
- (e) Caldwell mismanaged the development of the project. Caldwell caused SAP to pay approximately \$1 Million in engineering costs for the design of a condominium building for the property. The plans had the parking spaces located on the north side of the property. However, covenants required that the parking spaces be on the south side of the building. As a result, the parking spaces could not be located on the north side of the building as designed, and shifting the parking spaces to the south side of the property (were the property is more narrow) prevents the building from being constructed as designed.
- (f) Caldwell only provided minimum accounting information regarding his use of SAG's funds on the project, and he failed and refused to provide any accounting of his use of SDG's funds on the project.

- (g) Caldwell began paying himself a \$5,000 per month "management fee" without notice, knowledge, or approval.
- (h) Caldwell owns an office building located on Houston Northcutt Boulevard in Mt. Pleasant, South Carolina. His building had some unoccupied space. Caldwell charged SAP \$200,000 to build a "model" Ripley Marina residential condominium in his unoccupied office space and then charged SAP approximately \$4,000 per month rent on the space.
- (i) Upon information and belief, Caldwell used investor money to fund his personal expenses.
- (j) Caldwell has been collecting approximately \$8,000 per month or more from rental of the boats slips. He has kept and used the \$8,000 monthly rent for his personal use, while at the same time he has failed and refused repeated requests by Caldwell and Harvey to provide an accounting and copies of the books and records related to the boat slips.

137. Caldwell mismanaged, wasted, siphoned off, and misappropriated funds intended for use in developing SAP's condominium project. SDG and SAP lacked sufficient cash to fund the debt service owed on the note and mortgages held by BB&TT and Carolina First on the Ripley Marina Condominium Tract and the boat slips. Caldwell informed Aiello and Harvey that he was unable to provide any capital contribution towards payment of the debt service.

138. The loans on the Ripley Marina Tract and boat slips owned by SAP and SDG went into default based on SAP and SDG's inability to pay the debt service on the loans.

139. Carolina First Bank filed an action to foreclosure the Ripley Marina Tract in the case captioned *Carolina Federal Bank v. Stonebridge Ashley Pointe, LLC; J. Mark Caldwell, Michael S. Aiello; Frank M. Harvey; LS3P Architects, Ltd*; Case No. 2008-CP-10-137 filed in the Charleston County Court of Common Pleas. The foreclosure action requested a deficiency judgment against Aiello, Harvey, and Caldwell based on their personal guarantee of the note and mortgage. A Master's Decree filed in the case on May 2, 2008, awarded Carolina First Bank a judgment of foreclosure and possession of the property and ordered that the property be sold at public action.

140. A third party, A & W Assets, LLC purchased BB&T's note and mortgage on the boat slips owned by SDG.

141. As such, at the present time, SAP no longer owns the Ripley Marina Tract, and Aiello and Harvey are subject to a personal deficiency judgment upon the foreclosure sale of the Ripley Property. Meanwhile, Caldwell has invested little or none of his own money in the project, he has diverted funds from the project to his personal use, he has tiled some of the boat slips in the name of a company owned solely by him, and he continues to pocket all of the boat slip rental income.

142. Aiello and Harvey are informed and that Caldwell is attempting to sell the boat slips well below fair market price so he can quickly pocket the proceeds from the sale.

143. Aiello, Harvey, SDG, SAP and all other persons and parties having or claiming to have an interest in the boat slips will suffer a permanent and irreparable harm if Caldwell sells the boat slips.

Crab House (a/k/ Landry's Restaurant) Tract at Ripley Point

144. The property known as the Crab House Tract is located at 116 Ripley Point Drive (TMS # 421-8-00-002).

145. Caldwell approached Aiello and indicated that he negotiated a deal to buy the Crab House property from the owner for approximately \$3 Million. That price was low as compared to the value of the property because the tract was encumbered by a long-term lease to Landry's Seafood Restaurant.

146. Caldwell informed Aiello that he had located a buyer that would pay \$17 Million for the property if not encumbered by the Landry's lease. Therefore, Caldwell had contracted to pay Landry's \$1.5 Million to buy out Landry's lease so Caldwell could flip the

property to the new buyer at a substantial profit. However, the buyer subsequently decided not to go forward, leaving Caldwell without a buy and still obligated on his \$1.5 million contract with Landry's.

147. As a result, Caldwell asked Aiello to loan him \$1.5 million to pay Landry's in exchange for Aiello receiving a 40% share of the profits generated by the sale of the property when Caldwell located a new buyer. In reliance on and in consideration of that agreement, within 48 hours of being approached by Caldwell, Aiello had arranged for his mother to loan Caldwell \$1.5 million so he could pay the Landry contract and buy the property.

148. Caldwell purchased the property in the name of his company, Stonebridge Ripley, LLC, as reflected in the deed recorded on 3/3/12005 in Book B531-Page796 in the Charleston County RMC Office. Caldwell subsequent transferred title of the property to another company owned by him, Stonebridge Ripley II, LLC, as reflected in the deed recorded on 10/26/2006 in Book J603-858.

149. For a period of nine months Caldwell defaulted on his obligation to repay the \$1.5 Million loan to Aiello's mother, though Caldwell did eventually repay the loan.

150. Aiello is informed and believes that Caldwell is attempting to sell or encumber the Crab House property without Aiello's approval or consent and in an effort to cut Aiello out of the proceeds from the sale or reduce his share.

151. Aiello has an interest in the Crab House property in the property and could suffer permanent and irreparable harm if Caldwell sells the property without Aiello's knowledge and consent.

FOR A #1 CAUSE OF ACTION
(Temporary, Preliminary, Permanent Injunction)

152. The previous paragraphs are incorporated by reference.

153. The Defendants are entitled a temporary restraining order and preliminary and permanent injunction as to the following matters

- (a) Requiring Caldwell to remove the lis pendens he caused to filed against Stoney Point Court Lot 1 so that property can be sold to Palmetto Premium Investments, LLC, with the proceeds applied to pay off SDG's note and mortgage to Regions Bank on the property.
- (b) Requiring Caldwell to remove the lis pendens that he has caused to be filed against the Riverwalk Drive Townhome Tract so that development of the tract can proceed.
- (c) Enjoining and restraining Caldwell and Stonebridge Ripley, LLC from selling any boat slips without notice to all parties and approval by the Court.
- (d) Requiring that Caldwell account for all monies associated with his rental of the boat slips and deposit all past and present boat slip rental proceeds with the Court.
- (e) Enjoining and restraining Caldwell and Stonebridge Ripley II, LLC from selling the Crab House Tract without prior notice to Aiello and approval by the Court.

154. The injunctive relief requested is necessary to protect the interests of all parties and persons concerned with the properties involved herein.

155. A temporary restraining order and preliminary and permanent injunction will not cause any undue hardship on Caldwell and his companies, and injunctive relief will prevent a grave injustice and permanent damage and harm to the Defendants and others.

156. The amount of damages that may arise in the absence of injunctive relief is difficult to determine precisely and compensate fully, and an adequate remedy at law may not exist in the absence of injunctive relief.

157. Injunctive relief will serve the public interest by removing an unlawful and wasteful restraint on property.

FOR A #2 CAUSE OF ACTION
(Accounting)

158. The previous paragraph are incorporated by reference.

159. Defendants are entitled to an Order requiring Caldwell to provide a complete and accurate accounting of all assets, debts, profits, liabilities, revenues, expenses related to SDG, SAP, Stonebridge Ripley, LLC, and Stonebridge Ripley II, LLC, including without limitation a full accounting of his receipt and disbursement of income generated by rental of boat slips.

FOR A #3 CAUSE OF ACTION
(Judicial Dissolution Of, or Alternatively Caldwell's Expulsion From, Stonebridge Development Group, LLC and Stonebridge Ashley Pointe, LLC)

160. The preceding paragraphs are incorporated by reference.

161. Caldwell has engaged in wrongful conduct and self-dealing that has adversely and materially affected the business purposes and goals of SDG and SAP.

162. Caldwell has continually engaged in conduct relating to the business of the companies that make it not reasonably practical to carry on the business.

163. Caldwell has repeatedly breached his duties and obligations as a member and manager acting on behalf other SDG and SAP, and he has engaged in fraud, deceit, misrepresentation and concealment of activities related to the projects undertaken by SDG and SAP.

164. Caldwell has intentionally frustrated the economic purposes of the companies and Caldwell has engaged in conduct that make is impractical for the companies to continue with him as a member.

165. The economic purposes of the companies has been unreasonably frustrated by the actions and conduct of Caldwell, and the companies cannot continue as a going concern with Caldwell as a member.

166. Aiello and Harvey, individually and as members of SAP and SDG, are entitled to an Order judicially dissolving SAP and SDG and appointing them with authority to handle all financial records, receipts and disbursement of the companies, liquidate the assets, and wind up the affairs of the companies. Alternatively, Aiello and Harvey, individually and as members of SAP and SDG, are entitled to an Order judicially expelling Caldwell as a member of the companies pursuant to S.C. Code Ann. § 33-44-601(6).

FOR A #4 CAUSE OF ACTION
(Breach of the SDG and SAP Operating Agreements)

167. The preceding paragraphs are incorporated by reference.

168. Caldwell has materially breached and violated of the duties and obligations owed by him, as a member and as a manger, under the operating agreements SDG and SAP.

169. Caldwell has repeatedly engaged in a course of self-dealing and conduct intended to advance his personal interests at the expense of Aiello, Harvey, and the companies.

170. Caldwell has intentionally attempted to harm SDG, Aiello, and Harvey by impeding their efforts to satisfy SDG's past due loan obligations.

171. Caldwell has misappropriated assets of SDG and SAP for his personal use.

172. Aiello and Harvey have suffered, and continues to suffer, actual and consequential damages as a direct and proximate result of Caldwell's breaches of his contractual obligations under the agreements.

173. Aiello and Harvey are entitled to a judgment against Caldwell for actual and consequential damages arising from his breach of his contractual obligations under the operating agreements.

FOR A #6 CAUSE OF ACTION
(Breach of Fiduciary Obligations)

174. The preceding paragraph are incorporated by reference.

175. Caldwell owed a duty of due care to Aiello and Harvey, and a fiduciary relationship of good faith and loyalty existed and exists between them.

176. Caldwell's acts and omissions as described hereinabove constitute a material breach his fiduciary obligations owed to Aiello and Harvey.

177. Aiello and Harvey have sustained and continue to sustain actual damages as a direct and proximate result of the Caldwell's breach of his fiduciary obligations, for which Aiello and Harvey are entitled to a judgment against Caldwell for actual and punitive damages.

FOR A #5 CAUSE OF ACTION
(Abuse of Process)

178. The previous paragraphs are incorporated by reference.

179. Caldwell filed this action and the lis pendens on the Riverwalk Drive Townhome Tract and Stoney Point Court Lot 1 with the intent to cause a waste of assets and harm to the property and interests of Defendants.

180. Caldwell filed this action and the lis pendens with the ulterior and improper purpose of using financial pressure and loan debt service obligations as a mean of extorting Defendants to paying Caldwell money not owed to him as a condition to him removing his

impediment to the sale of Stoney Point Court Lot 1 and development of the Riverwalk Drive Townhome Tract.

181. Caldwell has acted with an improper ulterior purpose and has knowingly and intentionally engaged in an improper act in the use of the legal process that is not proper in the regular conduct of the proceeding and has engaged in a malicious misuse and perversion of the process for a result that is not legitimate for its purpose.

182. Caldwell has committed an abuse of process.

183. Defendants are entitled to a judgment against Caldwell for actual and punitive damages based on his abuse of process.

FOR A #7 CAUSE OF ACTION
(violation of South Carolina Unfair Trade Practices Act)

184. The preceding paragraphs are incorporated by reference.

185. The South Carolina Unfair Trade Practices Act ("SCUTPA"), South Carolina Code Ann. § 39-5-10 et seq., provides that unfair methods of competition and unfair or deceptive acts or promises in the conduct of any trade or commerce are unlawful.

186. At all times relevant hereto, Caldwell was engaged in trade or commerce directly and indirectly affecting the people of the State of South Carolina within the meaning of the SCUTPA.

187. The acts and omissions of Caldwell as set forth herein constitute unlawful and deceptive acts or practices in the conduct of trade or commerce as contemplated by the SCUTPA.

188. Caldwell knew, or should have known, that his acts and omissions were fraudulent and in violation of state law and the SCUTPA.

189. The acts and omissions of Caldwell adversely affect the members of the public and are potentially harmful to the public.

190. The acts and omissions of Caldwell have a potential for repetition and adversely affect the public interests of the State of South Carolina.

191. The acts and omissions of the Caldwell were willful and knowing violations of the SCUTPA.

192. As a result of the Caldwell's use of unfair and deceptive methods, acts and practices, Defendants have suffered an ascertainable loss of money and have incurred legal costs and attorney's fees and other expenses and damages.

193. Defendants are entitled to a judgment against Caldwell for actual damages, plus treble actual damages, attorney's fees and the costs of this action, pursuant to South Carolina Code Ann. § 39-5-140.

FOR A #7 CAUSE OF ACTION
(declaratory judgment as to Crab House tract)

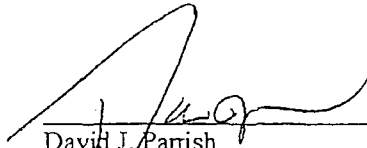
194. The preceding paragraphs are incorporated by reference.

195. Aiello requests that the Court inquire into the facts and circumstances surrounding the concerning the Crab House property and issued a declaratory judgment regarding Aiello's rights and interests in the property and right to receive half of the proceeds from any sale thereof.

WHEREFORE, Defendants pray for:

- (a) An Order compelling Caldwell to produce a full accounting as requested hereinabove;
- (b) An Order granting the injunctive relief as requested hereinabove;
- (c) An Order judicially dissolving SDG and SAP or, alternatively, expelling Caldwell as a member of the companies;

- (d) A judgment against Caldwell for actual and consequential damages based on his breach of duties and obligations under the operating agreements of SDG and SAP;
- (e) A judgment against Caldwell for actual and punitive damages based on his breach of his fiduciary duties and obligations;
- (f) A judgment against Caldwell for actual and punitive damages based on his abuse of process;
- (g) A judgment against the Caldwell for actual damages, plus treble actual damages, and attorney's fees and the costs of this action, based on his violations of the SCUTPA;
- (h) A declaratory judgment regarding Aiello's rights and interests in the Crab House property and the proceeds from any sale thereof;
- (i) An award of attorney's fees;
- (j) The costs of this action; and
- (k) Such other and further relief as the Court deems just and proper.


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*Attorneys for Defendants Michael Aiello, Francis
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Partnership, and Plantation Isle Equity Group, LLC*

June 13, 2008

Notice of Appeal [of
Frank M. Harvey] (Dec.
13, 2010

THE STATE OF SOUTH CAROLINA

In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY

Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2008-CP-10-2513

FILED
2010 DEC 13 PM 3:26
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Regions Bank,

Respondent,

v.

Stonebridge Development Group, LLC; Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company; Carolina Federal Savings Bank; Plantation Isle Equity Partners General Partnership; Michael Aiello; Frank M. Harvey aka Francis M. Harvey; Brandon Advertising, Inc; Rubeling & Associates, Inc.; Carolina Custom Docks, LLC; J. Mark Caldwell, individually; Carolina Clearing & Grading, Inc.,

Defendants,

Of Whom Frank M. Harvey aka Francis M. Harvey is the

Appellant.

NOTICE OF APPEAL

Frank M. Harvey hereby appeals the order of the Honorable Mikell R. Scarborough dated October 21, 2010 (filed October 29, 2010). A copy of the notice of entry of this order was mailed to counsel of record, not including counsel for the Appellant, on November 9, 2010. Appellant received written notice of entry of this order on December 10, 2010. A copy of the order is attached hereto.

December 10, 2010



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STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

Case No.: 2008-CP-10-2513

Regions Bank,

Plaintiff,

v.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company;
Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership;
Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; Carolina Clearing
& Grading, Inc.,

Defendants.

**ORDER DENYING MOTION OF DEFENDANT
FRANK M. HARVEY FOR RELIEF FROM
JUDGMENT**

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

2010 OCT 29 AM 11:02

FILED

THIS MATTER CAME before the Court pursuant to the Motion of Defendant Frank M. Harvey for Relief From Judgment ("Defendant's Motion") filed on August 4, 2010, as supplemented on August 20, 2010. Regions Bank ("Plaintiff") filed Plaintiff's Memorandum in Opposition to Defendant's Motion ("Plaintiff's Memorandum") on September 16, 2010.

In the above-referenced action, Plaintiff sought foreclosure of the subject note and mortgage, with deficiency demanded, and sought personal judgment against Frank M. Harvey ("Defendant") pursuant to his unconditional personal guaranty of the debt. On May 7, 2008, Plaintiff filed the original Civil Action Coversheet, Certificate of Exemption from ADR, Summons and Complaint ("Foreclosure Action") with Exhibits (collectively referred to hereinafter as the "Pleadings") in the Office of the Clerk of Court for Charleston County.

Defendant was personally served the Pleadings on August 14, 2008, as evidenced by the Affidavit of Service ("Affidavit") filed with the Court on September 2, 2008, a copy of which is attached hereto as Exhibit A. After a period of more than thirty (30) days, no notice, motion, or other pleading was filed by or on behalf of Defendant, and, on February 24, 2010, an Order of Default as to Defendant was entered ("Order of Default").

On May 18, 2010, after notice and a hearing, the Master in Equity's Order and Judgment of Foreclosure and Sale was entered ("Foreclosure Decree"). The Foreclosure Decree awarded Plaintiff, in addition to other relief, personal judgment against Defendant in the amount of \$733,694.66, with a credit against the judgment to be given for the net proceeds received by Plaintiff for the sale. Pursuant to the Foreclosure Decree, the property was offered for sale on July 6, 2010, at the initial foreclosure sale, and on August 5, 2010, at the deficiency sale. Woodrow W. Blizzard was the high bidder at the conclusion of the deficiency sale with a bid in the amount of \$260,000.00.

On August 4, 2010, one day prior to the deficiency sale, Defendant filed this Motion asserting that the Foreclosure Decree is void due to lack of personal jurisdiction. As a result, an emergency hearing on Defendant's Motion was held before me, via phone conference, the morning of August 5, 2010, at 9:00 a.m., just hours before the deficiency sale occurred. Present and participating in the hearing was Louise M. Johnson of Haynsworth Sinkler Boyd, P.A., attorneys for Plaintiff. Also present was J. Rutledge Young, III, attorney Defendant. For the reasons set forth herein, Defendant's Motion is DENIED.

FINDING OF FACT AND CONCLUSION OF LAW

The South Carolina Supreme Court has held that, "[a] presumption of proper service exists when the rules governing service are followed." *BB&T v. Taylor*, 369 S.C. 548, 633

S.E.2d 501 (2006). Plaintiff contends that it followed the rules governing service of process by hiring a process server who hand delivered the Pleadings to Defendant and who, after personally serving Defendant, executed the Affidavit which included the time, date, and location of service, along with a physical description of Defendant. In the Affidavit of Frank M. Harvey filed on August 26, 2010, Defendant attempts to rebut the presumption of proper service by asserting that the Affidavit is false and that he was not personally, nor properly served. Further, Plaintiff argues that the filing of an Answer and Counterclaim by Defendant on June 13, 2008, in a separate civil action (*J. Mark Caldwell et al. v. Michael Aiello, Francis M. Harvey, et al.*, C/A No. 2008-CP-10-2169) ("Caldwell Case") is evidence that Defendant had actual notice of this foreclosure action as early as June 2008.

After considering Defendant's Motion, Plaintiff's Memorandum, oral arguments presented at the hearing, and all other relevant evidence, I find the following:

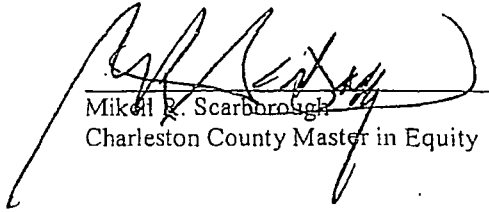
1. Plaintiff complied with the South Carolina Rules of Civil Procedure governing service of process and Defendant was properly served as evidenced by the service Affidavit; and
2. Defendant's Motion was not filed in a timely manner as Defendant had actual notice of this foreclosure action on June 13, 2008, which is evidenced by the Answer and Counterclaim he filed in the Caldwell Case.

For the reasons set forth above,

IT IS THEREFORE ORDERED that the Motion of Defendant Frank M. Harvey for Relief from Judgment is DENIED, and

IT IS SO ORDERED.

October 4, 2010


Mikell R. Scarborough
Charleston County Master in Equity

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2008-CP-10-2513

Regions Bank,

Respondent,

v.

Stonebridge Development Group, LLC; Plantation Isle Equity Group, LLC, a Maryland
Limited Liability Company; Carolina Federal Savings Bank; Plantation Isle Equity
Partners General Partnership; Michael Aiello; Frank M. Harvey aka Francis M. Harvey;
Brandon Advertising, Inc; Rubeling & Associates, Inc.; Carolina Custom Docks, LLC; J.
Mark Caldwell, individually; Carolina Clearing & Grading, Inc.,

Defendants,

Of Whom Frank M. Harvey aka Francis M. Harvey is the

Appellant.

APPELLANT'S FINAL BRIEF

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Statement of the Issues on Appeal

A. A judgment is void if a summons and complaint are not served upon the defendant so that the Court obtains personal jurisdiction over the defendant. Harvey was never served with a summons and complaint in this case. Was the default judgment entered against Harvey void for lack of jurisdiction and a proper subject for relief under Rule 60(b)(4) of the South Carolina Rules of Civil Procedure?

B. Harvey filed an affidavit that he was never served with a summons and complaint and was out of town with his family on the date the private-process server's Affidavit of Service states he served Harvey with a summons and complaint at his home. The Master in Equity decided this disputed issue of fact solely on the basis of the affidavit submitted by Harvey and the private-process server's Affidavit of Service. Should the Master in Equity have held an evidentiary hearing, after limited discovery, to resolve the disputed factual issue before ruling on Harvey's motion for relief under Rule 60(b)(4) of the South Carolina Rules of Civil Procedure?

C. Rule 60(b)(4), South Carolina Rules of Civil Procedure, does not limit the time to file a motion for relief from judgment on the basis that the judgment is void. The default judgment against Harvey was void because he was never served with a summons and complaint, and the Court of Common Pleas never acquired jurisdiction over him. Did the Master in Equity err in denying Harvey's motion under Rule 60(b)(4) of the South Carolina Rules of Civil Procedure, because it was not filed in a timely manner?

Statement of the Case

- A. Regions Bank instituted this case to foreclose a mortgage from Stonebridge Development Group, LLC and to collect a deficiency judgment against the alleged guarantors of the loan.**

On September 29, 2006, Regions Bank ("Regions") extended a \$595,000 loan to Stonebridge Development Group LLC ("Stonebridge") secured by a mortgage on undeveloped land in Charleston County. The loan matured on October 10, 2007. (R. p. 95, 105-117; Compl. ¶ 10 & Ex. B). After a default by Stonebridge, Regions instituted foreclosure of the mortgage on May 7, 2008, in the Court of Common Pleas of Charleston County. (R. p. 94-101; Compl. ¶¶ 1-240). The complaint, besides seeking to foreclose the mortgage, asked for a deficiency judgment against J. Mark Caldwell, Michael Aiello, and Frank Harvey, the three members of Stonebridge, based on their alleged guaranties of Regions' loan to Stonebridge. Aiello and Harvey are Maryland residents. (R. p. 95, 99-102; Compl. ¶¶ 5; 23-35).

The case was referred to the Master in Equity on February 24, 2010 for all further proceedings. (R. p. 3-5; Order of Default & Consent Order of Reference). On May 18, 2010, the Master in Equity entered an Order and Judgment of Foreclosure and Sale. (R. p. 7-16; Master's Order & J. of Foreclosure & Sale). The property was sold on August 5, 2010 for \$260,000, leaving a deficiency of \$482,282.84. (R. p. 84; Master's Order of Sale & Disbursement). The amount of this deficiency judgment was entered against Harvey on November 24, 2010 and entered on the docket of the Court on November 30, 2010. (R. p. 86; Order of Deficiency J.).

B. Regions retained a private-process server to serve the summons and complaint on Harvey and Aiello in Maryland and filed Affidavits of Service that impeach each other.

Regions retained Serve-One, Inc. of Greenville, South Carolina to effect service of process on Harvey and Aiello in Maryland. On September 2, 2008, an Affidavit of Service was filed with the Clerk as to service on Harvey. (R. p. 117; Aff. of Serv. of Sept. 2, 2008). On September 8, 2008, an Affidavit of Service was filed with the Clerk as to Aiello. (R. p. 119; Aff. of Serv. of Sept. 8, 2008). Each Affidavit of Service was on a partially typed form with handwritten additions that were filled in by the private-process server. Although service of process was purportedly done by the same person, the two Affidavits of Service in their handwritten portions are radically different - so different that they impeach each other and undeniably indicate that they were signed by different people. If one is legitimate, the other is not.

1. The Harvey Affidavit of Service.

In the opening paragraph of the Harvey Affidavit of Service, the private-process server identifies himself in handwriting as "Wm L Angel." The signature line contains a handwritten signature reading "William L Angel," with no printed version of the full name elsewhere on the Affidavit.

Although the typed portion of the opening paragraph gives Harvey's home address at 2109 Foxhall Road, Reisterstown, Maryland 21136,¹ and the Affidavit of Service certifies that personal service was made on Harvey on August 14, 2008, the Affidavit of Service gives no handwritten indication of where that service was made.

¹ Reisterstown is a suburb of Baltimore City located to the north east of the City in Baltimore County.

Presumptively, because no contrary indication is given, the Affidavit purports to state that service was made at Harvey's home in Reisterstown, Maryland.

The Affidavit of Service contains a handwritten physical description of someone but there is no indication that this is Harvey's physical description or how the private-process server knew he was handing papers to Frank Harvey (such as if the person being served answered to his name). The Affidavit of Service does not indicate how the private-process server knew what Frank Harvey looked like. Nor is there any indication when the physical description was placed on the Affidavit of Service, whether before the alleged service was made (to aid in the identification of the person to be served) or after service was made (to describe the person actually served).

The Affidavit of Service was notarized by Sheila F. Cohen, a Maryland notary, on August 18. Presumptively this was done in 2008, but the notary certificate does not indicate. Assuming this was on August 18, 2008, the Affidavit of Service was notarized four days after service was allegedly made.

2. The Aiello Affidavit of Service.

In the opening paragraph of the Aiello Affidavit of Service, the private-process server identifies himself in handwriting as "Bill Angel," not "Wm L Angel," as was done on the Harvey Affidavit of Service. The signature line contains a handwritten signature reading "Bill Angel," with the name "Bill Angel" printed to the left of the signature. This is in contrast to the signature reading "William L Angel" on the Harvey Affidavit, with no hand-printed name next to the signature. Even the most untrained eye quickly sees that the Aiello and Harvey Affidavits of Service were executed by two different people.

The typed portion of the opening paragraph gives Aiello's home address as 906 Cold Bottom Road, Sparks, Maryland 21152² and certifies in writing that Aiello was served on August 16, 2008. Unlike the Harvey Affidavit of Service, this Affidavit of Service includes a second, handwritten notation of Aiello's address. Presumptively, this handwriting is intended to indicate where service was made, the Aiello home address, like the Harvey home address, already having been typed in the opening paragraph. The Harvey Affidavit of Service, in contrast, does not have any handwritten address, only the typed address at the beginning.

The Aiello Affidavit of Service contains a handwritten-physical description of someone, but there is no indication that this was Aiello's actual-physical description or how the private-process server knew he was handing the papers to Michael Aiello. The Affidavit of Service does not indicate how the private-process server knew what Aiello looked like before serving the papers. Nor, like the Harvey Affidavit of Service, is there any indication when the physical description was placed on the Affidavit, such as before the alleged service was made (to aid in identification) or after service was made (to describe who had been served).

The hand-printed physical description on the Aiello Affidavit of Service appears consistent with the hand writing elsewhere on the Affidavit. Just the opposite is true on the Harvey Affidavit of Service. The hand-printed-physical description appears different than the other printing on the Harvey Affidavit of Service.

Of particular note, the hand-printed-physical descriptions on the Aiello and Harvey Affidavits of Service are identical in both their characteristics and printing. It is

² Sparks, Maryland is in Baltimore County, north of Baltimore City.

apparent that the same person (who signs his name as "Bill Angel" on the Aiello Affidavit and "William L Angel" on the Harvey Affidavit) wrote both descriptions when the printing is compared on the two Affidavits. The formatting of the two descriptions is the same. The age estimate is the same: "40's." The printing of the heights and weights are in the same format ("5'11 200" as compared to "6' 180"). And the descriptions of sex, race, and hair color are in the same format ("W M and ____ Hair," with Aiello being described as "Gray" and Harvey, "Brown.").

The Aiello Affidavit of Service also was notarized by Sheila F. Cohen, a Maryland notary, this time on August 27, 2008. Unlike the Harvey Affidavit of Service, Cohen wrote 2008 and signed her name twice. In the Harvey Affidavit of Service, she specified that her commission would expire "6/5/2010" whereas the Aiello Affidavit of Service states "her commission expires on June 5, 2010." Although the details of the notary are different, the handwriting appears to be from the same person in each.

C. Regions obtained a default judgment against Harvey.

On May 14, 2010, the Master in Equity entered an Order and Judgment of Foreclosure and Sale. (R. p. 7-16; Master's Order & J. of Foreclosure & Sale). Besides authorizing the sale of the mortgaged property, this order directed the entry of "a personal or deficiency judgment against . . . Frank M. Harvey aka Francis M. Harvey, with a credit against the judgment to be given for the net proceeds received by the Plaintiff for the sale shall be entered upon the judgment rolls for Charleston County." (R. p. 13; Master's Order & J. of Foreclosure & Sale). Based on the Affidavits of Service, the Order and Judgment of Foreclosure and Sale found that "Said pleadings were served upon Michael Aiello via personal service on August 16, 2008, evidenced by the Affidavit of Service

item that is of record here” and “[s]aid pleadings were served upon Frank M. Harvey aka Francis M. Harvey via personal service on August 14, 2008, evidenced by the Affidavit of Service item that is of record here.” (R. p. 8; Master’s Order & J. of Foreclosure & Sale at ¶¶ 8, 9). No mention is made in the Order and Judgment of Foreclosure and Sale about the discrepancies in the two Affidavits of Service.

D. Harvey filed a motion for relief from the default judgment entered against him.

Harvey, having learned of the entry of the default-deficiency judgment against him and the scheduling of the foreclosure sale for August 5, 2010, filed a motion for relief from the judgment under Rule 60(b), SCRCR on August 4, 2010, asking the Master in Equity to delay the scheduled foreclosure sale and grant him relief from the default judgment. (R. p. 125-31; Mot. of Frank M. Harvey for Relief from J.). Harvey’s motion was accompanied by his Affidavit. (R. p. 127-29; Mot. of Def. Frank M. Harvey, Ex. A.). In this Affidavit, Harvey swore under the penalties of perjury that:

- The Affidavit of Service was false.
- He was not served on August 14, 2008 at his home at 2109 Fox Trail Court, Reisterstown, Maryland.
- On August 14, 2008, he was vacationing with his family in Berlin, Maryland.³
- He had never been served with a copy of the Summons, Complaint to Foreclose Mortgage and Exhibits in the case instituted by Regions Bank against *Stonebridge Development Group, LLC*, Civil Action No. 2008-CP-2513.

At a conference attended in person by Harvey’s counsel and via telephone by Regions’ counsel, the Master in Equity declined to delay the foreclosure sale but

³ Berlin, Maryland is a town near Ocean City, Maryland, a resort on Maryland’s Eastern Shore. Berlin is approximately 150 miles away from Reisterstown.

authorized further briefing on the question of relief from the default judgment. No transcript was made of the conference.

E. The Master in Equity denied Harvey's motion for relief from the judgment without a hearing.

Harvey supplemented his initial motion on August 20, 2010 with a memorandum pointing out that the default judgment was void under Rule 60(b)(4), SCRCF because process had never been served on him and the Court of Common Pleas had not attained jurisdiction over him. (R. p. 134-39; Mem. of Def. Frank M. Harvey for Relief from J.). Regions responded with a memorandum in opposition on September 17, 2010. (R. p. 141-77; Pl.'s Mem. in Opp. to Mot. of Def. Frank M. Harvey for Relief from J.). Regions did not enhance or supplement the Affidavit of Service it had filed earlier. Regions argued that it was entitled to a presumption of proper service because it followed the South Carolina Rules of Civil Procedure and because the motion was not timely filed. Regions also argued that Harvey had actual knowledge of the pendency of the suit, as revealed in a pleading filed in a related case between Caldwell and Harvey and Aiello entitled *Caldwell v. Aiello & Harvey*, Civil Action No. 2008-CP-10-2169.

The Master in Equity denied Harvey's motion on October 29, 2010, agreeing with Regions that Regions was entitled to a presumption that service was accomplished because the rules governing service had been followed and that the motion was not filed in a timely manner. (R. p. 88-90; Order Denying Mot. of Def. Frank M. Harvey for Relief from J.). The Master in Equity determined that Harvey had actual knowledge of the pendency of this suit, based on an answer and counterclaim filed in the related suit.

The Master in Equity did not conduct an evidentiary hearing to resolve the factual conflict in the Affidavit of Service and Harvey's Affidavit and the patent discrepancies in

the Harvey & Aiello Affidavits of Service. The Master in Equity permitted no discovery on the factual dispute. He simply denied Harvey's motion in favor of a presumption, essentially treating the presumption as irrebuttable, a decision bulwarked by the Master in Equity's ruling that actual knowledge cured any defect in service of process and that the motion was not filed in a reasonable time.

F. Harvey appeals.

After the Master in Equity denied his motion and reduced the amount of the default-deficiency judgment on November 30, 2010 to reflect the credit for the purchase price of the real estate at the foreclosure sale, Harvey noted an appeal to this Court on December 10, 2010. (R. p. 179-83; Notice of Appeal).

Arguments

A. The judgment by default entered against Harvey was void for lack of jurisdiction and was a proper subject for relief under Rule 60(b)(4), South Carolina Rules of Civil Procedure.

Standard of Review. On appeal, the denial of a motion for relief from judgment under Rule 60(b), SCRPC is reviewed for abuse of discretion. An abuse of discretion occurs when the lower court's decision was controlled by an error of law or is based on factual findings that are without evidentiary support. *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006); *McChure v. Elliott*, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct. App. 2002). When the motion is under Rule 60(b)(4), SCRPC and alleges the judgment is void for lack of service of process, a finding that process was served when "the record discloses there is no evidence reasonably supporting the finding" is "manifestly influenced or controlled by an error of law." *Richardson Constr. Co. v. Meek Eng'g &*

Constr., Inc., 274 S.C. 307, 309-10, 262 S.E.2d 913, 915 (1980). "Such relief, when warranted, is not discretionary but a matter of right." *Id.* at 309, 262 S.E.2d at 915.

Summary of the Argument. A judgment is void if the court does not obtain personal jurisdiction over a defendant by service of a summons and complaint upon the defendant in accordance with the procedures of Rule 4, South Carolina Rules of Civil Procedure. The plaintiff has the burden of establishing that the court has obtained personal jurisdiction over the defendant. While a presumption of valid service arises if Rule 4 is followed, that presumption may be impeached and overcome by extrinsic evidence.

Regions' Affidavit of Service in this case appears to be false and not signed by the private-process server. The Affidavit of Service was countered by Harvey's Affidavit that he was out of town on the date the Affidavit of Service states he was served and that he was never served. Harvey's personal knowledge of the pendency of the suit does not substitute for service of process or cure defective service. Regions, to meet its burden of establishing jurisdiction, relied solely on the impugned Affidavit of Service. Regions is not entitled to the presumption of valid service due to patent defects in the Affidavit of Service. Under decisions of the South Carolina Supreme Court, the default judgment should have been set aside under Rule 60(b)(4), SCRPC as being void for lack of service of process and the case should be dismissed under Rule 3(a) of the South Carolina Rules of Civil Procedure.

Argument.

1. A default judgment is void if the court lacks jurisdiction.

A default judgment is void if it is entered by a court without jurisdiction over the defendant. *Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 562, 683 S.E.2d 486, 490

(2009); *Thomas & Howard Co. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 343 (1995); *McClure v. Elliott*, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct. App. 2002). Jurisdiction over the defendant is obtained by service of process in compliance with Rule 4, SCRPC. *BB & T v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006); *Patel v. S. Brokers, Ltd.*, 277 S.C. 490, 492, 289 S.E.2d 642, 643 (1982); *McClure*, 350 S.C. at 407, 566 S.E.2d at 198.

2. The plaintiff bears the burden of establishing that personal jurisdiction has been obtained.

The plaintiff has the burden of establishing that the court has personal jurisdiction over the defendant. *BB & T*, 369 S.C. at 552, 633 S.E.2d at 503; *Fassett v. Evans*, 364 S.C. 42, 47, 610 S.E.2d 841, 843 (Ct. App. 2005). When process has been served in apparent compliance with the procedures of Rule 4, SCRPC, a presumption arises that the service is effective and jurisdiction over the defendant has been obtained. *BB & T*, 369 S.C. at 552, 633 S.E.2d at 503; *Fassett*, 364 S.C. at 47, 610 S.E.2d at 843-44. Substantial, not exacting, compliance, with Rule 4, SCRPC is required for the presumption to arise. *Roche v. Young Bros. of Florence*, 318 S.C. 207, 209-10, 456 S.E.2d 897, 899 (1995). When an Affidavit of Service is facially insufficient - like the Harvey Affidavit of Service, which, based on the record, appears to not have been signed by the private-process server - the presumption will not apply. See *BB & T*, 369 S.C. at 552, 633 S.E.2d at 503 (Affidavit of Service based on speculation of private-process server insufficient and default judgment set aside).

3. The rebuttable presumption of proper service may be impeached by extrinsic evidence.

The presumption is rebuttable and may be impeached by extrinsic evidence. *Richardson Constr. Co. v. Meek Eng'g & Constr.*, 274 S.C. 307, 311, 262 S.E.2d 913, 915 (1980); *MCC Fin. Servs., Inc. v. Duffel*, 265 S.C. 519, 522, 220 S.E.2d 127, 128-29 (1975) ("[T]he Affidavit of Service is only prima facie evidence of the facts stated therein and, where directly attacked, may be impeached by extrinsic evidence."); *Laurens Trust Co. v. Copeland*, 154 S.C. 390, 151 S.E. 617, 620 (1930) ("The return of this officer is only prima facie evidence of the facts therein stated, but this affidavit of service has been impeached by extrinsic evidence, and the proof of its falsity has been clearly and convincingly established."). A defendant may present contrary evidence to overcome the presumption and put the plaintiff to its proof.

A simple-conclusory denial that process has been served may not be sufficient to rebut the presumption that service has been effected when the presumption arises from an unimpeachable Affidavit of Service. *Patel*, 277 S.C. at 493, 289 S.E.2d at 644; *Fassett*, 364 S.C. at 47, 610 S.E.2d at 844. But when the defendant presents details in an affidavit as to the absence of service and flatly denies that service was made, and when the surrounding circumstances support the conclusion that service was not made, the presumption is rebutted. The Supreme Court, in setting aside a default judgment and dismissing the plaintiff's case, held:

An affidavit of service is Prima Facie evidence of service which may be impeached by extrinsic evidence. . . . The proof by affidavit in this case is insufficient when confronted with the other facts and circumstances attending it. When these factors are coupled with appellant's counteraffidavit denying service, the cumulative effect entitles appellant to relief from judgment as a matter of

right, and any finding of the trial judge to the contrary is controlled by error of law.

Richardson, 274 S.C. at 311, 262 S.E.2d at 915-16.

4. A defendant's actual knowledge of a suit does not cure defective service of process.

A defect in the service of process required to give the court jurisdiction is not cured by the actual knowledge of the defendant. The Master in Equity committed reversible error when he ruled that actual knowledge was sufficient to overcome disputed factual issues about service of process.

Service of process has two purposes, one being to apprise the defendant of the proceedings against him and the other, to give the court jurisdiction over the defendant. *Roche v. Young Bros. of Florence*, 318 S.C. 207, 210, 456 S.E.2d 897, 899 (1995). The defendant's knowledge of the suit does not confer jurisdiction on the court entertaining the suit absent service of process in compliance with the applicable rules governing that service. *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006) ("A court generally obtains personal jurisdiction by the service of a summons."); *McClure v. Elliott*, 350 S.C. 404, 407, 566 S.E.2d 196, 198 (Ct. App. 2002). Courts around the country have expressly held that actual knowledge neither confers jurisdiction nor cures defects in the service of process.⁴

⁴ Some examples of different states' highest courts so holding are the following: *Hall v. Haynes*, 319 S.W.3d 564, 572 (Tenn. 2010) ("[A]ctual notice of the lawsuit is not 'a substitute for service of process when the Rules of Civil Procedure so require.'"); *Trusclair v. McGowan Working Partners*, 306 S.W.3d 428, 430 (Ark. 2009) ("Actual knowledge of a proceeding does not validate defective process."); *Ellis v. N.D. State Univ.*, 764 N.W.2d 192, 196 (N.D. 2009) ("Generally, '[a]bsent valid service of process, even actual knowledge of the existence of a lawsuit is insufficient to effectuate personal jurisdiction over a defendant.'")(alteration in original); *Perceer v. Sawyer*, 984 So.2d 1100, 1111 (Ala. 2007) ("[A]ctual 'knowledge of an action does not confer personal

5. South Carolina courts have granted relief from default judgments for lack of service of process.

a. *Richardson Constr. Co. v. Meek Engineering & Construction, Inc.*

Richardson Construction Co. v. Meek Engineering & Construction, Inc., 274 S.C. 307, 262 S.E.2d 913 (1980) is strong authority that Harvey's default judgment is void and must be set aside under Rule 60(b)(4), SCRCPP. Richardson Construction took a default judgment against Meek Engineering, which moved to set the judgment aside as void due to lack of service of process. A law clerk for Richardson Construction's attorney served process. He filed an affidavit of service that he had given a Summons (Complaint Not Served) and a Notice of Mechanic's Lien to a secretary at Meek Engineering. Richardson Construction, when it obtained its default, submitted an incorrect affidavit stating that the complaint (as contrasted with the summons) had been served on Meek Engineering, when it had not been. Meek Engineering submitted an affidavit from the secretary that she had been served with a copy of the Notice of Mechanic's Lien, but not the Summons (Complaint Not Served). *Richardson*, 274 S.C. at 308-09, 262 S.E.2d at 914-15.

The Circuit Court refused to set aside the default judgment as void for lack of service, *id.* at 309-10, 262 S.E.2d at 915, and was reversed by the Supreme Court, which set the default aside and dismissed the case. The Supreme Court acknowledged that an

jurisdiction without compliance with Rule 4.""); *Semenza v. Kniss*, 122 P.3d 1203, 1207 (Mont. 2005) ("[A]ctual knowledge of a lawsuit is no substitute for proper service."); *Lifestar Response of Md., Inc. v. Vegosen*, 594 S.E.2d 589, 591 (Va. 2004) (reversing a trial court that relied on actual notice because "[w]ithout service of the 'process,' the court acquires no jurisdiction."); *Abreu v. Gilmer*, 985 P.2d 746, 750 n.5 (Nev. 1999) ("[A]ctual notice of a suit is not an effective substitute for service of process."). Innumerable other courts are in accord with these authorities.

affidavit of service (as had been filed) was *prima facie* evidence of service but that an affidavit of service could be impeached by extrinsic evidence. The Supreme Court found that the secretary's counter-affidavit, when considered in the context of the surrounding facts and circumstances — such as the form of affidavit signed by the law clerk (part typed and part handwritten), that a law clerk and not a sheriff served the Summons (Complaint Not Served), and the failure of Richard Construction's counsel to ever serve a summons on Meek Engineering (despite filing an incorrect affidavit when obtaining the default that the complaint had been served) — mandated that the default be set aside and the case dismissed. *Id.* at 310-12, 262 S.E.2d at 814-15. The Supreme Court held that the relief Meek Engineering sought was “not discretionary but a matter of right.” *Id.* at 309, 262 S.E.2d at 915.

b. ***BB & T v. Taylor.***

Ironically, *BB & T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501 (2006) is a case relied upon by the Master in Equity in denying Harvey's Rule 60(b)(4), SCRC motion. In *BB & T*, the Supreme Court, after noting that “[a] presumption of proper service exists when the rules governing service are followed,” *id.*, 369 S.C. at 552, 633 S.E.2d at 503, found the Affidavit of Service of a private-process server to be wholly inadequate because it was based on speculation. The Affidavit of Service stated that the summons and complaint were posted on the front door of the defendant's house after the private-process server determined that the house was occupied, the occupants refused to answer the door, the private-process server called out his purpose, and the server verified that the defendant's car was in the driveway. *Id.* at 552-53, 633 S.E.2d at 503. The Supreme

Court found this Affidavit's conclusion that the defendant was inside the house to be mere speculation and refused to accept service as having been made, noting:

Jones merely speculated that an individual of suitable age and discretion was inside Petitioner's residence and was refusing to communicate with him during his attempts to serve process. Also, Petitioner did not refuse to accept a copy of the summons and complaint, unlike the defendant in *Patel*. Rather, there are no facts in the record to indicate Petitioner was even aware of the process server and his attempts to serve her. Petitioner was not properly served under these facts because Jones never saw or spoke to anyone who resided in Petitioner's residence nor did anyone refuse acceptance before Jones attached the summons and complaint to Petitioner's front door.

Id. at 554, 633 S.E.2d at 504. Because the Affidavit of Service was insufficient to establish that service had been made, the Supreme Court set aside the default judgment.

In this case, the Harvey Affidavit of Service is even less sufficient than that in *BB & T*. The Harvey Affidavit of Service, when compared to the Aiello Affidavit of Service, is most likely fraudulent, having been signed by someone other than the affiant. It gives no details of the service that would enable a person reading it to conclude that the summons and complaint had actually been given to Harvey and not some unidentified person in the area. And, unlike *BB & T*, where the defendant "alleged" not receiving the process without submitting an affidavit, Harvey provided a sworn affidavit that he was in a different area of the State when he was alleged to have been served. Faced with the Harvey Affidavit, Regions did nothing to support its case or meet its burden of establishing that jurisdiction had been obtained. It simply relied on an Affidavit of Service that was palpably suspect and a presumption of service that was unwarranted.

c. *Laurens Trust Co. v. Copeland.*

In *Laurens Trust Co. v. Copeland*, 154 S.C. 390, 151 S.E. 617 (1930), a default was entered in favor of Laurens Trust against E.W. Copeland and Lizzie Copeland, his wife. An Affidavit of Service, signed by a deputy sheriff and duly notarized, stated that a copy of the summons and complaint had been personally delivered to each of the defendants on December 4, 1924. *Id.* at 390, 151 S.E. at 618. As the court noted about the default judgments that had been entered: "The summons and complaint, the affidavit of proof of service, affidavit of no answer, order for the judgment, and all other papers constituting the judgment roll, are regular on their face." *Id.* at 390, 151 S.E. at 619. Yet after an evidentiary hearing before a specially-appointed master, no evidence was extant in the record that the summons and complaint had ever been served upon Lizzie Copeland. The falsity of the Affidavit of Service was convincingly proved, and the court set aside the default as to Lizzie Copeland. *Id.* at 390, 151 S.E. at 619-20. The Court noted that, if the Affidavit of Service was disregarded (as the impeached Harvey Affidavit of Service should be), "then there is not a particle of testimony remaining in the record to sustain the findings of the circuit judge [that process had been personally served]." *Id.* at 390, 151 S.E. at 620.

So too in this case. Disregarding the impugned Affidavit of Service and giving due consideration to the Harvey Affidavit, nothing exists in the record to demonstrate that Harvey was served with the summons and complaint on August 14, 2008 in Reisterstown, Maryland.

6. Harvey is entitled to have the default judgment set aside and this case dismissed.

In this case, Regions has not proved that it served process upon Harvey. To begin, Harvey has not simply denied being served. He has provided an Affidavit that he was not at his residence on the date the Affidavit of Service states he was personally served there. Harvey's Affidavit states that he was in Berlin, Maryland vacationing with his family. Regions has presented nothing to gainsay Harvey's sworn affidavit.

And, the Affidavit of Service is so suspect – so inherently flawed – that it should be given no credibility, much less afforded a presumption of valid service. When compared to the Aiello Affidavit of Service, the Harvey Affidavit of Service shows that it was most likely signed by someone other than the person whose name appears on it. The handwriting on the Harvey Affidavit of Service is not the same throughout, in contrast to the Aiello Affidavit of Service, where the handwriting is the same. Yet the identical private-process server – William/Bill Angel – is the private-process server in each instance.

The Master in Equity relied on Harvey's actual knowledge of the pendency of the case to deny Harvey's motion. But actual knowledge does not cure defective service or excuse a failure to substantially comply with the requirements of Rule 4, SCRCP. Service of process does more than alert the defendant to the pendency of the suit. It is the manner in which the court obtains jurisdiction over the defendant. No matter how much actual knowledge a defendant has of a pending suit, that knowledge does not give the court jurisdiction over him or excuse service of process in substantial compliance with the rules governing service.

Harvey was never served with process in accordance with Rule 4, SCRPC. Regions presented no credible evidence that he was served and failed to sustain its burden of establishing that jurisdiction was satisfied. Because of the evident flaws in the Affidavit of Service and the likelihood that it was fraudulently executed, Regions is not entitled to a presumption of valid service. Any such presumption is rebutted by the flaws in the Affidavit of Service and by Harvey's contradictory affidavit.

The default judgment should have been set aside by the Master in Equity, and the case dismissed for failure to serve a summons within the time required by Rule 3(a), SCRPC. *Kiriakides v. Sch. Dist. of Greenville Cnty.*, 382 S.C. 8, 22, 675 S.E.2d 439, 446 (2009) ("literal compliance" with Rule 3(a), SCRPC is required). As the Supreme Court noted in *Richardson Construction Co. v. Meek Engineering & Construction, Inc.*, this is a matter of right, not a matter of discretion of the court. *Id.* 274 S.C. at 309, 262 S.E.2d at 915.

- B. The Master in Equity should have held an evidentiary hearing, after limited discovery, to determine if process had been served on Harvey before ruling on Harvey's motion for relief from a void default judgment under Rule 60(b)(4), South Carolina Rules of Civil Procedure.**

Standard of Review. This issue involves the Court of Common Pleas' determination of the procedure to be followed in resolving a motion for relief from a judgment under Rule 60(b), SCRPC. The standard of review should be abuse of discretion by analogy to the standard of review applied to a decision on the motion itself.

Summary of the Argument. When a genuine factual dispute exists, the Court should not decide the factual dispute on the basis of contradictory affidavits. The Court should permit limited discovery (if needed) and should hold a hearing in which evidence can be

presented and witnesses cross-examined. Harvey's Affidavit directly contradicted the Affidavit of Service. Had he been given limited discovery and an evidentiary hearing, he could have proved the Affidavit of Service was false and that he had never been served with a summons and complaint. He was denied this opportunity.

Argument. Even if the Harvey Affidavit of Service was given facial credence, it was still impeached by credible extrinsic evidence. Harvey did not merely file a conclusory affidavit that he was never served. He provided an affidavit that he was never served because he was in a different part of the State on the day the private-process server swore he personally served him. At a minimum, Harvey's Affidavit raised a disputed issue of fact.

1. South Carolina does not favor resolving factual disputes by affidavit.

The South Carolina appellate courts do not favor resolving disputes as to material facts solely by traversing affidavits. *See S.C. Nat'l Bank v. Cent. Livestock Mkt., Inc.*, 289 S.C. 309, 314, 345 S.E.2d 485, 488 (1986) ("We have previously condemned the use of affidavits to determine disputed issues of fact."); *Union Savs. Bank v. Hubbard*, 138 S.C. 328, 328, 136 S.E. 481, 482 (1927) ("This court has decided in several cases that to decide an issue of fact on affidavits in most cases is unsatisfactory."). Just as motions for summary judgment cannot be decided as a matter of law when supporting affidavits reveal a genuine dispute as to material facts, neither should a Rule 60(b)(4), SCRCF motion be decided based on factually contradictory affidavits. *Brockbank v. Best Capital Corp.*, 341 S.C. 372, 378, 534 S.E.2d 688, 692 (2000) ("Summary judgment is not appropriate when further inquiry into the facts of the case is desirable to clarify the

application of the law.”); *Rife v. Hitachi Constr. Mach. Co.*, 363 S.C. 209, 214, 609 S.E. 565, 568 (Ct. App. 2005) (Summary judgment is proper “when plain, palpable, and indisputable facts exist on which reasonable minds cannot differ”); see *Knutson Mortg. Corp. v. Bernier*, 789 A.2d 528, 530 (Conn. App. Ct. 2002) (“Affidavits are insufficient to determine the facts [regarding service of process] unless, like [on] summary judgment, they disclose that no genuine issue as to a material fact exists.”).

2. The Master in Equity should have permitted discovery and held an evidentiary hearing.

The Master in Equity should have afforded the parties an opportunity for discovery and then held an evidentiary hearing where cross-examination would be possible and where the court could judge the credibility of the witnesses and the persuasiveness of the evidence. See *S.C. Nat’l Bank*, 289 S.C. at 318, 345 S.E.2d at 488 (“The fundamental requirement of due process is the opportunity to be heard ‘at a meaningful time and in a meaningful manner.’”).

The Supreme Court of South Dakota in *Dairyland Insurance Co. v. Jarman*, 741 N.W.2d 731 (S.D. 2007), addressed a dispute over service of process that had been decided by the lower court on the basis of competing affidavits. A South Dakota resident was sued in Wyoming, whose long arm statute required a degree of diligence in serving the out-of-state defendant, and had a default judgment taken against him. *Id.* at 732. Each side submitted conflicting affidavits about what had been done to effect service. The plaintiff sent a certified letter to an address that may not have been correct. The certified letter was returned by the Post Office marked “Refused” — not “Undeliverable.” *Id.* at 735. The plaintiff submitted an affidavit about its efforts to ascertain a correct address, accompanied by a copy of the return receipt marked

“Refused.” *Id.* The defendant submitted an affidavit that he was out of town when a certified letter containing process arrived and that he could not, therefore, have refused receipt of it. *Id.* at 735-36. The lower court ruled in favor of the plaintiff and was reversed for not having an evidentiary hearing to resolve the disputed facts. As the South Dakota Supreme Court ruled:

In light of the foregoing disputes of fact, the circuit court erred in granting enforcement on the ground that Jarman refused delivery of the letter. Although the use of affidavits is often permissible in deciding motions, “[w]here the affidavits are so conflicting as to render cross-examination essential, then the desirability of expeditious procedure must give way to a more formal hearing.”

Id. at 736 (alteration in original).

In *Dillon v. Dillon*, 176 N.W.2d 362 (Wis. 1970), the Wisconsin Supreme Court faced a similar jurisdictional issue and reached the same result: the disputed facts could not be determined on the basis of competing affidavits. Quoting:

The question of whether the plaintiff continued to reside in this state after the defendant left the state is too grave to be decided on affidavits such as were presented in this case. It involves the determination of disputed facts, and in our judgment, demands a judicial hearing or taking of depositions, in which the full opportunity to examine and cross-examine the witnesses will be given to all parties. While we do not say that questions of jurisdiction can never be determined on the basis of affidavits, we do disapprove of materially disputed facts being presented in this manner.

Id. at 371.

The Appellate Division of the New York Supreme Court has come to the same conclusion. In *Deutsche Bank National Trust Co. v. Pestano*, 899 N.Y.S.2d 269 (App. Div. 2010), a mortgagor denied that service was made, although an affidavit of service

had been filed. The New York court ruled “[a] process server’s affidavit of service ordinarily constitutes prima facie evidence of proper service. However, where there is a sworn denial of receipt of process, the affidavit of service is rebutted, and the plaintiff must establish jurisdiction by a preponderance of the evidence at a hearing.” *Id.* at 270; *U.S. Bank Nat’l Ass’n v. Vanvliet*, 805 N.Y.S.2d 459, 461 (App. Div. 2005); *see also Wells Fargo Bank, N.A. v. Chaplin*, 884 N.Y.S.2d 254, 255 (App. Div. 2009); *Wickham v. Liberty Mut. Ins. Co.*, 423 N.Y.S.2d 273, 274-75 (App. Div. 1979).

3. Harvey could have proved he was not served at an evidentiary hearing.

An evidentiary hearing would have provided Harvey the opportunity to prove that he was not served with the summons and complaint. At a hearing, Harvey’s counsel would have cross-examined Angel on the discrepancies between the Harvey Affidavit of Service and the Aiello Affidavit of Service. Harvey would have produced neighbors from his Reisterstown address to testify that he was not at home on the date service supposedly was made. He would have produced evidence of his ownership of a home in Berlin, Maryland and provided testimony from neighbors and other people residing in Berlin that he was present there on August 14, 2008. He would have corroborated this testimony by producing credit card receipts on August 14, 2008 from stores, restaurants, gas stations and the like in Berlin, Maryland and its environs showing he was there on the day in question. He could have produced phone records to demonstrate his whereabouts that day. His family would have testified as to where he was. Indeed, the Master in Equity could even have ascertained if Angel could identify Harvey in a crowd of people.

Discovery would have enabled Harvey to demonstrate the sham nature of the Affidavit of Service. He would have been able to query both Angel and the notary and

pursue the discrepancies in their stories and in the affidavits they filed with the Court. The United States Court of Appeals in *Blair v. Worcester*, 522 F.3d 105 (1st Cir. 2008) reversed as an abuse of discretion the District Court's refusal to permit limited discovery on a dispute over service of process and an evidentiary hearing to resolve that dispute, noting that "where a plaintiff can demonstrate the existence of a plausible factual disagreement or ambiguity, our jurisprudence favors permitting the litigants the opportunity to flesh out the record." *Id.* at 111.

Harvey's Affidavit should not have been categorically rejected, and he should not have been denied discovery and an opportunity to prove the Affidavit of Service was false. He should have been given discovery and an evidentiary hearing. His affidavit should not have been discounted as meaningless.

C. The Master in Equity erred in denying Harvey's motion under Rule 60(b)(4), South Carolina Rules of Civil Procedure, as untimely.

Standard of Review. The interpretation of the unambiguous provisions of the South Carolina Rules of Civil Procedure is done as a matter of law by the lower court and that interpretation is reviewed *de novo* by this Court on appeal. *Summerville v. N. Charleston*, 378 S.C. 107, 110, 662 S.E.2d 40, 41 (2008) ("Determining the proper interpretation of a statute is a question of law, and this Court reviews questions of law *de novo*."); *Maxwell v. Genez*, 356 S.C. 617, 620, 591 S.E.2d 26, 27 (2004) ("In interpreting the meaning of the South Carolina Rules of Civil Procedure, the Court applies the same rules of construction used to interpret statutes.").

Summary of the Argument. By its express terms, Rule 60(b), SCRPC has a time limit for filing a motion under subsections 1, 2, and 3. A motion under Rule 60(b)(4), SCRPC, on the other hand, has no time limit as to when it may be filed.

Argument. The Master in Equity gave as a reason for denying Harvey's motion for relief from the default judgment under Rule 60(b)(4), SCRPC that the motion was not timely filed. The Master in Equity noted that Harvey had actual knowledge of the pendency of this suit in June of 2008, as evidenced by an Answer and Counterclaim filed in a related action, but waited until August of 2010 to file his motion.

But relief under Rule 60(b)(4), SCRPC may be filed at any time because it is premised on a judgment being void. The proscription in Rule 60(b), SCRPC that a motion under Rules 60(b)(1), (2) or (3) be filed within a reasonable time and in all events within one year of the entry of the judgment does not apply to a motion under Rule 60(b)(4), SCRPC.

The South Carolina Supreme Court has held that a motion under Rule 60(b)(4), SCRPC is not subject to the one year limitation. *Thomas & Howard Co. v. T.W. Graham & Co.*, 318 S.C. 286, 291, 457 S.E.2d 340, 344 (1995) ("A judgment may be set aside more than one year after its entry only if it is 'void.' See Rule 60(b)(4), SCRPC."). In discussing Fed. R. Civ. P. 60(b)(4), the federal counterpart of Rule 60(b)(4), SCRPC, Wright, Miller and Kane in *Federal Practice and Procedure* point out that this section of the rule has no time limit for when a motion must be filed, noting:

Although Rule 60(b) purports to require all motions under it to be made within a "reasonable time," this limitation does not apply to a motion under clause (4) attacking a judgment as void. **There is no time limit on a motion of that kind.** All other motions under Rule 60(b),

however, must be made within a reasonable time of the judgment, order, or proceeding from which relief is sought.

11 Charles Alan Wright, et al., *Federal Practice and Procedure* § 2866, at 382 (2d ed. 1995)(emphasis added).

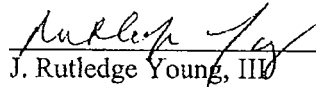
The Master in Equity should not have denied Harvey's motion to set aside a void judgment under Rule 60(b)(4), SCRCPP as being untimely.

Conclusion

A court does not obtain personal jurisdiction without personal service of process on the defendant. A valid default judgment cannot be entered when a defendant has not been served with a summons and complaint in accordance with Rule 4, SCRCPP. No convincing proof is in the record that Harvey was ever served with process in this case, but there is convincing proof that he was not. A default judgment should not be permitted to stand without proper, convincing evidence that jurisdiction was obtained through actual service of process.

This Court should reverse the Master in Equity and grant relief from the void-default judgment by setting that judgment aside and directing that the case be dismissed for failure to serve process within the time specified in Rule 3(a), SCRCPP. Alternatively, this Court should reverse the Master in Equity and remand for discovery and an evidentiary hearing in which Regions will be required to prove service was made by Angel on the day his Affidavit of Service states and in which Harvey will have the opportunity to prove he was never served and the Court of Common Pleas never obtained jurisdiction over him.

Respectfully submitted,



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June 6, 2011
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2008-CP-10-2513

Regions Bank,

Respondent,

v.

Stonebridge Development Group, LLC; Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company; Carolina Federal Savings Bank; Plantation Isle Equity Partners General Partnership; Michael Aiello; Frank M. Harvey aka Francis M. Harvey; Brandon Advertising, Inc; Rubeling & Associates, Inc.; Carolina Custom Docks, LLC; J. Mark Caldwell, individually; Carolina Clearing & Grading, Inc.,

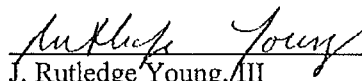
Defendants,

Of Whom Frank M. Harvey aka Francis M. Harvey is the

Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that this Final Brief complies with Rule 211(b), SCACR.



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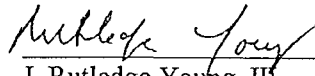
Defendants,

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PROOF OF SERVICE

I, J. Rutledge Young, III, of Duffy & Young, LLC, certify that I have served the
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Charleston, South Carolina

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STATEMENT OF ISSUES ON APPEAL

1. Is there evidence to support the Master's ruling that Frank M. Harvey (Harvey) was served with the summons and complaint in this action?
2. Was the Master within his discretion in ruling on this matter based on a telephone hearing and the parties' written submissions?
3. Was the Master within his discretion in finding Harvey's motions untimely when there were filed more than two years after Harvey had knowledge of this action?

STATEMENT OF THE CASE¹

This appeal arises out of a foreclosure and deficiency action filed by Regions Bank (Regions) on May 7, 2008 against Stonebridge Development Group, LLC (Stonebridge) and its guarantors, including Frank Harvey, one of the members Stonebridge. (R. at 94-102). Harvey was personally served the Pleadings on August 14, 2008, as evidenced by the affidavit of service (Affidavit) filed on September 2, 2008. (R. at 117). Harvey failed to answer.

Harvey was held in default and the matter was referred to the Master in Equity for Charleston County on February 24, 2010. (R. at 3-5). On May 18, 2010, after notice and a hearing, the Master entered an Order and Judgment of Foreclosure and Sale (Foreclosure Decree). (R. at 7-16). Among other things, the Foreclosure Decree awarded Regions personal judgment against Harvey for \$733,694.66, with a credit against the judgment to be given for the net proceeds received in the sale. Pursuant to the Foreclosure Decree, the property was offered for sale on July 6, 2010 at the initial foreclosure sale and on August 5, 2010 at the deficiency sale. Woodrow W. Blizzard was the high bidder at the conclusion of the deficiency sale with a bid of \$260,000.00.²

On August 4, one day before the deficiency sale, Harvey moved to postpone the sale and for relief from the Foreclosure Decree pursuant to Rule 60(b)(1), SCRCR. (R. at 125-26). Harvey attached an affidavit (Harvey Affidavit) to the motion to the effect that he was out of town on the day of service, and he had not been served. (R. at 128-29, ¶¶ 5-

¹ Regions Bank objects to the Statement of the Case presented by Harvey as in violation of Rule 208(C), SCACR, because it contains contested matters and arguments.

² Following the sale, the amount of the deficiency was \$482,282.84. A judgment in that amount was entered against Harvey on November 30, 2010. (R. at 86).

6). Harvey further acknowledged he had known about this action for approximately two years prior to the filing of the affidavit by virtue of his membership in Stonebridge. (*Id.* at ¶9).

The Master then held an emergency hearing via telephone on Harvey's motion the morning of August 5, mere hours before the sale. (R. at 89). Counsel for Regions and Harvey were both present at the hearing. (*Id.*). Harvey submitted a later motion again seeking relief from the Foreclosure Decree pursuant to Rules 55 and 60(b)(4), SCRCPC on August 20, 2010. (R. at 134-36). Neither of Harvey's motions requested discovery or an evidentiary hearing, nor did Harvey serve any discovery requests or notices of deposition on Regions. Regions filed a memorandum in opposition to these motions on September 16, 2010. (R. at 141-44). After full consideration of the record before him, the Master denied the motions by order dated October 21, 2010, on two grounds: (1) Harvey "was properly served;" and (2) the motions were not filed in a timely manner because Harvey had known about the action since at least June 13, 2008 as reflected in an answer Harvey filed in another case. (R. at 88-90). Harvey did not file a motion for reconsideration.

This appeal followed.

FACTS

With respect to the service of process, the sole issue is whether there is any evidence supporting the Master's finding that Harvey "was properly served." Harvey does not contest that the address on the Affidavit was his home address or that the packet contained the requisite items to effect service. Harvey also does not complain that he did not have notice of this action. In fact, he admits he had known about it for approximately two years as of the date of his affidavit. (R. at 128-29, ¶9).

There are only three pieces of evidence in the record pertaining to the issue of service: the Affidavit, the Harvey Affidavit, and the affidavit of service relating to another guarantor in this case, Michael Aiello (Aiello Affidavit). (R. at 117, R. at 128-29, R. at 119). The Affidavit is notarized and recites that William Angel served Harvey on August 14, 2008 at Harvey's home and includes a physical description. (R. at 117). Harvey has not contested the physical description. The Harvey affidavit flatly denies service and recites that Harvey was out of town on August 14. (R. at 128-29). It does not attach or authenticate any additional evidence of the type argued in Harvey's brief (such as proof he owned a home in Berlin, Maryland, credit card receipts, and phone records). Nor did he produce corroborating affidavits from third party witnesses. Contrary to the bald assertions in Harvey's brief, the Affidavit is not facially defective or fraudulent when compared with the Aiello Affidavit. Both appear to contain similar information and handwriting and were notarized by the same notary, albeit on different dates.

ARGUMENTS

In this case, this Court must affirm the Master's order unless it finds there was a clear abuse of discretion. *Fassett v. Evans*, 364 S.C. 42, 49-50, 610 S.E.2d 841, 845 (Ct. App. 2005); *Mitchell Supply Co. v. Gaffney*, 297 S.C. 160, 162-63, 375 S.E.2d 321, 322-23 (Ct. App. 1988). "An abuse of discretion in setting aside a default judgment occurs when the judge issuing the order was controlled by some error of law or when the order, based upon factual, as distinguished from legal conclusions, is without evidentiary support." *In re Estate of Weeks*, 329 S.C. 251, 259, 495 S.E.2d 454, 459 (Ct. App. 1997), *quoted in Fassett*, 364 S.C. at 49-50, 610 S.E.2d at 845. Here, the Master's findings were legally correct and supported by evidence in the record.

I. The Master's ruling that Harvey was properly served is supported by evidence in the record and may not be overturned by this Court.

A finding of service will not be disturbed unless "there is no evidence reasonably supporting the finding." *Richardson Constr. Co. v. Meek Engineering & Constr., Inc.*, 274 S.C. 307, 309-10, 262 S.E.2d 913, 915 (1980). In addition, the party seeking relief bears the burden of proving the facts entitling him to relief under Rule 60(b), SCRCP. *BB&T v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006).

Here, Regions filed a duly executed and notarized affidavit of service from a private process server. (R. at 117). Harvey filed an affidavit stating that he was out of town that day and was not served. (R. at 128-29). Rather than treating the presumption as irrebuttable as argued by Harvey, the Master held a hearing and considered all the materials submitted by the parties (including the affidavits) and found service was made. (R. at 88-90). Based on the standard of review, that finding should end the inquiry on appeal.

When process has been served in apparent compliance with Rule 4, SCRCP, there is a rebuttable presumption of service. *BB&T* at 552, 633 S.E.2d at 503. That presumption may be overcome by extrinsic evidence. *Richardson Constr. Co* at 311, 262 S.E.2d at 915. However, where the service has been accomplished by an officer who executes a return of service, the presumption of service cannot be overturned by mere denial of service by the defendant. *Id.* Harvey focuses on three cases in which a South Carolina appellate court overturned a trial court's determination that service had been accomplished based on extrinsic evidence. In those cases, there were numerous irregularities and proof that distinguish them from the instant case.

In *Richardson Construction Co.*, the plaintiff's attorney sent one of his own employees, a law clerk, to serve a Summons (Complaint not Served). The attorney testified in his affidavit of default that a summons and complaint were served. The secretary for the defendant acknowledged receipt of a mechanic's lien but not a summons or complaint in the action in question. On those facts, the court found service had not been accomplished. The court was particularly concerned that an employee of the plaintiffs' attorney rather than a disinterested third party purportedly accomplished the service and that the form to be served was a Summons (Complaint not Served). Here, service was of a summons and complaint and the return was executed and notarized by independent third parties. Thus, the factors present in *Richardson Construction Co.* are absent here.

In *BB&T*, there was a different concern; there the private process server merely assumed someone of suitable age was home when he left the papers at the defendant's residence. No one actively refused to accept service. There, the court found that service had not been accomplished for failure to comply with the rules pertaining to service. Again, that is not the case here. The Affidavit states that the process server personally delivered the summons and complaint. Harvey denies he was served. That puts this case back in the framework of *Patel v. S. Brokers, Ltd.*, 277 S.C. 490, 492, 289 S.E.2d 642, 643 (1982) and *Fassett*, 364 S.C. at 47, 610 S.E.2d at 844. In these cases, the court found that the defendants' mere denial of service was insufficient to rebut the presumption.

The third case Harvey highlights is *Laurens Trust Co. v. Copeland*, 154 S.C. 390, 151 S.E. 617 (1930). In that case, which long pre-dates the current Rules of Civil Procedure, the court found there was no evidence of either service or notice to the

defendant. The court found that the following evidence clearly impeached the affidavit of service purportedly executed by L.F. Nabors, a deputy sheriff:

The deputy sheriff testified that he never served the summons and complaint upon Mrs. Copeland, and that he had never seen her in his life until the day of the hearing before the Referee, and Mrs. Copeland declared positively that she had never been served; that she never heard of the papers being left at her home; and that she had never met Mr. Nabors until the day of the taking of the testimony. The testimony was uncontroverted that it was not the signature of Nabors to the affidavit of service, and there is no testimony in the record that she was ever served by any other person, or that she was ever given any notice of the pendency of the action. On the contrary, no other inference can be drawn from the testimony, other than that she never had any notice that an action was pending against her, or that a judgment had been obtained against her, until she was notified of this fact in March, 1928, more than three years after rendition of the judgment, and she immediately consulted Mr. Richey with a view to have the judgment set aside. . . . There is no evidence of laches on the part of Mrs. Copeland, as she applied promptly to the Court for relief, after she learned that the judgment had been entered against her.

Id. at 397-98, 151 S.E. at 620. In this case, Harvey has presented no extrinsic evidence apart from the bare assertions contained in his affidavit and his speculations about the Affidavit. These assertions alone are insufficient to rebut the presumption of service. Further, unlike Mrs. Copeland, Harvey had notice of this action for more than two years and failed to do anything about it.

II. The Master was not required to hold an evidentiary hearing to address Harvey's motions for relief.

As an initial matter, Harvey did not serve discovery requests nor did he ask the Master to hold an evidentiary hearing or allow him to engage in additional discovery. Moreover, much of the information he claims he would have liked to present was already in his control at the time of the Harvey Affidavit. For example, he could have included property records, credit card statements, and phone bills with his affidavit, but chose not to do so.

Harvey's failure to raise these issues to the Master leaves them unpreserved for this Court's review. To be preserved for appellate review, an argument must have been raised to and ruled on by the trial court. *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 734 (1998). Harvey did not seek discovery or an evidentiary hearing from the Master; therefore, he may not raise this argument before this Court. *See Allen v. Allen*, 347 S.C. 177, 189, 554 S.E.2d 421, 427 (Ct. App. 2001) (finding issue unpreserved "[a]lthough the husband raised the issue of attorney fees in his post trial motion for reconsideration, the motion does not mention the sufficiency of the wife's attorney fee affidavit. Neither did he object to submission of the affidavit nor challenge its sufficiency at trial."). The requirement that matters be presented to the trial court is explained as follows:

Imposing this preservation requirement on the appellant is meant to enable the lower court to rule properly after it has considered all relevant facts, law, and arguments. The requirement also serves as a keen incentive for a party to prepare a case thoroughly. It prevents a party from keeping an ace card up his sleeve - intentionally or by chance - in the hope that an appellate court will accept that ace card and, via a reversal, give him another opportunity to prove his case.

I'On, L.L.C. v. Town of Mt. Pleasant, 338 S.C. 406, 422, 526 S.E.2d 716, 724 (2000) (citation omitted). This rule is particularly fitting here where Harvey did not ask for the relief in question and had the opportunity to provide additional evidence with his affidavit.

Moreover, even if Harvey had sought discovery or requested an evidentiary hearing, nothing in the South Carolina Rules of Civil Procedure requires an evidentiary hearing in addition to the emergency telephone hearing held by the Master. *See e.g.*, Rules 7, 55, and 60, SCRCP. Further, Harvey, as the moving party, had the burden of establishing any entitlement to relief. *BB&T* at 552, 633 S.E.2d at 503; *Perry v. Heirs at Law of Gadsden*, 357 S.C. 42, 46-47, 590 S.E.2d 502, 504 (Ct. App. 2003). If Harvey wanted to present additional evidence, he should have done so.

III. Given the record in this case and his admitted notice of this action, Harvey's motion for relief was not filed within a reasonable time as required under Rule 60(b)(4), SCRCP.

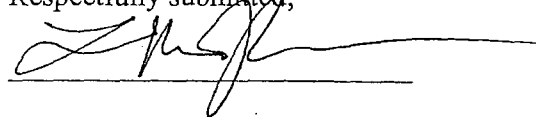
The Master did not rule that Harvey's motion was required to be filed within a year. Instead, he ruled that the motion was "not filed in a timely manner as [Harvey] had actual notice of this foreclosure action on June 13, 2008, which is evidence by the Answer and Counterclaim he filed in the Caldwell Case." (R. at 88-90). Contrary to Harvey's argument, all motions under Rule 60, SCRCP must be made within a reasonable time (and motions under Rule 60(b)(1)-(3) must be made within a year). *See Mr. T. v. Ms. T.*, 378 S.C. 127, 134, 662 S.E.2d 413, 417 (Ct. App. 2008) ("The language of Rule 60 specifically excludes motions under Rule 60(b)(4) and (5) from the one year limitation within which prior judgments may be attacked and indicates these motions must be brought within a reasonable time."). Here, the Master found that Harvey's

motion, filed the day before the deficiency sale when Harvey admittedly had known about the action for more than two years, was not filed within a reasonable time. This decision was well within the Master's discretion and must be affirmed on appeal.

CONCLUSION

For all of these reasons, the Master correctly determined that Harvey did not meet his burden of showing he was not served and in denying Harvey's motion for relief. Based on the record before the Court, there is evidence supporting the Master's ruling and it must be affirmed.

Respectfully submitted,



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June 1, 2011

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Defendants,

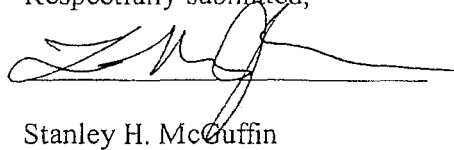
Of Whom Frank M. Harvey aka Francis M. Harvey is the

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CERTIFICATE OF COMPLIANCE

I certify that the final respondent's brief in this matter complies with Rule 211(b), SCACR and the August 13, 2007 Order of the South Carolina Supreme Court relating to personal data identifiers.

Respectfully submitted,

A handwritten signature in dark ink, appearing to read 'SMC', is written over a horizontal line.

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STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS

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Francis M. Harvey; Brandon Advertising,
Inc.; Rubeling & Associates, Inc.;
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Defendants.

CERTIFICATE OF SERVICE

I, the undersigned, do hereby certify that on June 2, 2011, I caused the below named parties to be served with a copy of the following document(s):

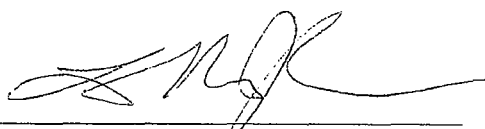
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by causing said document(s) to be placed in a sealed envelope with postage thereon fully prepaid, in the United States mail, with return address clearly shown, as set forth below.

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Defendants,

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I.
Introduction

A judgment entered by default against a defendant is void unless the Court entering the judgment obtained jurisdiction by the valid service of a summons and complaint under Rule 4, South Carolina Rules of Civil Procedure. While a presumption of valid service may exist when the record indicates that the requirements of Rule 4, SCRCP have been satisfied, that presumption does not apply when the affidavit of service is palpably defective on its face, appears fraudulent when compared to another affidavit of service in the record, and is gainsaid by a detailed affidavit of the defendant providing a credible explanation of why service was not made as described in the affidavit of service. Relief from the void-default judgment is proper under these circumstances.

And, when contradictory affidavits are of record and the record itself raises questions about which is true, the Court should not decide the disputed issue of fact solely on the papers before it and should require testimony and evidence to determine if service of the summons and complaint was actually done in accordance with the requirements of Rule 4, SCRCP. A defendant should not be subjected to a judgment by default from a court that never acquired jurisdiction over him. Yet that is what happened in this case.

II.
Reply Arguments

- A. Regions did not corroborate or enhance the facially defective Affidavit of Service that was rebutted by the Harvey Affidavit and impeached by the record.**

Regions received Harvey's Affidavit before it responded to the motion under Rule 60(b), SCRCP. Although the Harvey Affidavit and the Affidavit of Service were

factually conflicting and irreconcilable, Regions failed to augment or reinforce the glaring weaknesses in the Affidavit of Service in its opposition to the motion when the need to do so should have been apparent to it. Nor did Regions address the conspicuous inconsistencies in the record regarding the Affidavit of Service it had filed. Instead, Regions relied entirely on the presumption of service that apparent compliance with Rule 4, SCRCP imparts and the passage of time between when Harvey learned of the suit and when he filed for relief from the judgment under Rule 60(b), SCRCP. (R. p. 141-44; Pl.'s Mem. in Opp. to Mot. of Def. Frank M. Harvey for Relief from J.). But, as will be discussed further in later sections of this Reply, the presumption of service was factually rebutted by the Harvey Affidavit (as should have been apparent to Regions) and no longer applied as a matter of law, and the motion for relief under Rule 60(b), SCRCP was filed within a reasonable time after entry of the void-default judgment. Regions did not present the Master in Equity with a basis to find that service had been made or that relief under Rule 60(b)(4), SCRCP was time barred. In the most basic sense, Regions failed to satisfy its burden of proving that the Court had jurisdiction to enter the default judgment. For this reason, the default judgment was void and a proper subject for relief under the timely motion filed by Harvey under Rule 60(b)(4), SCRCP.

B. Regions has ignored applicable law governing the burden of proof and the presumption of service that arises from an uncontested affidavit of service.

Regions has ignored applicable law governing the burden of proof and the presumption of service that arises from an uncontested affidavit of service. Instead, Regions argues that “the sole issue is whether there is any evidence supporting the Master’s finding that Harvey ‘was properly served’” and that “[a] finding of service will

not be disturbed unless 'there is no evidence reasonably supporting the finding.'" Initial Brief of Respondent at 3, 5 ("Regions Br."). Regions forgets that only conflicting affidavits were presented to the Master in Equity (which, being hearsay, are not admissible evidence) and that no actual, admissible evidence was presented. The Master in Equity improperly relied exclusively upon a presumption arising from an affidavit of service (not evidence) that was rebutted by an opposing, factually detailed affidavit. The Master in Equity did not make a finding of actual service based on evidence presented, free of the rebutted presumption and giving due consideration to the applicable burden of proof.

1. Regions did not satisfy its burden of proving that service was made and that the Court had jurisdiction to enter the default judgment.

To begin, Regions, as plaintiff, had the burden of proving that the Court had personal jurisdiction over Harvey before the default judgment entered against him could be sustained. *BB & T v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006); *Fassett v. Evans*, 364 S.C. 42, 47, 610 S.E.2d 841, 843 (Ct. App. 2005). For the Court to have personal jurisdiction, Regions had to establish that proper service of process upon Harvey under Rule 4, SCRCP had occurred.

When a proper and facially sufficient affidavit of service is filed by the plaintiff, a presumption arises that personal service was accomplished and the Court obtained jurisdiction over the defendant. *BB & T*, 369 S.C. at 552, 633 S.E.2d at 503; *Fassett*, 364 S.C. at 47, 610 S.E.2d at 843-44. The presumption, if factually uncontested, is sufficient to support the entry of a default judgment against the defendant.

But the presumption arising from the filing of an affidavit of service in accordance with Rule 4, SCRCP does not shift the burden of proof. If the defendant presents a proper, factually detailed affidavit that rebuts the presumption of service, the rebutted presumption vanishes, the burden of proof remains on the plaintiff, and the plaintiff must present sufficient evidence to overcome any counter-evidence from the defendant. The rebutted presumption alone, resting solely on a contested affidavit, is not sufficient to prove that service occurred. The plaintiff must prove this fact, unassisted by the rebutted presumption. Rule 301, South Carolina Rules of Evidence; *Gastineau v. Murphy*, 323 S.C. 168, 177, 473 S.E.2d 819, 825 (Ct. App. 1996) ("A presumption is a rule of law by which the finding of a basic fact gives rise to the existence of the presumed fact until the presumption is rebutted by evidence produced by the defendant."), *rev'd on other grounds*, 331 S.C. 565, 503 S.E.2d 712 (1998).

In the *Federal Rules of Evidence Manual*, the authors provide an example of how Rule 301 of the Federal Rules of Evidence (worded identically to Rule 301, SCRE) works:

An example may help to illustrate how the Rule works in practice. If there is a presumption that a letter once mailed is received, and one party to litigation introduces evidence of mailing, an opposing party must produce evidence of nonreceipt to rebut the presumption or the Judge will find that receipt is established on the basis of the evidence of mailing together with the presumption; if there is no rebuttal evidence, the jury in a civil case should be instructed that it *must* find the presumed fact. If evidence sufficient to support a finding of nonreceipt is offered, the presumption disappears. This is true regardless of the strength of the evidence on mailing, and regardless of whether the Judge actually believes the evidence of nonreceipt. If the presumption disappears, the party who mailed the letter must then offer affirmative evidence of receipt in order to prevail.

1 Steven A. Saltzburg, et al., *Federal Rules of Evidence Manual* § 301.02[2], at 301-6 (9th ed. 2006); *see also Foster v. Ford Motor Credit Co.*, 302 S.C. 450, 395 S.E.2d 440 (1990) (presumption that mailed letter was received rebutted by denial of receipt); Alex Sanders & John S. Nichols, *Trial Handbook for South Carolina Lawyers* § 12.1, at 500 (4th ed. 2010) ("Rule 301 is the same as the federal rule, and is consistent with prior case law of this state.").

If a defendant subjected to a default judgment moves for relief based on Rule 60(b)(4), SCRCF asserting that the default judgment is void due to lack of service, the defendant must establish initially that *prima facie* grounds for relief are present. *BB & T*, 369 S.C. at 552, 633 S.E.2d at 503. To demonstrate that *prima facie* grounds for relief are present, the defendant must do more than baldly deny receipt of the summons and complaint. The defendant must present facts that establish that service did not occur. Once the defendant does so, the plaintiff cannot simply continue to rely on the presumption arising from an affidavit of service. The plaintiff must then prove that service actually occurred.

In this instance, the Master in Equity, agreeing with Regions' incorrect argument, imposed a presumption arising from an affidavit of service that had been rebutted by a traversing affidavit and went no further. But the presumption alone, when rebutted by the opposing affidavit presented by Harvey, could not satisfy Regions' burden of proof.

2. The summary judgment standard should apply when conflicting affidavits about service are presented.

In assessing conflicting affidavits, one averring that service was made and one averring that service was not made, the Court should evaluate the affidavits by a standard

analogous to that used in summary judgment motions. If the defendant presents a conclusory, simple denial of service, with nothing more, the Court may be justified in disregarding the affidavit as not establishing a genuine dispute and relying on the presumption. *Patel v. So. Brokers, Ltd.*, 277 S.C. 490, 493, 289 S.E.2d 642, 644 (1982); *Fassett*, 364 S.C. at 47, 610 S.E.2d at 844. Conversely, if the defendant presents a non-conclusory affidavit showing by detailed facts that service was not made, the Court should regard the matter as establishing a genuine dispute as to a material fact and require evidence to resolve the factual dispute. The Court in that instance should no more decide the motion on conflicting affidavits than it should decide a motion for summary judgment based on affidavits that genuinely dispute a material fact.

In this case, the issue should be whether a genuine dispute of material fact about service was generated and required an evidentiary presentation in which Regions had the ultimate burden of proving that service had been accomplished. The issue is not, as Regions argues, whether any evidence in the record would support the ruling of the Master in Equity. Regions should have been required to prove in an evidentiary hearing that the Circuit Court had jurisdiction to enter the default judgment against Harvey because he was properly served with a summons and complaint.

C. The Master in Equity should have required an evidentiary hearing regardless of whether Harvey requested one or not.

As Regions would have it, Harvey was not entitled to an evidentiary hearing on the factual dispute between his Affidavit and the Affidavit of Service solely because he did not ask for one. Regions Br. at 8-9. In making this argument, Regions does not deny that the two affidavits are factually conflicting and irreconcilable. Nor does Regions deny that Harvey asked for a hearing and a court reporter when the August 4 emergency

motion was filed (which yielded a telephonic hearing, with no court reporter) and when his supplemental memorandum was filed (which yielded only an adverse ruling, without a hearing.). (R. p. 124, 133; Mot. of Def. Frank M. Harvey for Relief from J. and Mem. of Def. Frank M. Harvey for Relief from J.).

Nothing in the South Carolina Rules of Civil Procedure requires a party in a factually contested matter, where competing affidavits have been filed, to request an evidentiary hearing as a condition of the hearing being held. Not requesting an evidentiary hearing is not a waiver of the right to an evidentiary hearing and does not constitute consent for the Court to determine the disputed factual issue solely on the basis of the paper submissions.

Consistent with the law in other jurisdictions, the South Carolina appellate courts have expressed strong disapproval of a trial court resolving material-factual disputes solely on the basis of paper submissions. *See* Final Brief of Appellant, Frank Harvey at 20-23 ("Harvey Br."). But that is what occurred in this case. The Master in Equity could not possibly decide the disputed-factual issue on paper alone: evidence and an opportunity to evaluate credibility – that of Harvey and that of whoever filled out the Affidavit of Service – was needed.¹

The lack of an evidentiary hearing before his motion was denied deprived Harvey of fundamental fairness in this case. He should not have been peremptorily and

¹ There is no presumption that the process server is truthful and the defendant is not. The cases from around the country contain examples of knowingly false affidavits of service having been filed by process servers. *See, e.g., Marksamer v. Guggenheimer*, 374 N.E.2d 128 (N.Y. 1978); *United States v. Wiseman*, 445 F.2d 792 (2d Cir. 1971); *Winning Moves, Inc. v. Hi! Baby, Inc.*, 605 N.E.2d 1026 (Ill. App. Ct. 2d Dist. 1992). Regions was not entitled to a presumption that the "William/Bill Angel" Affidavit of Service was truthful and the Harvey Affidavit gainsaying it was not.

summarily rendered personally liable for a judgment of \$733,694.66 (later reduced by credit to \$482,282.84) without the Court first determining factually, based on competent evidence, that service had been accomplished and that it had jurisdiction. *See* authorities discussed in the Harvey Br. at 21-23.

D. Harvey's Rule 60(b)(4), SCRCP motion was filed within a reasonable time after the entry of the judgment against him.

Regions argues that the Master in Equity was correct in ruling that Harvey's motion under Rule 60(b)(4), SCRCP should be denied because "Defendant's Motion was not filed in a timely manner as Defendant had actual notice of this foreclosure action on June 13, 2008, which is evidenced by the Answer and Counterclaim he filed in the Caldwell Case." Regions Br. at 9-10. Regions posits that a motion under Rule 60(b)(4), SCRCP must be filed within "a reasonable time," because the reasonable time requirement applies to all motions under Rule 60(b), SCRCP, including Rule 60(b)(4).

1. South Carolina law is in conflict as to whether a motion under Rule 60(b)(4), SCRCP must be filed within a reasonable time.

Regions cites as authority for its argument *Mr. T v. Ms. T (In re S.N.T.)*, 378 S.C. 127, 662 S.E.2d 413 (Ct. App. 2008). There, the Court of Appeals stated in *dicta*, that the reasonable time requirement in Rule 60(b), SCRCP applies to motions under Rule 60(b)(4), and not just motions under Rules 60(b)(1), (2), (3) and (5). *Id.* at 134, 662 S.E. 2d at 416-17. But South Carolina law is in conflict on this point.

In *BB & T v. Taylor*, 369 S.C. 548, 633 S.E.2d 501, the Supreme Court of South Carolina ruled that a motion under Rule 60(b)(4), SCRCP that was filed four years after the judgment was entered should have been granted. The Supreme Court expressly held that promptness in filing the motion is not a requirement under Rule 60(b)(4), SCRCP. *BB & T*, 369 S.C. at 552 n.1, 633 S.E.2d at 503 n.1; *accord Gatling v. Beach Palace, Inc.*,

294 S.C. 464, 464, 365 S.E.2d 736, 736 (Ct. App. 1988) (“[B]ecause a void judgment is a nullity, it may be attacked at any time and, for this reason, the provision of [Rule 60(b)] which requires a motion for relief from a judgment to be made within a reasonable time does not apply to motions made on the ground the judgment is void.”).

Yet in an earlier case, *Sijon v. Green*, 289 S.C. 126, 128 n.2, 345 S.E.2d 246, 248 n.2 (1986), the Supreme Court held that the reasonable time requirement of Rule 60(b), SCRCF applied to motions under Rule 60(b)(4). *Accord McDaniel v. United States Fid. & Guar. Co.*, 324 S.C. 639, 643-44, 478 S.E.2d 868, 870-71 (Ct. App. 1996); *Smith Cos. of Greenville v. Hayes*, 311 S.C. 358, 359, 428 S.E.2d 900, 902 (Ct. App. 1993).

Although an apparent conflict exists under South Carolina law, the generally recognized rule is that a motion for relief from a void judgment may be filed at any time because a void judgment is a nullity. *See Precision Etchings & Findings, Inc. v. LPG Gem, Ltd.*, 953 F.2d 21, 23 (1st Cir. 1992); 11 Charles Alan Wright, et al., *Federal Practice and Procedure* §§ 2862, 2866 (2d ed. 1995).

2. **A reasonable time under Rule 60(b)(4), SCRCF can only be measured from when the judgment was entered, not when the defendant learned of the suit.**

This Court need not resolve the conflict in South Carolina law to decide the issue on appeal. In making this argument, Regions has overlooked a crucial point: the reasonable time specified in Rule 60(b), SCRCF (assuming it applies to motions under Rule 60(b)(4)) must be measured from the date of the entry of the void judgment, not the date of the defendant learns of the filing of the suit that resulted in the void judgment. The Master in Equity, in determining that Harvey’s motion under Rule 60(b)(4), SCRCF was not filed timely, looked to the time Harvey learned the suit had been filed. (R. p. 88-

90; Order Denying Mot. of Def. Frank M. Harvey for Relief from J.). He did not consider when the judgment was entered and when Harvey learned of the judgment. This was a fundamental error by the Master in Equity that justifies a reversal of his ruling.

Reasonableness can only be measured from the date the void judgment is entered and the defendant learns of it. Harvey could not possibly have moved for relief from a void judgment before that judgment was entered. Knowing that a suit was filed cannot constitute knowledge that a void judgment was entered, particularly if service of process was never made. Only the date of the actual entry of the void judgment can serve as the measuring date for the requirement that the motion for relief from the judgment be filed within a reasonable time.

3. Harvey did not receive notice that a hearing on entering a judgment against him for a liquidated amount was to be held.

Harvey was not given notice of the entry of the default against him on February 24, 2010. This notice was not required because, due to the lack of service, he had not entered an appearance in the case. Rule 55(b)(2), SCRPC.

Harvey was given notice of the May 11, 2010 hearing that resulted in the default judgment. *See* Regions Br. at 2 ("On May 18, 2010, after notice and a hearing, the Master entered an Order and Judgment of Foreclosure and Sale."). But the notice he was sent gave no indication that a personal judgment against him based on an earlier default would be before the Court. The notice sent to Harvey simply said that the hearing would consider:

- 1) Plaintiff's Motion for Summary Judgment on priority of title/lien against Defendant Carolina Federal Savings Bank; and
- 2) Plaintiff's foreclosure action.

R. Notice of Hearing at 2. Issues relating to the foreclosure of the mortgage are not, perforce, issues relating to the entry of an *in personam*-default judgment for the full amount of the debt. Harvey had no reason to believe the Court would be entertaining entering a personal judgment against him at the hearing.

The failure to give Harvey notice that the hearing on May 11, 2010 would address extending the default into a final judgment against him calls into question Regions' compliance with Rule 55(b)(2), SCRCF (which requires that "notice of any trial or hearing on unliquidated damages shall also be given to parties in default . . . whether or not such party has appeared in the action."). The record contains no evidence that Regions complied with Rule 55(b)(2), SCRCF. The notice sent to Harvey of the May 11 hearing does not satisfy this requirement.

No evidence exists in the record as to when Harvey first learned a judgment by default had been (or might be) taken against him by Regions. That an emergency motion was filed implies that he learned of the default judgment around the time of the filing of the motion, and not months before. If Harvey is to be denied relief because he did not file his motion under Rule 60(b)(4), SCRCF within a reasonable time, the date he learned of the default judgment must be considered. Simply knowing a suit was filed two years earlier, when service has not been made, does not apprise the defendant of the need to file a motion under Rule 60(b)(4), SCRCF.

4. **Even though the record does not disclose when Harvey learned of the default judgment, Harvey filed his motion within a reasonable time.**

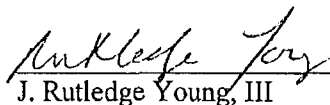
The default entered on February 24, 2010 was extended to a final judgment on May 18, 2010, approximately 2 1/2 months before Harvey filed his motion on August 4,

2010. A 2 1/2 month period between the entry of the judgment and the date the motion was filed does not constitute an unreasonable delay, particularly when the record does not reveal when Harvey learned of the default judgment. Even if one assumed Harvey knew of the default judgment on the date it was entered, he filed his motion within a reasonable time from the date of entry.

III. Conclusion

Proper service of process in compliance with Rule 4, SCRPC is essential to the jurisdiction of the Court. Harvey had a substantial default judgment entered against him, with no opportunity to defend, based on a record that, when viewed as a whole, did not reveal that Harvey had been properly served. The Master in Equity either should have granted Harvey's motion under Rule 60(b)(4), SCRPC or held an evidentiary hearing to determine if Regions could prove that he had been served. The Master in Equity's denial of the motion under Rule 60(b)(4), SCRPC should be reversed.

Respectfully submitted,



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June 6, 2011
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2008-CP-10-2513

Regions Bank,

Respondent,

v.

Stonebridge Development Group, LLC; Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company; Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership; Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising, Inc; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark Caldwell, individually; Carolina Clearing
& Grading, Inc.,

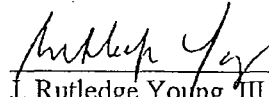
Defendants,

Of Whom Frank M. Harvey aka Francis M. Harvey is the

Appellant.

PROOF OF SERVICE

I, J. Rutledge Young, III, of Duffy & Young, LLC, certify that I have served the
APPELLANT'S FINAL REPLY BRIEF on Regions Bank by depositing a copy of it in the
United States Mail, postage prepaid on June 6, 2011, addressed to Attorney Louise M.
Johnson at her office located at Haynsworth Sinkler Boyd, P.A., 1201 Main Street, Suite
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June 6, 2011
Charleston, South Carolina

THIS OPINION HAS NO PRECEDENTIAL VALUE. IT SHOULD NOT BE CITED OR RELIED ON AS PRECEDENT IN ANY PROCEEDING EXCEPT AS PROVIDED BY RULE 268(d)(2), SCACR.

**THE STATE OF SOUTH CAROLINA
In The Court of Appeals**

Regions Bank, Respondent,

v.

Stonebridge Development Group, LLC;
Plantation Isle Equity Group, LLC, a Maryland
Limited Liability Company; Carolina Federal
Savings Bank; Plantation Isle Equity Partners
General Partnership; Michael Aiello; Frank M.
Harvey a/k/a Francis M. Harvey; Brandon
Advertising, Inc.; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark
Caldwell, individually; and Carolina Clearing &
Grading, Inc., Defendants,

Of whom Frank M. Harvey a/k/a Francis M.
Harvey is the Appellant.

Appeal From Charleston County
Mikell R. Scarborough, Master-in-Equity

Unpublished Opinion No. 2012-UP-276
Heard April 11, 2012 - Filed May 9, 2012

AFFIRMED

Lawrence J. Gebhardt, of Baltimore, Maryland
and Lee Anne Walters, Rutledge Young, III,
and Charles S. Altman, all of Charleston, for
Appellant.

Sarah Patrick Spruill, of Greenville and Stanley
H. McGuffin and Louise M. Johnson, both of
Columbia, for Respondent.

PER CURIAM: Frank Harvey appeals the master's order declining to set aside default judgment. On appeal, Harvey argues the master erred by (1) determining he was properly served a summons and complaint and (2) not holding an evidentiary hearing. We affirm pursuant to Rule 220(b)(1), SCACR, and the following authorities:

APX261

1. As to whether the master erred in determining Harvey was properly served: Fassett v. Evans, 364 S.C. 42, 47, 610 S.E.2d 841, 843 (Ct. App. 2005) ("It is the plaintiff's burden to show that the court has personal jurisdiction over the defendant."); Richardson Constr. Co. v. Meek Eng'g & Constr., Inc., 274 S.C. 307, 311, 262 S.E.2d 913, 915 (1980) ("An affidavit of service is [p]rima facie evidence of service which may be impeached by extrinsic evidence."); Patel v. S. Brokers, Ltd., 277 S.C. 490, 493, 289 S.E.2d 642, 644 (1982) (holding a defendant's mere denial of service is insufficient to rebut the presumption).

2. As to whether the master erred by not holding an evidentiary hearing: S.C. Dep't of Transp. v. First Carolina Corp. of S.C., 372 S.C. 295, 301-02, 641 S.E.2d 903, 907 (2007) (holding issues not raised and ruled upon in the trial court will not be considered on appeal); Knight v. Waggoner, 359 S.C. 492, 496, 597 S.E.2d 894, 896 (Ct. App. 2004) (arguments made for first time on appeal are not preserved for review).

AFFIRMED.

PIEPER and KONDUROS, JJ., and CURETON, A.J., concur.

APX262

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

No. 2010180209

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master-in-Equity

Case No. 2008-CP-10-2513

Regions Bank,

Respondent,

V.

Stonebridge Development Group, LLC; Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company; Carolina Federal Savings Bank; Plantation Isle Equity Partners General Partnership; Michael Aiello; Frank M. Harvey aka Francis M. Harvey; Brandon Advertising, Inc; Rubeling & Associates, Inc.; Carolina Custom Docks, LLC; J. Mark Caldwell, individually; Carolina Clearing & Grading, Inc.;

Defendants,

Of Whom Frank M. Harvey aka Francis M. Harvey is the

Appellant.

PETITION FOR REHEARING

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Petition for Rehearing

Petitioner/Appellant, Frank M. Harvey, petitions the Court of Appeals pursuant to Rule 221(a), SCACR, for a rehearing of its affirmance of the Master's order declining to set aside the default judgment against him under Rule 60(b)(4), SCRCP, for lack of personal jurisdiction due to the lack of service of process in accordance with Rule 4, SCRCP.

I. Introduction

Regions had the burden of proof on the issue of the Circuit Court's jurisdiction to enter the default judgment against Harvey. *Fassett v. Evans*, 364 S.C. 42, 47, 610 S.E.2d 841, 843 (Ct. App. 2005); *Moore v. Simpson*, 322 S.C. 518, 523, 473 S.E.2d 64, 66 (Ct. App. 1996). Personal jurisdiction over a defendant is obtained through service of a summons and complaint in accordance with Rule 4, SCRCP. *Fin. Fed. Credit Inc. v. Brown*, 384 S.C. 555, 563, 683 S.E.2d 486, 490 (2009); *BB & T v. Taylor*, 369 S.C. 548, 551, 633 S.E.2d 501, 503 (2006). Regions did not establish that the Circuit Court obtained personal jurisdiction over Harvey through service of a summons and complaint under Rule 4.

Two points were overlooked or misapprehended by the Court of Appeals in affirming the Master's order.

First, the Affidavit of Service was facially defective and non-compliant with Rule 4, SCRCP. As such, the Affidavit of Service as a matter of law could not entitle Regions to a presumption that service had been accomplished. Not only was the facially defective and non-compliant Affidavit of Service impeached by another Affidavit of Service from

the same process server in the record, it was also gainsaid by a competent, non-conclusory affidavit from Harvey that should have been sufficient to establish that service had not been made. The Master should have granted Harvey's motion for relief from the default judgment and dismissed the complaint for lack of service within the time specified by Rule 3(a), SCRCP. This Court should reverse the Master and remand for a dismissal of the complaint.

Second, despite two requests for a hearing by Harvey, the Master did not conduct a hearing and denied Harvey's Rule 60(b)(4) motion solely on the record. The two requests for a hearing preserved the denial of a hearing for appellate review. And, the failure to hold the requested hearing denied Harvey procedural due process, as the Supreme Court confirmed in a very recent decision. On January 17, 2012 (after all briefing in this case had concluded), the Supreme Court issued its decision in *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 721 S.E.2d 430 (2012). In *Graham Law Firm*, the Supreme Court held that the failure of the lower court to permit discovery and cross-examination of witnesses in deciding a Rule 60(b) motion for relief from a default judgment constituted a reversible denial of due process. This case, which is controlling precedent and was not considered by this Court, requires reconsideration of the Court's affirmance and a reversal and remand to the Circuit Court for an evidentiary hearing and discovery if the case is not reversed and remanded for dismissal under Rule 3, SCRCP.

II.
The Points Overlooked Or Misapprehended By The Court of Appeals

A. Regions Did Not Establish That The Circuit Court Had Jurisdiction To Enter A Default Judgment Against Harvey.

1. The Affidavit of Service was facially irregular and defective and was not *prima facie* evidence of service of process.

When the requirements of Rule 4 have been satisfied, a rebuttable presumption arises that process has been served on the defendant and the Court has obtained jurisdiction to render judgment. *BB & T v. Taylor*, 369 S.C. 548, 552, 633 S.E.2d 501, 503 (2006) (a presumption of proper service exists **when the rules governing service are followed**) (emphasis added). The presumption does not arise when the requirements of Rule 4 have not been met. In *BB & T v. Taylor*, the Affidavit of Service by the process server was facially insufficient because it was based on the process server's speculation that the summons and complaint, which had been left at the door of the defendant's residence when the occupants refused to answer the door, had been left with a person of suitable age and discretion, as required by Rule 4(d)(1). The presumption of service did not arise and the default judgment was set aside.

While substantial, not strict, compliance with Rule 4 is all that is required, the compliance must be sufficient to impart personal jurisdiction on the Court and, through the service of process, give the defendant formal notice of the proceedings against him.¹ *Roche v. Young Bros., Inc. of Florence*, 318 S.C. 207, 210, 456 S.E.2d 897, 899 (1995). ("[W]e inquire whether the plaintiff has sufficiently complied with the rules such that the

¹ Harvey does not contend that he was unaware of the suit against him. But, his knowledge from sources extraneous to the Court's process is not relevant to the issue of the Court's jurisdiction. Service of the Court's process imparts jurisdiction on the Court because the process officially gives the defendant the notice he is entitled to receive. Notice from unofficial, adventitious sources does not confer jurisdiction.

court has personal jurisdiction of the defendant and the defendant has notice of the proceedings.”).

One of the requirements of Rule 4 is that proof of service complying with the Rule be filed promptly. Rule 4(g), SCRCF. Although Regions timely filed an Affidavit of Service, the Affidavit of Service did not comply with Rule 4 and for this reason, did not raise a presumption that service under the Rule had been accomplished.

a. **The Affidavit of Service on its face does not comply with Rule 4.**

i. **The Affidavit of Service fails to state the place where service was made.**

On its face, the Affidavit of Service is defective and does not comply with Rule 4(g). R. p. 117. Rule 4(g) requires the process server to state in the proof of service the “place of such service.” The Affidavit of Service does not do so. While Frank Harvey’s residence address was typed on the Affidavit of Service form delivered to the process server (presumptively by the person who prepared the form for delivery to the process server), the process server did not write on the form where he allegedly served Harvey. Did he serve process at Harvey’s residence in Reisterstown, Maryland or somewhere else?

This fact is of critical importance because Harvey has sworn that he was not at his residence on the date the process server contends he effected personal service. Harvey has sworn he was vacationing at his home in Berlin, Maryland on Maryland’s Eastern Shore on the date the process server avers he served the summons and complaint. The place where service allegedly was accomplished is a cornerstone in the dispute about whether service was made. Yet the Affidavit, despite the express requirement of Rule 4,

is facially defective under and non-compliant with Rule 4 for not stating the place where service was made.

ii. The Affidavit of Service contains other patent defects.

The Affidavit of Service contains other patent defects. Two distinct forms of handwriting are on the Affidavit. The physical description on the Affidavit of Service is in handwriting that is different than the handwriting on the rest of the Affidavit. No physical description of the person to whom the process was allegedly delivered, in the handwriting of the process server, is on the Affidavit. The Affidavit of Service gives no physical description from the process server of the person to whom he delivered process. Rule 4(g), SCRCPP.

The Affidavit states that the process server was “appointed in accordance with State Statutes” and that process was delivered to Harvey “in accordance with state statutes in the manner marked below.” Yet the Affidavit does not identify the State — Maryland or South Carolina — and does not reference the statute under which the process server was acting. In actuality, the process server was supposed to be acting under the authority of Rule 4, SCRCPP, not a state statute of Maryland or South Carolina.

iii. Regions never amended the Affidavit of Service.

While Rule 4(i) permits an Affidavit of Service to be amended with leave of Court, Regions never filed an amended Affidavit of Service, even after Harvey filed his Affidavit raising the issue of his location on the date service allegedly was made. *See Foster v. Crawford*, 57 S.C. 551, 36 S.E. 5, 8 (1900) (Proof of service can be amended to state time and place of service.).

In this context, does the filing of this facially defective and non-compliant Affidavit of Service entitle Regions to a presumption that service was accomplished, particularly when the Affidavit of Service does not provide a specific item of information required by the Rule: where service was made? Regions should not have been afforded a presumption that service occurred. The Master's determination that service of process had been accomplished, solely on the basis of the presumption, was error that should be reversed.

b. The record demonstrates that the Affidavit of Service was fraudulent.

Besides the facial defects in the Harvey Affidavit of Service, the record before the Master demonstrated that the Harvey Affidavit of Service was fraudulent.

Besides the Harvey Affidavit of Service, Regions filed an Affidavit of Service for Michael Aiello, another defendant. Service on both Harvey and Aiello allegedly was accomplished by the same process server on August 14 and 16, 2008. Yet the process server's handwriting is obviously different on each Affidavit. Anyone looking at the Affidavits can see the difference in the two handwritings. Contrast R. p. 117 with R. p. 119.

Worse, in the Harvey Affidavit of Service, the process server identifies himself as "Wm. L. Angel" and signs his name as "William L. Angel." In the Aiello Affidavit of Service, the process server identifies himself as "Bill Angel" and signs his name "Bill Angel," with a printed "Bill Angel" placed next to the signature. Hence, the supposed same man used different handwriting and a different signature style and format on each Affidavit of Service. More likely, the Harvey Affidavit of Service was not executed by

the person purporting to give the affidavit and was instead executed by someone else perpetrating a fraud on the Court.

Other disparities abound. The Aiello Affidavit, consistent with Rule 4's requirement, contains a handwritten notation of the place Aiello was served, which was Aiello's residence. This handwritten notation of the place of service is in addition to the typed residence address for Aiello, even though the two addresses, one typed and one written, are the same. Why does the Harvey Affidavit of Service omit a statement of where service was made? This information is material to the dispute about whether Harvey was served. If the process server knew to state where service was made on the Aiello Affidavit of Service, why did he not know to do so on the Harvey Affidavit of Service?

The Aiello Affidavit of Service contains a handwritten description of Aiello that is consistent with the other handwriting on the Affidavit. This handwritten description is in the same hand writing as the description on the Harvey Affidavit of Service but is different than all of the other handwriting on the Harvey Affidavit of Service.

Regions provided no explanation for these disparities.

Besides being facially defective, the Harvey Affidavit of Service was impeached by the Aiello Affidavit of Service, both of which were reviewed by the Master at the time he entered the default judgments against Harvey and Aiello. R. p. 8 (at ¶¶ 8 and 9). In this context, was Regions entitled to a presumption that service was made on Harvey? An observably fraudulent affidavit should not entitle the party submitting it to any favorable presumption.

c. Harvey's Affidavit rebutted the Affidavit of Service and required Regions to satisfy its burden of proving that service had been accomplished.

Harvey filed a detailed Affidavit traversing the Affidavit of Service. R. p. 128-9. In his Affidavit, Harvey did not just assert in bald, conclusory language that he had not been served. He explained that he was not at his residence and was at his vacation home in a different part of Maryland on the date the Harvey Affidavit of Service says he was served. The deficient Affidavit of Service does not state where service occurred and certainly does not state that it was made at Harvey's vacation home. The record is devoid of any indication that Regions or Angel had any knowledge of Harvey's Berlin, Maryland residence or his actual whereabouts on the date service was supposedly made.

The presumption afforded an Affidavit of Service compliant with Rule 4 may be impeached and rebutted by extrinsic evidence that service in accordance with the Rule did not actually occur. *Richardson Constr. Co. v. Meek Eng'g & Constr.*, 274 S.C. 307, 311, 262 S.E.2d 913, 915 (1980); *MCC Fin. Servs., Inc. v. Duffel*, 265 S.C. 519, 522, 220 S.E.2d 127, 128-29 (1975) ("[T]he Affidavit of Service is only prima facie evidence of the facts stated therein and, where directly attacked, may be impeached by extrinsic evidence."); *Laurens Trust Co. v. Copeland*, 154 S.C. 390, 151 S.E. 617, 620 (1930). Simple denial of receipt of the summons and complaint, without more, is not sufficient to impeach and rebut an otherwise proper affidavit of service. *Patel v. S. Brokers, Ltd.*, 277 S.C. 490, 493, 289 S.E.2d 642, 644 (1982) ("The Defendant, in its affidavit before the lower court, sets forth no facts which warrant the conclusion that it was (1) never served The affidavit is, in essence, a mere conclusion ". . . that no Summons and Complaint in the above-entitled case has ever been served upon either of them personally nor do

they have any knowledge of a copy of the Summons and Complaint ever having been served upon any of the personnel employed by Southern Brokers, Ltd. in its office in Wilmington, North Carolina, either by delivery by someone or by mail.”); *Richardson Const. Co., Inc. v. Meek Eng’g & Const., Inc.*, 274 S.C. at 312, 262 S.E.2d at 916 (“Moreover, it is not the mere denial of service by appellant, but the extrinsic factors surrounding the service as well which require as a matter of law that we vacate the default judgment, set aside the service of the Summons, and reverse the order of the lower court.”) (emphasis added).

But the Harvey Affidavit is more than a mere denial of receipt of process. Besides confirming that he never received the summons and complaint, Harvey provided the reason he did not receive the process and could not have received it: he was in a different part of the state on the date he allegedly was served. And the facial defects in the Affidavit of Service (including its failure to specify where service occurred) and the impeachment by the record via the Aiello Affidavit of Service rebutted the presumption and put Regions to its proof.

Regions had the burden of proving that service had been accomplished under Rule 4. Once the presumption was rebutted, Regions could no longer rest on the Affidavit of Service but had to come forward with evidence to satisfy its burden of proof that the Court obtained jurisdiction through the proper service of process before the default judgment was entered. But Regions did not do so and rested solely on the presumption, its incorrect assertion that Harvey’s actual knowledge of the case cured any problem with service, and its erroneous contention that Harvey’s Rule 60(b)(4) motion was filed too late.

The Master should have set aside the default judgment and dismissed the case. The Master entered a default judgment when the Court had not acquired jurisdiction and then refused to correct the error. This Court should have reversed the Master's decision.

2. The Master's failure to hold a hearing was preserved for appeal and constituted reversible error under *Graham Law Firm, P.A. v. Makawi*.

Regions argued that Harvey was not entitled to a hearing on his motion under Rule 60(b)(4) because he did not ask for one. Regions Br. At 8-9. This Court, accepting Regions' contention, ruled that Harvey had not preserved the issue of a lack of a hearing by not raising it below. Yet Regions' assertion that Harvey did not request a hearing before the Master is incorrect, as was pointed out by Harvey in his Reply Brief. Reply Brief at 6-7. And this Court's ruling that the issue of a hearing was not preserved for appeal is also incorrect. The failure to hold that hearing violated Harvey's right to procedural due process and constitutes reversible error under *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 721 S.E.2d 430 (2012).

a. Harvey twice requested a hearing and a court reporter.

Regions had scheduled a foreclosure sale of the mortgaged property for August 5, 2010. On August 4, 2010, Harvey filed an emergency motion under Rule 60 for relief from the judgment to forestall the foreclosure sale. R. p. 125. The motion was supported by Harvey's Affidavit. R. p. 128. He accompanied his motion with a request for a hearing and a court reporter. R. p. 124.

No hearing was held. Instead, the Master conducted a telephonic conference with counsel but without a court reporter. R. p. 89. At the telephonic conference, the Master

refused to delay the foreclosure sale but did not rule on the motion for relief from the judgment under Rule 60(b). He directed further briefing by the parties.

Harvey filed a supplemental brief on August 20, 2010 (R. p. 134) and relied on the previously filed Harvey Affidavit. He again requested a hearing and a court reporter. R. p. 133. Regions responded on September 17, 2010. R. p. 141. Regions did not supplement, amend, or in any way enhance the Harvey Affidavit of Service, standing pat despite the traversing Harvey Affidavit.

Despite Harvey's two requests for both a hearing and a court reporter, the Master did not hold a hearing with a court reporter present. The Master denied Harvey's motion without any hearing, implicitly rejecting Harvey's request that he be afforded a hearing on his motion for relief from what was a void judgment.

b. The two requests for a hearing preserved for appeal the failure to hold a hearing.

To be the subject of an appeal, an issue must be raised in and ruled upon by the trial court. Otherwise, the issue is not preserved for appeal and is considered to have been waived. *Herron v. Century BMW*, 395 S.C. 461, 465, 719 S.E.2d 640, 642 (2011) ("At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge."); *S. Carolina Dept. of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 301, 641 S.E.2d 903, 907 (2007) ("[i]t is axiomatic that an issue cannot be raised for the first time on appeal, but must have been raised to and ruled upon by the trial judge to be preserved for appellate review.") (quoting *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998)).

i. **The Master implicitly denied the request for a hearing.**

Because Harvey twice asked for a hearing and a court reporter and because a hearing was never held, the issue of his entitlement to a hearing was raised in the trial court and denied implicitly by the Master's ruling on his motion without ever holding the requested hearing. For an issue to be preserved for appeal, the trial court need not expressly rule. An implicit ruling in which the trial court, per force, decides the issue against the appellant, such as occurred here, is all that is required to preserve the issue for appeal.

This point is demonstrated by *Pryor v. Nw. Apartments, Ltd.*, 321 S.C. 524, 469 S.E.2d 630 (Ct. App. 1996). There, a tenant sued a landlord in a slip and fall case and asserted on appeal that the South Carolina Residential Landlord and Tenant Act, S.C. Code Ann. §§ 27-40-10 through 27-40-940, controlled as to the landlord's duty. The trial court granted the landlord summary judgment. The tenant, who had raised the Residential Landlord and Tenant Act in her pleadings, failed to argue the statute's applicability in opposing summary judgment. The landlord argued on appeal that the issue of the applicability of the Residential Landlord and Tenant Act had not been preserved below and was waived on appeal due to the lack of an express ruling by the trial court. The Court of Appeals, affirming the summary judgment for the landlord, held that the issue had been raised in the pleadings and although not argued in the summary judgment opposition or expressly ruled on by the trial court, had nevertheless been implicitly ruled on at trial and preserved for appeal. As the Court of Appeals wrote:

Northwest argues Pryor has abandoned any argument she may have had under the RLTA by failing to specifically raise the issue in her memorandum in opposition to

Northwest's motion for summary judgment. Northwest further argues the issue is not preserved for appeal because the trial court did not expressly rule on it and Pryor failed to raise the issue in a Rule 59(e) motion to alter or amend the judgment. However, Pryor's pleadings clearly asserted the RLTA was applicable to the facts of this case. Moreover, the trial court implicitly ruled on and rejected this argument in finding Northwest had no duty to warn of dangerous conditions existing on its property.

Pryor v. Nw. Apartments, Ltd., 321 S.C. at 528, 469 S.E.2d at 633.

A similar holding occurred in *Staubes v. City of Folly Beach*, 339 S.C. 406, 413, 529 S.E.2d 543, 546 (2000). The plaintiff sued the City for revoking a permit to repair damage done to his apartment building by Hurricane Hugo. The plaintiff claimed the revocation amounted to a taking but did not allege that the revocation of the permit constituted negligence by the City. The plaintiff moved to amend the complaint to include a negligence claim and was opposed by the City. Although the trial court never granted leave to amend the complaint to include a negligence claim, the trial court granted the City summary judgment because the essence of plaintiff's claim was negligence and was for this reason barred by the Tort Claims Act. The plaintiff appealed and argued that the trial court incorrectly decided the negligence claim. The City argued that the failure of the trial court to rule on the motion to amend resulted in a failure to preserve the issue of negligence for appeal.

The Supreme Court, after stating that an issue may not be raised for the first time on appeal, held that the negligence issue had been raised in the trial court due to the summary judgment ruling even though the motion to amend the complaint to add a negligence claim was never ruled on by the trial court. The ruling on the motion for

summary judgment was an implicit ruling on the motion to amend. According to the Court:

There was no express ruling on Staubes' motion to amend. Nevertheless, by granting the motion for summary judgment on the negligence cause of action, the trial court obviously treated the complaint as if it had been amended.

Staubes v. City of Folly Beach, 339 S.C. at 414, 529 S.E.2d at 547.

Once the Master decided the motion under Rule 60(b)(4) without conducting a hearing, Harvey had no practical recourse to obtain a hearing. It would have been futile to have filed a motion to ask, for the third time, the Master to hold a hearing on a matter on which he had already ruled without a hearing. *See State v. Bryant*, 316 S.C. 216, 220, 447 S.E.2d 852, 855 (1994) ("Further, we find that it would have been futile to move to strike testimony which the trial court had already ruled was proper."); *State v. Ross*, 272 S.C. 56, 60-61, 249 S.E.2d 159, 162 (1978) ("Once the court rules on an objection to a line of questioning, it is not necessary that counsel repeat his objection after each question."). The Master's decision, issued without a hearing in the face of the two requests for a hearing, preserved for appeal the issue of whether a hearing should have been held before a decision was made.

ii. **Harvey did not have to specifically request that the hearing be an evidentiary hearing.**

In his Brief, Harvey argued that the Master should have held an evidentiary hearing although the two requests filed by him only asked for a hearing, not an evidentiary hearing. In the trial courts of South Carolina, there is no special process by which to request an evidentiary hearing as opposed to a "hearing." The failure to use the

word “evidentiary” should not mean that the need for an evidentiary hearing was not preserved as an issue for appeal.

Because the ruling was based on a dispute as to a material fact, the Master should not have resolved the factual dispute based solely on the directly conflicting affidavits that were submitted and should have taken testimony and received evidence. South Carolina, like other states, is averse to deciding factual disputes solely on paper submissions, particularly where due process considerations are present. *S.C. Nat’l Bank v. Cent. Livestock Mkt., Inc.*, 289 S.C. 309, 314, 345 S.E.2d 485, 488 (1986) (where, in addressing the due process implications of the valuation procedure contained in the mortgage appraisal statute, the Supreme Court stated “We have previously condemned the use of affidavits to determine disputed issues of fact. ... If the judge had remained steadfast in his initial ruling which limited the hearing on appeal to affidavits alone, this ruling, though permitted by the Act, would have denied the parties a meaningful opportunity to be heard.”); *Union Savs. Bank v. Hubbard*, 138 S.C. 328, 328, 136 S.E. 481, 482 (1927) (“This court has decided in several cases that to decide an issue of fact on affidavits in most cases is unsatisfactory.”). See also *Dairyland Insurance Co. v. Jarman*, 741 N.W.2d 731 (S.D. 2007); *Dillon v. Dillon*, 176 N.W.2d 362 (Wis. 1970); *Deutsche Bank National Trust Co. v. Pestano*, 899 N.Y.S.2d 269 (App. Div. 2010).

An evidentiary hearing was the natural and proper type of hearing to be held when a material fact is in genuine dispute. At an evidentiary hearing, cross-examination would have been possible and conflicting testimony, tested. The Master could have judged the credibility of the witnesses (particularly Harvey and Angel) and the persuasiveness of the evidence presented. Even if Harvey did not specifically ask for an evidentiary hearing, if

the Master had convened a hearing, could the Master have properly refused to permit Harvey to testify because his hearing request did not include the word “evidentiary?” Could the Master have refused Harvey’s testimony in favor of deciding the dispute based solely on competing affidavits? Could the Master have prevented Harvey from calling Angel as an adverse witness and cross-examining him about the fraudulent Affidavit of Service?

The Supreme Court has ruled that an issue does not have to be phrased on appeal in exactly the same terms as when presented in the trial court to be preserved for appeal. *Herron v. Century BMW*, 395 S.C. 461, 466, 719 S.E.2d 640, 642 (2011) (“Of course, a party is not required to use the exact name of a legal doctrine in order to preserve the issue.”); *S. Carolina Dept. of Transp. v. First Carolina Corp. of S.C.*, 372 S.C. 295, 302, 641 S.E.2d 903, 907 (2007) (“Although SCDOT did not phrase its objection in the exact terms used in the issues on appeal, SCDOT’s objection ... provided a meaningful objection with sufficient specificity to allow the trial court to rule on the issue.”); *Wilder Corp. v. Wilke*, 330 S.C. 71, 76, 497 S.E.2d 731, 733 (1998) (“[A]n objection must be sufficiently specific to inform the trial court of the point being urged by the objector.”); *State v. Russell*, 345 S.C. 128, 132, 546 S.E.2d 202, 204 (Ct. App. 2001). As a practical matter, Harvey’s two requests for a hearing, fairly viewed, meant an evidentiary hearing.

c. Harvey was denied due process by not being afforded an evidentiary hearing.

The Master’s failure to hold an evidentiary hearing denied Harvey procedural due process. To prevent a party from appearing in Court to express his position, from introducing evidence and testifying, and from cross-examining the opposition’s key witness and to instead apply a presumption, treat that presumption as irrebutable, and

accept as true a facially defective, impeached Affidavit of Service and as false a traversing Affidavit, is inconsistent with the fundamental fairness required by procedural due process.

The South Carolina Supreme Court has noted that "Due process requires (1) adequate notice; (2) adequate opportunity for a hearing; (3) the right to introduce evidence; and (4) the right to confront and cross-examine witnesses." *Clear Channel Outdoor v. City of Myrtle Beach*, 372 S.C. 230, 235, 642 S.E.2d 565, 567 (2007). *Accord Moore v. Moore*, 376 S.C. 467, 473, 657 S.E.2d 743, 746 (2008). When a decision affecting a substantial right of a party turns on a question of disputed fact, due process requires an opportunity to confront and cross-examine adverse witnesses. *Moore v. Moore*, 376 S.C. at 473, 657 S.E.2d at 746; *S. Carolina Dept. of Soc. Services v. Wilson*, 352 S.C. 445, 452, 574 S.E.2d 730, 734 (2002); *Brown v. S. Carolina State Bd. of Educ.*, 301 S.C. 326, 329, 391 S.E.2d 866, 867 (1990) ("Procedural due process often requires confrontation and cross-examination of one whose word deprives a person of his or her livelihood."). *See also Tobias v. Rice*, 386 S.C. 306, 311, 688 S.E.2d 552, 554 (2010), *reh'g denied* (Feb. 18, 2010) (Judgment entered after trial without defendant's presence set aside under Rules 55(c) and 60(b) because of denial of procedural due process, citing *Moore v. Moore*.). These fundamental due process requirements were not satisfied by the process employed by the Master in denying Harvey's motion for relief from the default judgment.

d. *Graham Law Firm, P.A. v. Makawi* is dispositive of Harvey's due process right to a hearing.

As previously mentioned, a decision of the Supreme Court issued on January 17, 2012 (after all briefing in this case had occurred) is dispositive on the issue of whether

Harvey's due process rights entitled him to an evidentiary hearing before his motion was denied. In *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 292, 721 S.E.2d 430, 431 (2012), a law firm sued its client to collect fees. Service was made by mail and was accepted by the defendants' employees. After judgment by default was entered, the defendants moved under Rule 60(b) for relief from the default judgment based on improper service of process to a person lacking authority to accept service. Defendants submitted affidavits about the lack of authority of the person served to accept service. The law firm requested discovery and an opportunity to cross-examine witnesses but its request was refused by the trial court, which granted the defendants' motion for relief from the default judgment. The Court of Appeals certified the matter to the Supreme Court, which reversed.

Because the issue of service would (as in this case) be dispositive of the merits due to the expiration of the statute of limitations and the requirement that the suit be dismissed if service were not effective, the Supreme Court held that the law firm's due process rights required that it be afforded an opportunity both to take discovery and to cross-examine adverse witnesses. As the Supreme Court stated:

In this case, if the court finds that no proper service was effected, Graham will be unable to dispute a statute of limitations defense. Thus, due process requires that Graham receive an opportunity to conduct adequate discovery on this question and confront adverse witnesses.

Graham Law Firm, P.A. v. Makawi, 396 S.C. at 301, 721 S.E.2d at 436. The Supreme Court concluded the opinion with an observation that is apposite to this case: "On this record, it cannot be said that Graham had a full and fair opportunity to be heard on an

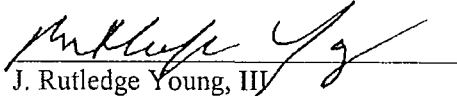
issue that may be determinative of its legal rights.” *Graham Law Firm, P.A. v. Makawi*, 396 S.C. at 302, 721 S.E.2d at 436.

The Master was aware that Harvey wanted a hearing but did not afford him one before ruling against him and conclusively deciding his rights on the merits. The issue of whether a hearing should have been held was properly raised before the Master but was rejected by him. The issue was preserved for appeal and justifies, on due process grounds, a reversal of the Master by this Court.

III. Conclusion

Frank Harvey, a Maryland resident, has had a \$733,694.66 default judgment entered against him by a South Carolina Court without ever having had the opportunity to enter that Court and present his case. He was never served with process, and the Circuit Court never acquired jurisdiction over him. The default judgment entered against him was sustained on the basis of a facially defective, non-compliant Affidavit of Service that, in the context of the record, was fraudulent. Harvey’s traversing Affidavit was completely rejected and the facially defective, fraudulent Affidavit of Service, completely accepted. Harvey was refused the opportunity to come to Court and both testify and confront the witnesses against him. This result is simply unfair and is not procedurally correct under South Carolina law and the requirements of due process as interpreted by the Supreme Court. *Graham Law Firm, P.A. v. Makawi*, 396 S.C. 290, 292, 721 S.E.2d 430, 431 (2012).

This Court should permit rehearing and should reverse the Master's denial of relief from the default judgment and either remand the case for dismissal or for an evidentiary hearing.


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May 23, 2012
Charleston, South Carolina

THE STATE OF SOUTH CAROLINA
In The Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

Mikell R. Scarborough, Master in Equity

Case No. 2008-CP-10-2513

Regions Bank,

Respondent,

v.

Stonebridge Development Group, LLC; Plantation Isle Equity Group, LLC, a
Maryland Limited Liability Company; Carolina Federal Savings Bank; Plantation
Isle Equity Partners General Partnership; Michael Aiello; Frank M. Harvey aka
Francis M. Harvey; Brandon Advertising, Inc; Rubeling & Associates, Inc.;
Carolina Custom Docks, LLC; J. Mark Caldwell, individually; Carolina Clearing
& Grading, Inc.,

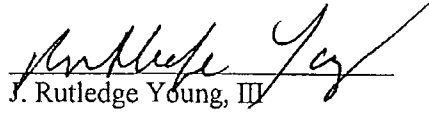
Defendants,

Of Whom Frank M. Harvey aka Francis M. Harvey is the

Appellant.

PROOF OF SERVICE

I, J. Rutledge Young, III, of Duffy & Young, LLC, certify that I have served the
PETITION FOR REHEARING on Regions Bank by depositing a copy of it in the United
States Mail, postage prepaid on May 23, 2012, addressed to Attorneys Louise M. Johnson,
Esq., Stanley H. McGruffin, Esq., and Sarah P. Spruill, Esq. at their offices located at
Haynsworth Sinkler Boyd, P.A., 1201 Main Street, Suite 2200, PO Drawer 118899 (29211),
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and

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Attorneys for the Appellant

May 23, 2012
Charleston, South Carolina

The South Carolina Court of Appeals

Regions Bank, Respondent,

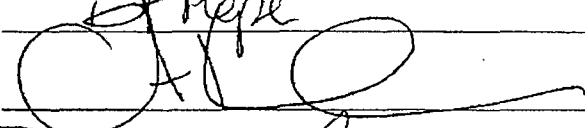
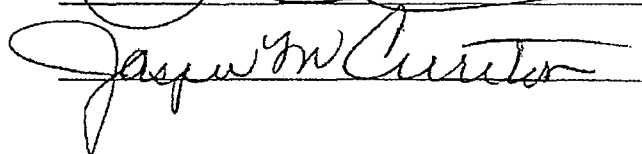
v.

Stonebridge Development Group, LLC; Plantation Isle Equity Group, LLC, a Maryland Limited Liability Company; Carolina Federal Savings Bank; Plantation Isle Equity Partners General Partnership; Michael Aiello; Frank M. Harvey aka Francis M. Harvey; Brandon Advertising, Inc.; Rubeling & Associates, Inc.; Carolina Custom Docks, LLC; J. Mark Caldwell, individually; Carolina Clearing & Grading, Inc., Defendants, Of whom, Frank M. Harvey aka Francis M. Harvey is the, Appellant.

Appellate Case No. 2010-180209

ORDER

After careful consideration of the petition for rehearing, the Court is unable to discover that any material fact or principle of law has been either overlooked or disregarded, and hence, there is no basis for granting a rehearing. Accordingly, the petition for rehearing is denied.

 J.
 J.
 J.

Columbia, South Carolina

cc:

Sarah Patrick Spruill
Louise Myers Johnson
Lee Anne Walters
Stanley H. McGuffin
Charles S. Altman

FILED

22 June 2012