

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM CHARLESTON COUNTY
Court of Common Pleas

R. Markley Dennis, Circuit Court Judge

RECEIVED

AUG 04 2015

SC Court of Appeals

Case No. 2015-001461

Wells Fargo Bank, N.A., as Successor by Merger to
Wachovia Bank, National Association as Successor by
Merger to First Union National Bank, ... Respondent,

v.

Penny Creek Associates, L.L.C. a/k/a Penny Creek
Associates, LLC; The Grove at Fenwick Plantation, LLC;
Michel F. LaPlante a/k/a Michel LaPlante a/k/a Mitch
LaPlante; Charlotte R. Zurlo; Eugene J. Zurlo; Charlotte R.
Zurlo and Eugene J. Zurlo, as Co-Trustees of The Nicklaus
Lane Realty Trust No.1 under Declaration of Trust dated
May 22, 1998, and The Zurlo Investment Trust No. 1
pursuant to trust agreement dated August 10, 1998;
Fenwick Hall Plantation Property Owners Ass'n., Inc. a/k/a
Fenwick Hall Plantation Property Owners' Association,
Inc.; Preserve at Fenwick Hall Property Owners'
Association, Inc.; and The Grove at Fenwick Plantation
Condominium
Association, Inc., ... Defendants,

Of Whom, Penny Creek Associates, L.L.C. a/k/a Penny
Creek Associates, LLC; The Grove at Fenwick Plantation,
LLC; Charlotte R. Zurlo; Eugene J. Zurlo; Charlotte R.
Zurlo and Eugene J. Zurlo, as Co-Trustees of The Nicklaus
Lane Realty Trust No.1 under Declaration of Trust dated
May 22, 1998, and The Zurlo Investment Trust No. 1
pursuant to trust agreement dated August 10, 1998;
Fenwick Hall Plantation Property Owners Ass'n., Inc. a/k/a
Fenwick Hall Plantation Property Owners' Association,
Inc.; Preserve at Fenwick Hall Property Owners'

Association, Inc.; and The Grove at Fenwick Plantation
Condominium Association, Inc. are the..... Respondents,

Michel F. LaPlante a/k/a Michel LaPlante a/k/a
Mitch LaPlante.....Appellant,

v.

The Eugene J. Zurlo Living Trust, Dated December
11, 1997 and Paul Zurlo,..... Respondents.

**MEMORANDUM IN SUPPORT OF RESPONDENT
WELLS FARGO BANK, N.A.'S MOTION TO DISMISS APPEAL**

Respondent Wells Fargo Bank, N.A. ("Wells Fargo") respectfully submits this Memorandum in Support of its Motion to Dismiss Appeal.

DISCUSSION

The appellant, Michel F. LaPlante a/k/a Michel LaPlante a/k/a Mitch LaPlante ("Appellant"), is one of several defendants in a foreclosure action brought by Wells Fargo. The Appellant, who personally guaranteed the underlying mortgage loans, did not assert any counterclaims against Wells Fargo. Instead, he asserted various cross-claims against certain co-defendants and third-party claims against third-party defendants he joined in the foreclosure, with respect to which claims the Appellant demanded a jury trial.

On March 3, 2015, the Circuit Court entered its order referring the action to the Charleston County Master-in-Equity. Appellant filed a motion to alter or amend the order of reference, and on June 2, 2015, the Circuit Court entered its Order denying the Appellant's motion. Appellant purports to appeal from both the March 3, 2015 Order and the June 2, 2015 Order, copies of which are attached hereto as *Exhibit A* and *Exhibit B*, respectively.

In neither Order appealed from did the Circuit Court actually rule on the Appellant's allegation that he has a right to a jury trial. To the contrary, the Circuit Court specifically stated in its June 2, 2015 Order that the issue of whether the Appellant had a right to jury trial would be specifically preserved for the Master-in-Equity to determine. Inasmuch as no final determination has been made regarding the Appellant's right to a jury trial, the appeal is premature and should be dismissed.

I. The Order of Reference is Not Immediately Appealable.

Appellant is asking this Court to make a determination on an issue that has not been ruled upon by any court and, therefore, is both interlocutory and premature. *See Malloy v. Thompson*, 409 S.C. 557, 561, 762 S.E.2d 690, 692 (2014) ("At a minimum, issue preservation requires that an issue be raised to and ruled upon by the trial judge."). Since the Order referring the case to the Master-in-Equity did not make any determination regarding Appellant's demand for a jury trial, the appeal is simply premature and should be dismissed.

Generally, an order of reference entered in a foreclosure action is not immediately appealable unless: (1) a party has a right to a jury trial; and (2) the order of reference deprives the party of that substantial right. *Compare, Creed v. Stokes*, 285 S.C. 542, 542–43, 331 S.E.2d 351, 352 (1985) (held that an order of reference was immediately appealable where defendant had a right to a jury trial and the order deprived the defendant of that right) and *N.C. Fed. Sav. & Loan Ass'n v. Twin States Dev. Corp.*, 289 S.C. 480, 481, 347 S.E.2d 97, 97 (1986) (held that an order of reference in a foreclosure action was not immediately appealable). Unless the order of reference makes an actual determination regarding the party's right to a jury trial, the order does not affect a substantial right and, therefore, is not immediately appealable. S.C. Code Ann. §14-

3-330 (Supp. 2014) (an interlocutory order is not immediately appealable unless it affects a substantial right).

Here, no substantial right of the Appellant has been affected. To the contrary, in the June 2, 2015 Order, the Circuit Court specifically stated that it was not determining the jury trial waiver issue, which would be left to the Master-in-Equity for determination:

[Wells Fargo] argues that [Appellant's] demand for a jury trial should be stricken because: (1) while Laplante has asserted cross-claims and third-party claims, he has not asserted any counterclaims against [Wells Fargo]; and (2) Laplante waived any right to a jury trial in the loan documents. ***The Court does not need to decide the motion to strike, but instead leaves that matter to the Master-in-Equity to determine.***

(June 2, 2015 Order, p. 2, n.1) (emphasis added). In the absence of such a determination, the appeal is simply premature. *See State v. Robinson*, 287 S.C. 173, 173, 337 S.E.2d 204, 204 (1985) (dismissing an appeal as premature because there was no final order from which to take an appeal as the sentencing order had not been read to the defendant and therefore was not a final order).

The Circuit Court was entirely within its discretion in referring this foreclosure case to the Master-in-Equity. Rule 71(a), SCRCP expressly provides that “[a]ctions to foreclose liens ... shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53”. Similarly, Rule 53(b) expressly authorizes the Circuit Court to order the reference of “an action for foreclosure” to a master or special referee. As the Notes to Rule 53 state, such references, while rare in federal court, are “absolutely essential in State Courts, particularly to handle a large volume of State litigation such as foreclosures, partitions, and other equity matters.”

Moreover, once referred, the Master-in-Equity had the same power and authority as a circuit judge, unless his or her authority was limited in the order of reference. *See*, Rule 53(c), SCRCP. The Master’s powers necessarily include the authority to determine whether a party is

entitled to a jury trial on any issue in the case and take appropriate action consistent with such ruling, including severing the cross-claims and third-party claims from the foreclosure claim if appropriate.¹

Here, the circuit court specifically left the issue of Appellant's right to a jury trial for the Master-in-Equity to decide. Because no court has yet ruled on the appropriateness of the Appellant's request for a jury trial, this appeal is premature and appeal must be dismissed.

Furthermore, the order of reference also does not affect any substantial right of the Appellant by reason of the fact that the Appellant has no right to a jury trial in this case. First, this is a foreclosure action in which no counterclaims have been asserted. *See Third-Party Summons and Answer, Cross Claims, and Third-Party Claims of Michel F. LaPlante a/k/a Michel LaPlante a/k/a Mitch LaPlante filed October 27, 2014* (the "LaPlante Answer"), a copy of which attached is hereto as Exhibit C.

The right to a jury trial in a foreclosure action is implicated only where the defendant asserts a counterclaim that is both legal in nature and is compulsory under Rule 13, SCRCP. Here, the Appellant has only asserted cross-claims and third-party claims, which are permissive by definition. *See, N.C. Fed. Sav. & Loan Ass'n v. DAV Corp.*, 298 S.C. 514, 519, 381 S.E.2d 903, 906 (1989) (holding that cross-claims and third-party claim are permissive and that their assertion in a foreclosure action resulted in a waiver of any right to a jury trial). *See also*, Rule 13(g), SCRCP (party "*may* state as a cross-claim any claim by one party against a co-party) and Rule 14(a), SCRCP (defending party "*may* cause a summons and complaint to be served upon a person not a party") (emphasis added).

¹ In an unpublished decision, this Court relied upon Rule 53(c) in holding that a master-in-equity has the authority to rule upon a motion to strike a request for a jury trial, absent some limitation to the contrary in the order of reference. *Wells Fargo Bank, NA v. Smith*, No. 2009-125666, 2012 WL 10987189, at *2 (S.C. Ct. App. June 13, 2012). Although this case is unpublished and has no precedential value under the Appellate Court Rules, the Court's analysis in the *Smith* is sound and its conclusion correct.

Second, the Appellant expressly waived his right to a jury trial in his guaranty. The relevant loan documents, including the Appellant's guaranty, which he has not denied executing, contain a jury trial waiver identical to the one upheld as valid and enforceable by this Court and by the Supreme Court in *Wachovia Bank, Nat. Ass'n v. Blackburn*, 407 S.C. 321, 328, 755 S.E.2d 437, 441 (2014), reh'g denied (Apr. 2, 2014). See *Exhibit M and Exhibit N to Summons and Complaint filed on August 14, 2014* (the "Complaint"), a copy of which is attached hereto as Exhibit D. The Appellant does not dispute that he signed the guaranties containing the jury trial waivers and, to the contrary, "craves reference to the documents in question". See *LaPlante Answer*, ¶¶22 and 25 (responding to Paragraphs 47 and 52 of the Complaint).

As both this Court and the Supreme Court held in *Blackburn*, a person who signs a loan guaranty "is responsible for exercising reasonable care to protect himself by reading the document and making sure of its contents" and "cannot avoid the effect of the document by claiming that he did not read it." *Blackburn*, 407 S.C. at 333, 755 S.E.2d at 443. The Appellant has not contested the validity of his jury trial waiver, but argues only that the cross claims and third-party claims "have common questions of fact with, and are logically related to, the foreclosure action." See *Motion to Alter or Amend filed by Appellant on March 23, 2015*, a copy of which is attached hereto as Exhibit E.

II. The Court Should Not Hold This Motion in Abeyance Pending Briefing.

Anticipating Wells Fargo's challenge to the direct appealability of the order of reference, counsel for the Appellant requested in his transmittal letter to this Court that any motion to dismiss filed by Wells Fargo be held in abeyance to allow Appellant to presents its argument on the merits during briefing. Such a request ignores the obvious purpose of a motion to dismiss, which is to allow for the early disposition of an interlocutory appeal that is not otherwise

warranted by statute. Here, Appellant appeals an order of reference that determines none of his rights and asks the Court to consider an issue that is unpreserved and premature. The appeal should be dismissed prior to briefing because there are no legitimate issues to be briefed for this Court. Wells Fargo respectfully requests that this Court deny the Appellant's request to hold this Motion to Dismiss in abeyance, and instead asks this Court to issue a ruling on the Motion at its earliest convenience.

CONCLUSION

Appellant has presented to this Court for review an unpreserved, premature issue that has not been addressed by any court below. The orders appealed from are not immediately appealable, and for the reasons stated hereinabove, Wells Fargo respectfully requests that this Court dismiss the Appellant's appeal.



Robert C. Byrd (S.C. Bar No. 1069)
A. Smith Podris (S.C. Bar No. 78051)
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650

Attorneys for the Respondent
Wells Fargo Bank, N.A., as Successor by Merger
to Wachovia Bank, National Association, as
Successor by Merger to First Union National Bank

August 3, 2015

Charleston, South Carolina

EXHIBIT A

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2014 CP-10-4946

Wells Fargo Bank

2015 MAR -5 PM 2:32

Penny Creek Associates

PLAINTIFF(S)

JULIE J. ARMSTRONG
CLERK OF COURT

DEFENDANT(S)

Submitted by:

BY

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: Plaintiff's Motion to Refer, filed on 11/14/2014, is GRANTED.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

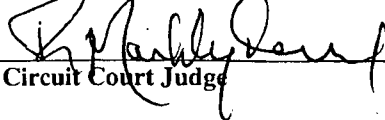
INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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


Circuit Court Judge

2060
Judge Code

3/3/15
Date

EXHIBIT B

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wells Fargo Bank, N.A., as Successor by
Merger to Wachovia Bank, National
Association, as Successor by Merger to First
Union National Bank,

Plaintiff,

vs.

Penny Creek Associates, L.L.C. a/k/a Penny
Creek Associates, LLC, et al.,

Defendants.

Michel Laplante,

Third-Party Plaintiff

vs.

The Eugene J. Zurlo Living Trust, Dated
December 11, 1997 and Paul Zurlo,

Third-Party Defendants.

IN THE CIRCUIT COURT

Case No. 2014-CP-10-4946

**ORDER DENYING DEFENDANT
LAPLANTE'S MOTION TO ALTER OR
AMEND**

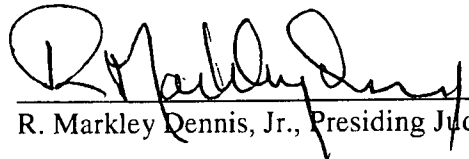
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JULIE J. ARMSTRONG
CLERK OF COURT

This matter came before the Court on May 27, 2015, for hearing on defendant Michel Laplante's Motion to Alter or Amend the Court's prior Order referring the case, in its entirety, to the Master-in-Equity for Charleston County. The plaintiff was represented at the hearing by Robert C. Byrd and A. Smith Podris, and defendant Laplante was represented by Jason S. Luck. Having considered the arguments of counsel, the pleadings, and the memoranda of law submitted in connection with the plaintiff's Motion to Strike Jury Demand and to Refer, the Court finds and concludes that reference to the Master-in-Equity is appropriate and that defendant Laplante's Motion should be denied.

Handwritten signature/initials.

Foreclosures and other non-jury matters are routinely referred to the Master-in-Equity pursuant to Rule 53, SCRPC. The procedural rules recognize that references to the Master-in-Equity "are absolutely necessary in State Courts, particularly to handle a large volume of State litigation such as foreclosures, partitions, and other equity matters." See Comments to Rule 53, SCRPC. Rule 71(a) further states that foreclosure actions "shall ordinarily be referred to a master pursuant to Rule 53". The Court believes that reference to the Master-in-Equity is appropriate in this action, and denies defendant Laplante's Motion to Alter or Amend.¹

AND IT IS SO ORDERED.


R. Markley Dennis, Jr., Presiding Judge

June 2, 2015

Charleston, South Carolina

RMD/jz

¹ Plaintiff argues that defendant Laplante's demand for a jury trial should be stricken because: (1) while Laplante has asserted cross-claims and third-party claims, he has not asserted any counterclaims against the plaintiff; and (2) Laplante waived any right to a jury trial in the loan documents. The Court does not need to decide the motion to strike, but instead leaves that matter to the Master-in-Equity to determine.

EXHIBIT C

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Wells Fargo Bank, N.A., as Successor by
Merger to Wachovia Bank, National
Association as Successor by Merger to
First Union National Bank,

Plaintiff,

vs.

Penny Creek Associates, L.L.C. a/k/a
Penny Creek Associates, LLC; The Grove
at Fenwick Plantation, LLC; Michel F.
LaPlante a/k/a Michel Laplante a/k/a
Mitch Laplante; Charlotte R. Zurlo;
Eugene J. Zurlo; Charlotte R. Zurlo and
Eugene J. Zurlo, as Co-Trustees of The
Nicklaus Lane Realty Trust No. 1 under
Declaration of Trust dated May 22, 1998;
Fenwick Hall Plantation Property Owners
Assn., Inc. a/k/a Fenwick Hall Plantation
Property Owners' Association, Inc.;
Preserve at Fenwick Hall Property
Owners' Association, Inc.; and The Grove
at Fenwick Plantation Condominium
Association, Inc.,

Defendant.

Michel Laplante,

Third-Party Plaintiff,

vs.

The Eugene J. Zurlo Living Trust, Dated
December 11, 1997 and Paul Zurlo,

Third-Party Defendants.

CASE NO.: 2014-CP-10-4946

Third-Party Summons

BY _____

JULIE J. ARMSTRONG
CLERK OF COURT

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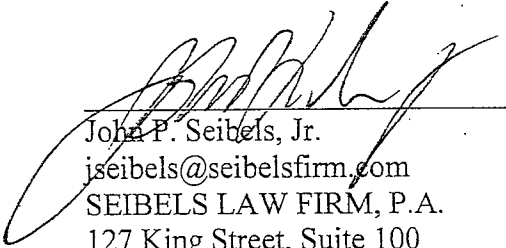
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TO THE THIRD-PARTY DEFENDANTS THE EUGENE J. ZURLO LIVING TRUST,
DATED DECEMBER 11, 1997 AND PAUL ZURLO:

YOU ARE HEREBY SUMMONED and required to Answer the Third-Party Claims in this action, of which a copy is herewith served upon you, and to file your Answer with the Charleston County Clerk of Court and to serve a copy of your Answer to said Third-Party Claims on the subscriber at his office, 127 King Street, Suite 100, Charleston, South Carolina 29401, within thirty (30) days after service hereof; exclusive of the date of such service; and if you fail to Answer the Third-Party Claims within the time aforesaid, the judgment may be granted by default for the relief demanded in the Third-Party Claims.

Respectfully submitted,

SEIBELS LAW FIRM, P.A.



John P. Seibels, Jr.
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Charleston, SC 29401
843.722.6777 (phone)
843.722.6781 (telefax)

**Attorney for Defendants and Third-Party
Plaintiff**

Charleston, SC
October 22, 2014

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

IN THE COURT OF COMMON PLEAS
NINTH JUDICIAL CIRCUIT

Wells Fargo Bank, N.A., as Successor by
Merger to Wachovia Bank, National
Association as Successor by Merger to
First Union National Bank,

Plaintiff,

vs.

Penny Creek Associates, L.L.C. a/k/a
Penny Creek Associates, LLC; The Grove
at Fenwick Plantation, LLC; Michel F.
LaPlante a/k/a Michel Laplante a/k/a
Mitch Laplante; Charlotte R. Zurlo;
Eugene J. Zurlo; Charlotte R. Zurlo and
Eugene J. Zurlo, as Co-Trustees of The
Nicklaus Lane Realty Trust No. 1 under
Declaration of Trust dated May 22, 1998;
Fenwick Hall Plantation Property Owners
Assn., Inc. a/k/a Fenwick Hall Plantation
Property Owners' Association, Inc.;
Preserve at Fenwick Hall Property
Owners' Association, Inc.; and The Grove
at Fenwick Plantation Condominium
Association, Inc.,

Defendant.

Michel Laplante,

Third-Party Plaintiff,

vs.

The Eugene J. Zurlo Living Trust, Dated
December 11, 1997 and Paul Zurlo,

Third-Party Defendants.

CASE NO.: 2014-CP-10-4946

**Answer, Cross Claims, and Third-Party
Claims of Michel F. LaPlante a/k/a Michel
Laplante a/k/a Mitch Laplante
(Jury Trial Demanded)**

BY

JULIE J. ARMSTRONG
CLERK OF COURT

2014 OCT 27 PM 4:32

FILED

Defendant Michel F. LaPlante a/k/a Michel Laplante a/k/a Mitch Laplante ("Laplante" or

"Defendant") answers the Plaintiff's complaint as follows:

For a First Defense

1. Defendant denies each and every allegation of the Complaint not specifically admitted, qualified or explained and demands strict proof thereof.

2. Defendant lacks knowledge and information sufficient to form a belief as to the allegations of paragraph 1, and therefore denies the same and demand strict proof thereof.

3. Defendant admits that the allegations of Paragraphs 2 and 3.

4. The allegations of paragraphs 4, 5, and 6 constitute conclusions of law that do no require a response. To the extent a response is needed, they are denied.

5. In response to the allegations of paragraph 7, Defendant repeats and realleges his responses set forth above as if restated fully verbatim herein.

6. In response to the allegations of paragraphs 8, 9, and 10, Defendant craves reference to the documents and public records evidencing the agreements in question and denies any allegations inconsistent with the same.

7. Defendant lacks knowledge and information sufficient to form a belief as to the allegations of paragraph 11, and therefore denies the same and demands strict proof thereof.

8. In response to the allegations of paragraphs, 12, 13, 14, 15, 16, 17, 18, 19, 20, 21, and 22, Defendant craves reference to the documents and public records evidencing the agreements in question and denies any allegations inconsistent with the same.

9. Defendant denies the allegations of paragraphs 23, 24, and 25.

10. In response to the allegations of paragraph 26 Defendant craves reference to the documents in question and denies any allegations inconsistent with the same.

11. Defendant denies the allegations of paragraph 27.

12. Defendant lacks knowledge and information sufficient to form a belief as to the allegations of paragraphs 28, 29, and 30, and therefore denies the same and demands strict proof thereof.

13. The allegations of paragraph 31 are a prayer for relief that does not require a response by Defendant. To the extent a response may be required, this paragraph is denied.

14. In response to the allegations of paragraph 32, Defendant repeats and realleges his responses set forth above as if restated fully verbatim herein.

15. In response to the allegations of paragraphs 33, 34, 35, and 36, Defendant craves reference to the documents and public records evidencing the agreements in question and denies any allegations inconsistent with the same.

16. Defendant denies the allegations of paragraphs 37, 38, and 39.

17. In response to the allegations of paragraph 40 Defendant craves reference to the documents and public records evidencing the agreements in question and denies any allegations inconsistent with the same.

18. Defendant denies the allegations of paragraph 41.

19. Defendant lacks knowledge and information sufficient to form a belief as to the allegations of paragraphs 42, 43, and 44, and therefore denies the same and demands strict proof thereof.

20. The allegations of paragraph 45 are a prayer for relief that does not require a response by Defendant. To the extent a response may be required, this paragraph is denied.

21. In response to the allegations of paragraph 46, Defendant repeats and realleges the responses set forth above as if restated fully verbatim herein.

22. In response to the allegations of paragraph 47 Defendant craves reference to the documents in question and denies any allegations inconsistent with the same.

23. Defendant denies the allegations of paragraphs 48, 49, and 50.

24. In response to the allegations of paragraph 51, Defendant repeats and realleges the responses set forth above as if restated fully verbatim herein.

25. In response to the allegations of paragraph 52 Defendant craves reference to the documents in question and denies any allegations inconsistent with the same.

26. Defendant denies the allegations of paragraphs 53, 54, and 55.

27. The Final Paragraph of the Complaint, which is unnumbered (beginning with "WHEREFORE,") constitutes a prayer for relief which requires no response from Defendant. To the extent any response may be required, Defendant denies the allegations of the Final Paragraph of the Complaint.

As Further Defenses

28. The Complaint should be dismissed pursuant to Rule 12(b)(6), SCRCF, for failure to state facts sufficient to constitute a cause of action.

29. Plaintiff may not have the requisite standing to bring this action.

30. Plaintiff has failed to mitigate its damages.

31. Defendant reserves and does not waive any additional or further defenses or potential counterclaims as may be revealed by additional information that may be acquired in discovery.

As a Further Defense And by way of Cross-Claims and Third-Party Claims

32. Defendant incorporates by reference all of the foregoing paragraphs as if set forth fully herein verbatim.

33. Defendants Eugene Zurlo and Charlotte Zurlo are, upon information and belief, the trustees of the Nicklaus Lane Realty Trust.

34. At all times relevant to this action, Defendant Eugene Zurlo, together with his wife Charlotte Zurlo, were the trustees of the Third-Party Defendant Eugene J. Zurlo Living Trust dated December 11, 1997 ("Living Trust" or "Third-Party Defendant"). The Living Trust and Defendant/Third-Party Plaintiff Laplante have been the only Class A members of Defendant Penny Creek Associates, LLC ("Penny Creek").

35. At all times relevant to this action, Penny Creek has been the only member of Defendant The Grove at Fenwick Plantation, LLC ("The Grove").

36. Defendant/Third-Party Plaintiff Laplante is the managing member of Penny Creek and The Grove.

37. Laplante fairly and adequately represents the interests of all members similarly situated in enforcing the rights of Penny Creek and The Grove. Laplante is entitled to pursue this action as a derivative action pursuant to Rule 23(b)(1) of the South Carolina Rules of Civil Procedure.

38. Paul Zurlo is a citizen and resident of a state other than South Carolina and is the adult son of Mr. and Mrs. Zurlo. Paul Zurlo is managing director and chief operating officer of Bain Capital Ventures and a co-tortfeasor and co-conspirator with Mr. and Mrs. Zurlo as more fully set forth herein.

39. Mr. and Mrs. Zurlo regularly consult with Paul Zurlo with regard to their options and duties in connection with the business affairs of Penny Creek and The Grove, and Paul Zurlo has acted individually and in concert with Mr. and Mrs. Zurlo to cause harm to Laplante individually and as a member of Penny Creek, Penny Creek and The Grove as more specifically set forth herein.

40. This court has subject matter jurisdiction of this action, and personal jurisdiction over the parties.

For a First Cross-Claim and Third-Party Claim
(Breach of Fiduciary Duty)
(Breach of Obligations of Good Faith and Fair Dealing)

41. Laplante incorporates by reference his responses and allegations in Paragraphs 1 through 40 as if fully restated verbatim herein.

42. The Living Trust, in its capacity as a member of Penny Creek and a party to the Penny Creek Operating Agreement, and Mr. and Mrs. Zurlo individually and as Co-Trustees, owe the implied duties of good faith and fair dealing to The Grove, Penny Creek, and their fellow members of Penny Creek.

43. The Living Trust and Mr. and Mrs. Zurlo owe certain fiduciary duties as more particularly set forth in the Penny Creek Operating Agreement, and they further owe the fiduciary duties set forth in South Carolina Code Section 33-44-409 to the extent they have exercised managerial authority vested in the Penny Creek manager. The Living Trust and Mr. and Mrs. Zurlo have committed certain acts and omissions in breach of their covenants of good faith and fair dealing and their fiduciary duties, including but not limited to:

- a. Acting individually and in concert with co-conspirator Paul Zurlo to refuse to participate in discussions regarding the refinancing of the assets of Penny Creek and The Grove, thus creating the appearance that the properties' rents and profits are in danger of being lost or materially injured or impaired, and creating the impression that Penny Creek and/or The Grove are in imminent danger of becoming insolvent, where no such appearance would otherwise exist;
- b. Repeatedly expressing their desire to allow the real estate investments of Penny Creek and The Grove to collapse so that the Living Trust and/or Mr. and Mrs. Zurlo can purchase the assets in a foreclosure sale to the exclusion of Laplante and the other members of Penny Creek;

- c. Spreading false rumors regarding Penny Creek's financial health suggesting a receiver is necessary because the company is in imminent danger of becoming insolvent, causing diminished real estate values and confidence among parties with whom Penny Creek does business;
- d. Falsely representing to third parties that Eugene Zurlo is the managing member of Penny Creek Associates, LLC, and directing said third parties to take actions against the interests of Penny Creek and its other members;
- e. Causing Penny Creek and/or The Grove to pay fees to accountants and legal counsel for work unrelated to Penny Creek's business or work that served only their interests;
- f. Acting in a racist, sexist, unprofessional, crass, abusive, bullying and belittling manner to Penny Creek's members, consultants, real estate brokers, prospective investors, and homeowners to such an extent that Eugene Zurlo agreed he should no longer attend meetings with third parties on behalf of Penny Creek or The Grove; and
- g. Acting individually and with their co-conspirator Paul Zurlo to refuse to execute "Pre-Negotiation Letters" with Wells Fargo Bank in the spring of 2014, which were a precondition to negotiating mortgage modifications with Wells Fargo, thus prohibiting Laplante from obtaining modification terms that would have prevented the institution of this action.

44. The Living Trust's acts and the actions of Mr. and Mrs. Zurlo as pleaded herein constitute intentional misconduct or, in the alternative, grossly negligent or reckless conduct.

45. As a direct and proximate result of violations by the Living Trust and Mr. and Mrs. Zurlo of their fiduciary and other duties, Penny Creek, The Grove, Laplante, and the other members of Penny Creek have suffered actual and special damages as pleaded herein in an amount to be proven at trial, including but not limited to the risk of total loss of their investment, harm to

Laplante's professional reputation, economic harm to Laplante's architectural business, loss in value of Penny Creek's assets, loss of a contract with True Homes, LLC which was producing income to Penny Creek and which would have produced over \$12 Million over the course of its term, the loss of an option with True Homes, LLC which would have grossed over \$7 Million to Penny Creek, decreased property values, the costs of the resulting foreclosure action, and such other damages as may be shown at trial.

46. The Living Trust's and Mr. and Mrs. Zurlo's willful, wanton and reckless acts and omissions as pleaded herein entitle Penny Creek, The Grove, Laplante and the other members of Penny Creek to punitive damages in an amount to be determined at trial.

FOR A SECOND CAUSE OF ACTION
(Civil Conspiracy)

47. Laplante incorporates by reference his responses and allegations in Paragraphs 1 through 46 as if fully restated verbatim herein.

48. The Living Trust, Paul Zurlo, and Mr. and Mrs. Zurlo have combined with one another for the purpose of injuring Laplante and/or Penny Creek, The Grove, and the other members of Penny Creek by:

- a. Refusing to cooperate or even communicate with the manager regarding the impending refinance needs of the assets of Penny Creek;
- b. Approving the Penny Creek tax return for 2012 without authority;
- c. Overdrawing the Penny Creek Operating Account;
- d. Publishing false accusations that Laplante has caused Penny Creek to pay the property owners association dues of his children;

- e. Threatening protracted litigation in an effort to coerce Laplante to vote to replace the manager of Penny Creek and The Grove, and to vote to liquidate and dissolve each entity;
- f. Falsely representing to third parties that Eugene Zurlo is the managing member of Penny Creek Associates, LLC, and directing said third parties to take actions against the interests of Penny Creek and its other members;
- g. Falsely representing to third parties that Laplante dishonestly distributed Penny Creek real estate to his children when in fact such distributions were approved by the Class A members;
- h. Refusing to execute "Pre-Negotiation Letters" with Wells Fargo Bank in the spring of 2014, which were a precondition to negotiating mortgage modifications with Wells Fargo, thus prohibiting Laplante from obtaining modification terms that would have prevented the institution of this action; and
- i. Taking such other actions in furtherance of their stated goal of allowing the assets of Penny Creek and The Grove to fall into foreclosure so that they may seize a business opportunity to the exclusion of Laplante and the other members of Penny Creek.

49. All of the above conduct by the Living Trust, Paul Zurlo, and Mr. and Mrs. Zurlo have caused actual, consequential, and special damages to Laplante, Penny Creek, The Grove, and the other members of Penny Creek in the form of harm to Laplante's professional reputation, economic harm to Laplante's architectural business, loss in value of Penny Creek's assets, loss of a contract with True Homes, LLC which was producing income to Penny Creek and which would have produced over \$12 Million over the course of its term, the loss of an option with True Homes, LLC which would have grossed over \$7 Million to Penny Creek, decreased

property value, the costs of the resulting foreclosure action, the costs of this action, including attorneys fees, and such other damages as may be shown at trial.

50. The Living Trust's, Paul Zurlo's and Mr. and Mrs. Zurlo's acts and omissions as pleaded herein were willful, wanton, and done with reckless disregard for the rights of Laplante. Laplante is therefore entitled to an award of punitive damages in an amount to be determined at trial.

AS AN ADDITIONAL CAUSE OF ACTION AGAINST THIRD-PARTY DEFENDANT
PAUL ZURLO
(Interference with Contractual Relationships)

51. Laplante incorporates by reference his responses and allegations in Paragraphs 1 through 50 as if fully restated verbatim herein.

52. Penny Creek, The Grove, and Laplante have a property right in certain contracts, including but not limited to the Penny Creek and The Grove Operating Agreements.

53. Third-Party Defendant Paul Zurlo had knowledge of each contract.

54. By assisting, advising, and instructing Mr. and Mrs. Zurlo to take certain steps, including but not limited to refusal to cooperate with Laplante's efforts to refinance The Grove in January, 2014 as shown on Exhibit A, and such other assistance, advice, and instruction as may be shown at trial, Paul Zurlo intentionally and maliciously procured breaches of covenants of good faith and fair dealing by the Trust and Mr. and Mrs. Zurlo, who did in fact refuse to cooperate with Laplante, Penny Creek, and The Grove on reasonable refinancing opportunities, and who further refused to execute Wells Fargo's "Pre-Negotiation Letters" until such time as Wells Fargo commenced foreclosure proceedings all to the detriment of Laplante individually, Penny Creek, its other members, and The Grove.

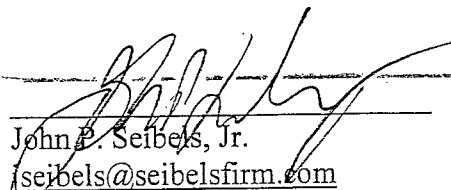
55. The conduct of Paul Zurlo as described herein lacked any legitimate business purpose or other justification.

56. As a direct and proximate result of Paul Zurlo's conduct, the Plaintiff withdrew The Grove's refinance opportunity, and ultimately commenced foreclosure proceedings against The Grove and Penny Creek, and their guarantors who include Laplante individually. The existence of the foreclosure action, and the lis pendens, caused Penny Creek to lose contracted sales of Penny Creek real estate and prospective sales of Penny Creek real estate, including but not limited to an agreement with True Homes, LLC which was providing, and would have provided, cash flow for Penny Creek's operational costs, debt service, and debt reduction or elimination.

57. Upon information and belief, Paul Zurlo's actions have directly and proximately caused such other damages, including but not limited to diminution of real estate values and assets of Penny Creek and The Grove, plus such other actual, consequential, and special damages as may be shown at trial.

58. In addition to actual, consequential, and special damages, Laplante, Penny Creek, and The Grove are entitled to punitive damages arising from the wrongful conduct of Paul Zurlo as plead herein.

Wherefore, having answered the Plaintiff's Complaint and asserted meritorious Cross-Claims and Third-Party Claims, Defendant asks this Court to dismiss the Plaintiff's Complaint, grant the relief requested in the Cross-Claims and Third-Party Claims, and award Defendant whatever further relief it deems just and proper.



John P. Seibels, Jr.

seibels@seibelsfirm.com

Jason S. Luck

jluck@seibelsfirm.com

SEIBELS LAW FIRM, P.A.

127 King Street, Suite 100

Charleston, SC 29401

843.722.6777 (phone)

843.722.6781 (telefax)

Attorneys for Defendant Michel F.

LaPlante a/k/a Michel Laplante

a/k/a Mitch Laplante

Charleston, SC

October 27, 2014

Certificate of Service
Case No.: 2014-CP-10-4946

I, Erin Magera, of the Seibels Law Firm, P.A., do hereby certify that a true and correct copy of the *Answer, Cross Claims, and Third-Party Claims of Michel F. LaPlante a/k/a Michel Laplante a/k/a Mitch Laplante* was properly addressed, postage pre-paid, and sent US Mail to counsel of record as follows:

Frank B. Ulmer, Esquire
Robert C. Byrd, Esquire
Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
frankulmer@parkerpoe.com
bobbybyrd@parkerpoe.com

Attorneys for Plaintiff

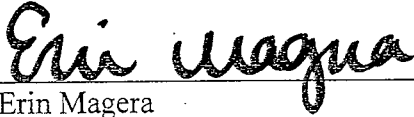
J. Rutledge Young, Jr., Esquire
Duffy & Young, LLC
96 Broad Street
Charleston, SC 29401
jry@duffyandyoung.com

**Attorney for Eugene J. Zurlo; Charlotte R. Zurlo
and Eugene J. Zurlo, as Co-Trustees of The
Nicklaus Realty Trust No. 1 under Declaration of
Trust dated May 22, 1998**

Robert B. Varnado, Esquire
Brown & Varnado, LLC
P.O. Box 1127
Mt. Pleasant, SC 29465
rvarnado@brown-varnado.com

**Attorney for Fenwick Hall Plantation Property
Owners Assn., Inc. a/k/a Fenwick Hall Property
Owners Association, Inc. a/k/a The Preserve at
Fenwick Hall Property Owners' Association, Inc.
and The Grove at Fenwick Plantation
Condominium Association, Inc.**

October 21, 2014


Erin Magera

1-8-14 Im for Gene Zurlo

Richter, Christine

From: Barnes, Scott
Sent: Monday, January 06, 2014 5:06 PM
To: Richter, Christine
Subject: FW: Wells Fargo 3 year commitment
Attachments: Grove Term Sheet January 2014.pdf

Chris, see if you can find the loan documents in the file for the Grove and Penny creek. We have pulled them in the past so I know they are there. Once you have them send them to Paul Zurlo

Haynsworth
Sinkler Boyd, P.A.

ATTORNEYS AND COUNSELORS AT LAW

Scott Y. Barnes | Attorney | Haynsworth Sinkler Boyd, P.A.

134 Meeting Street, 3rd Floor (29401) | Post Office Box 340 (29402) | Charleston, South Carolina
Phone: 843.722.3366 | Fax: 843.722.2266 | Direct: 843.720.4458

website | bio | vCard | map | email

From: Genezurlo [mailto:genezurlo@aol.com]
Sent: Monday, January 06, 2014 4:53 PM
To: Barnes, Scott
Subject: Fwd: Wells Fargo 3 year commitment

Scott

Contained herein is the contact information for Paul Zurlo. As I mentioned on the voicemail, Paul would like to get copies of the relevant loan docs.

Gene

Begin forwarded message:

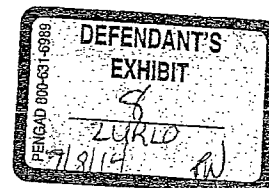
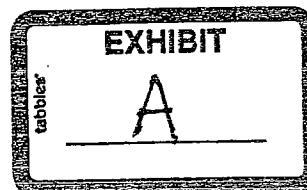
From: "Zurlo, Paul" <pzurlo@baincapitalventures.com>
Date: January 6, 2014, 3:26:44 PM EST
To: 'Genezurlo' <genezurlo@aol.com>
Subject: FW: Wells Fargo 3 year commitment

Dad

This is where you have all the leverage. They need you to sign on as guarantor to this term sheet. I would withhold that until you get what you want. For me, that would be the ability to be the sole check writer. At minimum, make Mitch and a representative for you (i.e. me) be co-mgrs of Penny Creek and the grove. Both of us would have to sign all checks. But I would push this to full manager control.

I would want to talk with Wells Fargo separately from and explain the situation. I believe you to be more aligned with them.

PZ



Paul Zurlo
Managing Director
Bain Capital Ventures
200 Clarendon Street, 39th Floor
Boston, MA 02116
617-516-2492 (o)
617-947-2809 (m)
pzurlo@baincapital.com

From: Mitch LaPlante [<mailto:scmitch@bellsouth.net>]
Sent: Monday, January 06, 2014 3:17 PM
To: Jared Becknell
Cc: Gene Zurlo; John laplante; mitch laplante
Subject: Wells Fargo 3 year commitment

jared

please review and re confirm that we can meet these terms under continued your strong management.

they are looking for a \$20,000 principal paydown upfront, can we handle that with available cash flow ?

I think this will afford a stable financing for 3 years, in which time we can either arrange a strong sale, sell condos w/ financing in place, or replace it with a long term loan

this has not been easy to arrange, but they have been understanding and are impress with the Grove's current operation.

Once this loan is in place we have great options available to us, now that we, mostly you and john, have stabilized the Grove as a well run, positive cash flow apartment complex. Thanks

let us know.

best

mitch

----- Forwarded Message -----

From: "Steven.A.Jasinski@wellsfargo.com" <Steven.A.Jasinski@wellsfargo.com>
To: scmitch@bellsouth.net
Cc: GeneZurlo@aol.com; john.laplante@gmail.com
Sent: Monday, January 6, 2014 2:58 PM
Subject: RE: phone call

Mitch,

Per our phone call this afternoon, please see the attached Term Sheet. Please forward to Jared if you wish.

Thanks,

Steve
Risk Management, Wealth Brokerage Retirement
NMLSR ID 634163

Tel 612-667-1741 | Fax: (612) 316-4910

steven.a.jasinski@wellsfargo.com

This message may contain confidential and/or privileged information. If you are not the addressee or authorized to receive this for the addressee, you must not use, copy, disclose, or take any action based on this message or any information herein. If you have received this message in error, please advise the sender immediately by reply e-mail and delete this message. Thank you for your cooperation.

From: Mitch LaPlante [<mailto:scmitch@bellsouth.net>]
Sent: Monday, January 06, 2014 8:30 AM
To: Jasinski, Steven A.
Cc: Gene Zurlo; John laplante
Subject: phone call

Steve

I trust you had a great holiday season

happy new year

let me know when I good time to return your call from over the holidays, I free most of today and Tuesday

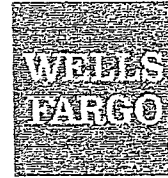
look forward to hearing your thoughts on working out the extended loan on the Grove.

best

mitch

The information transmitted is intended only for the person or entity to which it is addressed and may contain confidential and/or privileged material. Any review, retransmission, dissemination or other use of, or taking of any action in reliance upon, this information by persons or entities other than the intended recipient is prohibited. If you received this in error, please contact the sender and delete the material from any computer.

Bain Capital, LLC
Boston, MA USA
+1 (617) 516 2000



Preliminary Term Sheet

FOR DISCUSSION PURPOSES ONLY-
NOT A COMMITMENT TO LEND

LENDER: Wells Fargo Bank, National Association ("Wells Fargo")

BORROWER(S): Grove at Fenwick Plantation, LLC

GUARANTOR(S): Gene Zurlo, Charlotte Zurlo, Zurlo Investment Trust No. 1, Michel LaPlante

TYPE OF CREDIT: Term Loan

PURPOSE: To renew financing of the existing obligation

LOAN AMOUNT: \$3,178,671.93 (reflects \$20,000 principal paydown)

FACILITY FEE(S): None

MATURITY DATE: January 31, 2017

COLLATERAL: A first mortgage on the real property currently known as The Grove at Fenwick Plantation

INTEREST RATE: The Wells Fargo Prime Rate plus 1%, this indicative floating rate as of today is 4.25%. All rates as defined and determined by Wells Fargo, with rounding upward as Wells Fargo requires.

REPAYMENT TERMS: \$23,000 Principal and Interest payable monthly with minimum monthly principal of \$10,000; remaining Principal payable at the Maturity Date.

COVENANTS & OTHER TERMS: Borrower and Guarantors agree that a minimum of \$10,000 shall be paid to principal monthly which could result in a total payment in excess of that which is cited above. Wells Fargo's usual and customary covenants and provisions, including any applicable fees, for credit of the kind, size and features above and such others as Wells Fargo determines may be needed during underwriting and due diligence, including requests for updated financial information.

This Preliminary Term Sheet presentation is for discussion purposes only and is not intended to be and should not be construed as an offer, a commitment, nor agreement to lend, nor should it be construed as an attempt to establish all of the terms and conditions relating to any loan or credit facility described above. It is intended only to be indicative of certain terms and conditions around which credit approval may be sought, and if approved, how the loan documents might be structured, and shall not preclude negotiations over these or any other terms and conditions.

THE
SEIBELS
—LAW FIRM, P.A.

127 KING STREET, SUITE 100
CHARLESTON, SOUTH CAROLINA 29401

843.722.6777
fax 843.722.6781

October 27, 2014

VIA HAND DELIVERY

The Honorable Julie J. Armstrong
Charleston County Clerk of Court
100 Broad Street, Suite 106
Charleston, South Carolina 29401-2258

RE: Wells Fargo Bank, N.A. v. Penny Creek Associates, LLC, et al.
Case No.: 2014-CP-10-4946
Our File No.: 6338-3

Dear Ms. Armstrong:

Enclosed please find an original and one copy of the Third-Party Summons, Answer, Cross Claims, and Third-Party Claims of Michel F. LaPlante a/k/a Michel Laplante a/k/a Mitch Laplante in the above reference matter. Please file the original and return the filed-stamped copy to us via the bearer of this letter.

Should you have any questions or require anything further, please do not hesitate to contact me.

With kind regards, I remain

Very truly yours,

SEIBELS LAW FIRM, P.A.



Erin Magera
Paralegal

/elm
Enclosure

cc: Frank B. Ulmer, Esquire (via US Mail) (w/encl.)
J. Rutledge Young, Jr., Esquire (via US Mail) (w/encl.)
Robert B. Varnado, Esquire (via US Mail) (w/encl.)

EXHIBIT D

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wells Fargo Bank, N.A., as Successor by Merger to
Wachovia Bank, National Association, as Successor
by Merger to First Union National Bank,

Plaintiff(s)

vs.

Penny Creek Associates, L.L.C. a/k/a Penny Creek
Associates, LLC, et al.

Defendant(s)

IN THE COURT OF COMMON PLEAS

CIVIL ACTION COVERSHEET

2014-CP - 10- 4946

Submitted By: Frank B. Ulmer, Esquire
Address: Parker Poe Adams & Bernstein LLP
200 Meeting Street, Suite 301
Charleston, South Carolina 29401

SC Bar #: 78055
Telephone #: (843) 727-2649
Fax #: (843) 727-2680
Other: (843) 727-2650
E-mail: frankulmer@parkerpoe.com

NOTE: The coversheet and information contained herein neither replaces nor supplements the filing and service of pleadings or other papers as required by law. This form is required for the use of the Clerk of Court for the purpose of docketing. It must be filled out completely, signed, and dated. A copy of this coversheet must be served on the defendant(s) along with the Summons and Complaint.

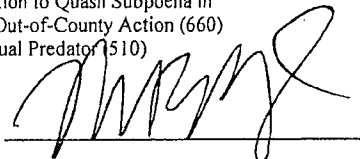
DOCKETING INFORMATION (Check all that apply)

**If Action is Judgment/Settlement do not complete*

- ☐ JURY TRIAL demanded in complaint. ☒ NON-JURY TRIAL demanded in complaint.
☐ This case is subject to ARBITRATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☐ This case is subject to MEDIATION pursuant to the Court Annexed Alternative Dispute Resolution Rules.
☒ This case is exempt from ADR. (Proof of ADR/Exemption Attached)

NATURE OF ACTION (Check One Box Below)

- | | | | |
|---|--|---|---|
| Contracts | Torts - Professional Malpractice | Torts - Personal Injury | Real Property |
| ☐ Constructions (100) | ☐ Dental Malpractice (200) | ☐ Assault/Slander/Libel (300) | ☐ Claim & Delivery (400) |
| ☐ Debt Collection (110) | ☐ Legal Malpractice (210) | ☐ Conversion (310) | ☐ Condemnation (410) |
| ☐ Employment (120) | ☐ Medical Malpractice (220) | ☐ Motor Vehicle Accident (320) | ☒ Foreclosure (420) |
| ☐ General (130) | Previous Notice of Intent Case # | ☐ Premises Liability (330) | ☐ Mechanic's Lien (430) |
| ☐ Breach of Contract (140) | 20 -CP- _____ | ☐ Products Liability (340) | ☐ Partition (440) |
| ☐ Other (199) | ☐ Notice/ File Med Mal (230) | ☐ Personal Injury (350) | ☐ Possession (450) |
| | ☐ Other (299) | ☐ Wrongful Death (360) | ☐ Building Code Violation (460) |
| | | ☐ Other (399) | ☐ Other (499) |
| Inmate Petitions | Administrative Law/Relief | Judgments/Settlements | Appeals |
| ☐ PCR (500) | ☐ Reinstate Drv. License (800) | ☐ Death Settlement (700) | ☐ Arbitration (900) |
| ☐ Mandamus (520) | ☐ Judicial Review (810) | ☐ Foreign Judgment (710) | ☐ Magistrate-Civil (910) |
| ☐ Habeas Corpus (530) | ☐ Relief (820) | ☐ Magistrate's Judgment (720) | ☐ Magistrate-Criminal (920) |
| ☐ Other (599) | ☐ Permanent Injunction (830) | ☐ Minor Settlement (730) | ☐ Municipal (930) |
| | ☐ Forfeiture-Petition (840) | ☐ Transcript Judgment (740) | ☐ Probate Court (940) |
| | ☐ Forfeiture-Consent Order (850) | ☐ Lis Pendens (750) | ☐ SCDOT (950) |
| | ☐ Other (899) | ☐ Transfer of Structured Settlement Payment Rights Application (760) | ☐ Worker's Comp (960) |
| Special/Complex /Other | | ☐ Confession of Judgment (770) | ☐ Zoning Board (970) |
| ☐ Environmental (600) | ☐ Pharmaceuticals (630) | ☐ Petition for Workers Compensation Settlement Approval (780) | ☐ Public Service Comm. (990) |
| ☐ Automobile Arb. (610) | ☐ Unfair Trade Practices (640) | ☐ Other (799) | ☐ Employment Security Comm (991) |
| ☐ Medical (620) | ☐ Out-of State Depositions (650) | | |
| ☐ Other (699) | ☐ Motion to Quash Subpoena in an Out-of-County Action (660) | | |
| | ☐ Sexual Predator (510) | | |

Submitting Party Signature: 

Date: August 14, 2014

Note: Frivolous civil proceedings may be subject to sanctions pursuant to SCRCP, Rule 11, and the South Carolina Frivolous Civil Proceedings Sanctions Act, S.C. Code Ann. §15-36-10 et. seq.

FOR MANDATED ADR COUNTIES ONLY

Aiken, Allendale, Anderson, Bamberg, Barnwell, Beaufort, Berkeley, Calhoun, Charleston, Cherokee, Clarendon, Colleton, Darlington, Dorchester, Florence, Georgetown, Greenville, Hampton, Horry, Jasper, Kershaw, Lee, Lexington, Marion, Oconee, Orangeburg, Pickens, Richland, Spartanburg, Sumter, Union, Williamsburg, and York

SUPREME COURT RULES REQUIRE THE SUBMISSION OF ALL CIVIL CASES TO AN ALTERNATIVE DISPUTE RESOLUTION PROCESS, UNLESS OTHERWISE EXEMPT.

You are required to take the following action(s):

1. The parties shall select a neutral and file a "Proof of ADR" form on or by the 210th day of the filing of this action. If the parties have not selected a neutral within 210 days, the Clerk of Court shall then appoint a primary and secondary mediator from the current roster on a rotating basis from among those mediators agreeing to accept cases in the county in which the action has been filed.
2. The initial ADR conference must be held within 300 days after the filing of the action.
3. Pre-suit medical malpractice mediations required by S.C. Code §15-79-125 shall be held not later than 120 days after all defendants are served with the "Notice of Intent to File Suit" or as the court directs. (Medical malpractice mediation is mandatory statewide.)
4. Cases are exempt from ADR only upon the following grounds:
 - a. Special proceeding, or actions seeking extraordinary relief such as mandamus, habeas corpus, or prohibition;
 - b. Requests for temporary relief;
 - c. Appeals
 - d. Post Conviction relief matters;
 - e. Contempt of Court proceedings;
 - f. Forfeiture proceedings brought by governmental entities;
 - g. Mortgage foreclosures; and
 - h. Cases that have been previously subjected to an ADR conference, unless otherwise required by Rule 3 or by statute.
5. In cases not subject to ADR, the Chief Judge for Administrative Purposes, upon the motion of the court or of any party, may order a case to mediation.
6. Motion of a party to be exempt from payment of neutral fees due to indigency should be filed with the Court within ten (10) days after the ADR conference has been concluded.

**Please Note: You must comply with the Supreme Court Rules regarding ADR.
Failure to do so may affect your case or may result in sanctions.**

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wells Fargo Bank, N.A., as Successor by Merger to
Wachovia Bank, National Association, as
Successor by Merger to First Union National Bank,

Plaintiff,

vs.

Penny Creek Associates, L.L.C. a/k/a Penny Creek
Associates, LLC; The Grove at Fenwick Plantation,
LLC; Michel F. LaPlante a/k/a Michel Laplante
a/k/a Mitch Laplante; Charlotte R. Zurlo; Eugene J.
Zurlo; Charlotte R. Zurlo and Eugene J. Zurlo, as
Co-Trustees of The Nicklaus Lane Realty Trust No.
1 under Declaration of Trust dated May 22, 1998,
and The Zurlo Investment Trust No. 1 pursuant to
trust agreement dated August 10, 1998; Fenwick
Hall Plantation Property Owners Assn., Inc. a/k/a
Fenwick Hall Plantation Property Owners'
Association, Inc.; Preserve at Fenwick Hall
Property Owners Association, Inc. a/k/a The
Preserve at Fenwick Hall Property Owners'
Association, Inc.; and The Grove At Fenwick
Plantation Condominium Association, Inc.,

Defendants.

IN THE CIRCUIT COURT

Case No. 2014-CP-10- 4946

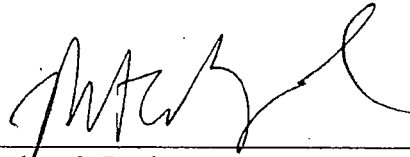
CERTIFICATE OF
EXEMPTION/WITHDRAWAL FROM
ARBITRATION/MEDIATION

2014 AUG 14 PM 4:32
JULIA STRONG
CLERK OF COURT
BY _____

I CERTIFY THAT THIS ACTION IS EXEMPT FROM SOUTH CAROLINA ALTERNATIVE
DISPUTE RESOLUTION RULES (SCADR) BECAUSE:

- ☐ monetary relief requested in this case exceeds \$25,000;
- ☐ this is a class action;
- ☐ there is a substantial claim for injunction or declaratory relief requested in this case;
- ☒ this case involves (check one or more of the following)
 - ☐ title to real estate
 - ☐ wills, trusts and decedents' estates;
 - ☒ mortgage foreclosure;
 - ☐ partition;
- ☐ this is a special proceeding or action seeking extraordinary relief such as mandamus, habeus corpus or prohibition;
- ☐ monetary relief requested in this case is unspecified but exceeds \$25,000;
- ☐ this case is a companion or related to similar actions pending in other courts with which the action might be consolidated but for lack of jurisdiction or venue;
- ☐ this action is appellate in nature;
- ☐ this is a post-conviction relief matter
- ☐ this is a forfeiture proceeding brought by the State; or
- ☐ this is a contempt of court proceeding

NOTE: Motion must be presented to the court, a hearing held, and a finding made, for exemption or withdrawal from arbitration for "strong and compelling reason" sought pursuant to Rule 1(d), Rules of Circuit Court Arbitration.



Robert C. Byrd
Frank B. Ulmer
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650

Attorneys for the Plaintiff
Wells Fargo Bank, N.A., as Successor by Merger to
Wachovia Bank, National Association, as Successor
by Merger to First Union National Bank

August 14, 2014

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wells Fargo Bank, N.A., as Successor by
Merger to Wachovia Bank, National
Association, as Successor by Merger to First
Union National Bank,

Plaintiff,

vs.

Penny Creek Associates, L.L.C. a/k/a Penny
Creek Associates, LLC; The Grove at Fenwick
Plantation, LLC; Michel F. LaPlante a/k/a
Michel Laplante a/k/a Mitch Laplante;
Charlotte R. Zurlo; Eugene J. Zurlo; Charlotte
R. Zurlo and Eugene J. Zurlo, as Co-Trustees
of The Nicklaus Lane Realty Trust No. 1 under
Declaration of Trust dated May 22, 1998, and
The Zurlo Investment Trust No. 1 pursuant to
trust agreement dated August 10, 1998;
Fenwick Hall Plantation Property Owners
Assn., Inc. a/k/a Fenwick Hall Plantation
Property Owners' Association, Inc.; Preserve
at Fenwick Hall Property Owners Association,
Inc. a/k/a The Preserve at Fenwick Hall
Property Owners' Association, Inc.; and The
Grove At Fenwick Plantation Condominium
Association, Inc.,

Defendants.

IN THE CIRCUIT COURT

Case No. 2014-CP-10- 4946

NOTICE OF PENDENCY OF ACTION

(Lis Pendens)

2014 AUG 14 PM 4:32
JULIE ARMSTRONG
CLERK OF COURT
BY _____

NOTICE IS HEREBY GIVEN that an action has been commenced or is about to be commenced in the Circuit Court for Charleston County by and between the above-named plaintiff against the above-named defendants to foreclose:

(i) That certain Mortgage and Absolute Assignment of Leases given by Penny Creek Associates, L.L.C. a/k/a Penny Creek Associates, LLC to First Union National Bank, dated August 7, 2000, in the original principal amount of \$5,300,000.00, and filed in the RMC Office for Charleston County on August 8, 2000, in Book P-352 at Page 613; and which mortgage was amended and/or modified by that certain Modification of Mortgages dated October 1, 2012, and

recorded in the said RMC Office on October 15, 2012, in Book 0284 at Page 614. The property which is the subject of the said mortgage and the First Cause of Action is described on Exhibit "A-1" attached hereto; and

(ii) That certain Mortgage and Assignment of Rents given by Penny Creek Associates, L.L.C. a/k/a Penny Creek Associates, LLC to Wachovia Bank, National Association, dated April 5, 2006, in the original principal amount of \$2,200,000.00, and filed in the RMC Office for Charleston County on April 7, 2006, in Book G-579 at Page 249; and which mortgage was amended and/or modified by: (a) that certain Modification of Mortgage and Notice of Future Advance dated July 5, 2007, and recorded in the said RMC Office on July 27, 2007, in Book V-633 at Page 342; and (b) that certain Modification of Mortgages dated October 1, 2012, and recorded in the said RMC Office on October 15, 2012, in Book 0284 at Page 614. The property which is the subject of the said mortgage and the First Cause of Action is described on Exhibit "A-2" attached hereto; and

(iii) That certain Mortgage and Assignment of Rents given by The Grove at Fenwick Plantation, LLC to Wells Fargo Bank, N.A., dated January 31, 2011, in the original principal amount of \$3,536,250.00, and filed in the RMC Office for Charleston County on February 1, 2011, in Book 0169 at Page 391. The property which is the subject of the said mortgage and the Second Cause of Action is described on Exhibit "A-3" attached hereto.



Robert C. Byrd

Frank B. Ulmer

PARKER POE ADAMS & BERNSTEIN LLP

200 Meeting Street, Suite 301

Charleston, SC 29401

(843) 727-2650

(843) 727-2680 (facsimile)

August 14, 2014

Charleston, South Carolina

Attorneys for the Plaintiff

Wells Fargo Bank, N.A., as Successor by Merger to
Wachovia Bank, National Association, as Successor
by Merger to First Union National Bank

EXHIBIT "A-1"

Tract B-2:

ALL that piece, parcel or tract of land, together with the improvements thereon, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as "Tract 'B-2' 42.7 Acres," on a plat entitled, "SUBDIVISION OF PROPERTY IN THE NAME OF F-H-P REALTY LOCATED ON JOHNS ISLAND, CHARLESTON COUNTY, S.C.," by Forrest G. Calvert, RLS, dated September 17, 1979, and recorded in the RMC Office for Charleston County, South Carolina (hereinafter the "RMC Office") in Plat Book AO at Page 74, said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully be shown.

And Tract A:

ALL that piece, parcel or tract of land, together with the improvements thereon, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as "FHP Realty Tract 'A' 5.503 Acres" on a plat entitled, "PLAT SHOWING THE ABANDONMENT OF PROPERTY LINES FOR TMS NO. 346-00-00-12 AND TMS NO. 346-00-00-011, AND THE SUBSEQUENT SUBDIVISION OF TMS NO. 346-00-00-007 INTO TRACT 'A' CONTAINING 5.503 ACRES AND TRACT 'B' CONTAINING 7.497 ACRES OWNED BY FHP REALTY LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Hoffman Lester Associates, Inc., dated September 24, 1997, and recorded January 20, 1998, in the aforesaid RMC Office in Plat Book EC at Page 263.

The aforesaid Tract B-2 and Tract A are also more particularly shown on that certain plat entitled, "PLAT SHOWING PROPERTY LINE BETWEEN TMS NO. 346-00-00-004, TRACT B-2 (CONTAINING 42.49 ACRES) AND TMS NO. 346-00-00-007, RESIDUAL TRACT B (CONTAINING 5.50 ACRES) TO FORM TRACT B-2 (CONTAINING 47.99 ACRES), OWNED BY FHP REALTY LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Hoffman Lester and Associates, Inc., dated April 7, 2000, and recorded as Exhibit "____" [sic: "C"] to that certain deed of conveyance from FHP Realty Company, a Partnership, to Penny Creek Associates, L.L.C., and also about to be recorded in the RMC Office for Charleston County, S.C.

Note: The above-referenced deed from FHP Realty Company, a Partnership, to Penny Creek Associates, L.L.C. is dated August 7, 2000, and recorded in the RMC Office for Charleston County on August 8, 2000, in Book O-352 at Page 691.

TOGETHER WITH a twenty-foot (20') non-exclusive easement in common with Helena Igoe Blanchard, her heirs and assigns, and others entitled thereto, in favor of "Tract B" above-described, for ingress and egress over, upon and across that certain twenty-foot (20') easement extending from Maybank Highway on the south to "Tract A" on the north, as said Tract A is shown on that certain plat recorded in Plat Book AK at Page 76 in the RMC Office, which easement is granted in that certain deed of conveyance from Helena Igoe Blanchard to FHP Realty Company, a Partnership, dated April 27, 1978, and recorded in Book P-115 at Page 273, in the RMC Office.

LESS AND EXCEPTING: ALL that certain streets, roads, drives and cul-de-sacs situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina and being shown and designated as "FENWICK HALL ALLEÉ R/W VARIES" on a plat entitled, "PLAT DEDICATING FENWICK HALL ALLEÉ, VARIABLE RIGHT-OF-WAY (TMS NO 346-00-00-078 TRACT C) TO THE USE OF THE PUBLIC CONTAINING 0.71 ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Hoffman Lester Associates, Inc., dated August 27, 2001, and recorded November 1, 2001, in the RMC Office for Charleston County, South Carolina in Plat Book EF at Page 157. Said streets, roads, drives and cul-de-sacs butting and bounding, measuring and containing, and having such courses and distances as shown are shown on said plat, it being the intent of this legal description to convey the entire right-of-way. Reference being had to the aforesaid plat for a more full and complete description, being all of the said dimensions, a little more or a little less. Together with an exclusive easement for drainage and maintenance purposes over all drainage easement shown on the said plat.

LESS AND EXCEPTING: ALL that certain streets, roads, drives and cul-de-sacs situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina and being shown and designated as "EXTENSION OF FENWICK HALL ALLEÉ" on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT C-1 (TMS NO. 346-00-00-077), TRACT B-2-1 (TMS NO. 346-00-00-004), AND TRACT B-2-2 (TMS NO. 346-00-00-076) TO CREATE AN EXTENSION OF FENWICK HALL ALLEÉ (CONTAINING 0.272 ACRES) AND CREATING RESIDUAL TRACT C-1 (TMS NO. 346-00-00-077) CONTAINING 15.454 ACRES, RESIDUAL TRACT B-2-1 (TMS NO. 346-00-00-004) CONTAINING 24.895 ACRES, AND RESIDUAL TRACT B-2-2 (TMS NO. 346-00-00-076) CONTAINING 22.856 ACRES PREPARED FOR PENNY CREEK ASSOCIATES, LLC AND FENWICK TARRAGON APARTMENTS, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by HLA, Inc., dated Decembêr 6, 2004, and recorded March 25, 2005, in the RMC Office for Charleston County, South Carolina in Plat Book EH at Page 817. Said streets, roads, drives and cul-de-sacs butting and bounding, measuring and containing, and having such courses and distances as shown are shown on said plat, it being the intent of this legal description to convey the entire right-of-way. Reference being had to the aforesaid plat for a more full and complete description, being all of the said dimensions, a little more or a little less. Together with an exclusive easement for drainage and maintenance purposes over all drainage easement shown on the said plat.

LESS AND EXCEPTING: ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, measuring and containing 12.250 acres as more fully shown and designated as "PROPOSED TRACT B-2-3" on that plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT B-2-1 TMS NO. 346-00-00-004 CONTAINING 24.895 ACRES INTO TRACT B-2-3 (12.250 ACRES) AND RESIDUAL TRACT B-2-1 (12.645 ACRES) PROPERTY OF PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by HLA INC., dated December 10, 2004, and recorded in Plat Book EH at Page 903, in the RMC Office for Charleston County, South Carolina, said parcel having such location, buttings, boundings, courses and distances as by references to said plat more fully appear.

THE ABOVE REFERENCED PROPERTY IS ALSO KNOWN AS

ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as **Tract B-2-1**, said to contain 11.645 total acres, as shown on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT B-2-1 TMS NO. 346-00-00-004 CONTAINING 24.895 ACRES INTO TRACT B-2-3 (12.250 ACRES) AND RESIDUAL TRACT B-2-1 (12.645 ACRES) PROPERTY OF PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by HLA INC., dated December 10, 2004, and recorded in Plat Book EH at Page 903, in the R.M.C. Office for Charleston County (herein after "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING a portion of the same property conveyed to Penny Creek Associates, LLC by deed of FHP Realty Company, a Partnership, dated August 7, 2000, and recorded August 8, 2000, in the RMC Office for Charleston County, South Carolina in Book O-352 at Page 691.

TMS#: 346-00-00-004

AND

ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as **Tract B-2-2**, said to contain 22.91 acres total, more or less, as shown on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT B-2-1 TMS NO. 346-00-00-004 CONTAINING 24.895 ACRES INTO TRACT B-2-3 (12.250 ACRES) AND RESIDUAL TRACT B-2-1 (12.645 ACRES) PROPERTY OF PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by HLA INC., dated December 10, 2004, and recorded in Plat Book EH at Page 903, in the R.M.C. Office for Charleston County (herein after "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING a portion of the same property conveyed to Penny Creek Associates, LLC by deed of FHP Realty Company, a Partnership, dated August 7, 2000, and recorded August 8, 2000, in the RMC Office for Charleston County, South Carolina in Book O-352 at Page 691.

TMS#: 346-00-00-076

ALSO

Tract C:

ALL that certain piece, parcel or lot of land, situate, lying and being in the City of Charleston, County of Charleston, South Carolina, and being shown and delineated as TRACT "C," 59.280 acres of highland and 95.063 acres of marshland, on a plat by Forrest G. Calvert, dated November, 1977, entitled in part "PLAT SHOWING SUBDIVISION OF FENWICK HALL PLANTATION, 237.176 AC. HIGHLAND 148.058 AC. MARSH LOCATED ON JOHNS ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA. PROPERTY OF MRS. HELENA IGOE BLANCHARD," and recorded in Plat Book AK at Page 76, in the RMC Office for Charleston County, South Carolina (the "RMC Office"), and having such location, size, shape, buttings, boundings, and dimensions as will appear by reference to said plat which is incorporated herein by reference, be all the dimensions and measurements shown thereon a little more or less.

SAVING AND EXCEPTING that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, described as 0.97 acres of land as conveyed to the South Carolina Department of Transportation in that certain deed of conveyance from Fenwick Acres dated April 16, 1998, and recorded July 28, 1998, in Book R-307 at Page 246, in the RMC Office.

The aforesaid property and said 0.97 acre parcel are more particularly shown on that certain plat prepared by Southeastern Surveying, Inc. entitled, "A BOUNDARY SURVEY OF TRACT 'C' CONTAINING 153.53 ACRES, OWNED BY FENWICK ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," dated March 23, 1999, and recorded in the RMC Office in Plat Book ED at Page 70.

LESS AND EXCEPTING: ALL that certain piece, parcel or tract of land, situate, lying and being in the City of Charleston, Charleston County, South Carolina, containing 15.63 acres, more or less, shown and designated as "TRACT C-1" on that certain plat entitled, "PLAT SHOWING THE ADJUSTMENT OF THE PROPERTY LINE BETWEEN TMS 346-00-00-078 (TRACT C, R/W), TMS 346-00-00-076 (TRACT B-2-2) & TMS 346-00-00-002 (TRACT C), TO FORM RESIDUAL TRACT C 137.1 ± ACRES, RESIDUAL TRACT B-2-2 22.91 ACRES AND TRACT C, R/W 0.71 ACRES TO DEDICATED AS A PUBLIC RIGHT OF WAY AND SHOWING TRACT C-1 (TMS NO. 346-00-00-077) CONTAINING 15.63 ACRES PREPARED FOR PENNY CREEK ASSOCIATES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Hoffman Lester & Associates, Inc., dated June 11, 2001, and recorded August 29, 2001, in the Charleston

County RMC Office in Plat Book EF at Page 23 (the "Plat"), said property having such location, size, shape, dimensions, courses, distances, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL that certain streets, roads, drives and cul-de-sacs situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina and being shown and designated as "FENWICK HALL ALLEÉ R/W VARIES" on a plat entitled, "PLAT DEDICATING FENWICK HALL ALLEÉ, VARIABLE RIGHT-OF-WAY (TMS NO 346-00-00-078 TRACT C) TO THE USE OF THE PUBLIC CONTAINING 0.71 ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Hoffman Lester Associates, Inc., dated August 27, 2001, and recorded November 1, 2001, in the RMC Office for Charleston County, South Carolina in Plat Book EF at Page 157. Said streets, roads, drives and cul-de-sacs butting and bounding, measuring and containing, and having such courses and distances as shown are shown on said plat, it being the intent of this legal description to convey the entire right-of-way. Reference being had to the aforesaid plat for a more full and complete description, being all of the said dimensions, a little more or a little less. Together with an exclusive easement for drainage and maintenance purposes over all drainage easement shown on the said plat.

LESS AND EXCEPTING: ALL that certain streets, roads, drives and cul-de-sacs situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina and being shown and designated as "EXTENSION OF FENWICK HALL ALLEÉ" on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT C-1 (TMS NO. 346-00-00-077), TRACT B-2-1 (TMS NO. 346-00-00-004), AND TRACT B-2-2 (TMS NO. 346-00-00-076) TO CREATE AN EXTENSION OF FENWICK HALL ALLEÉ (CONTAINING 0.272 ACRES) AND CREATING RESIDUAL TRACT C-1 (TMS NO. 346-00-00-077) CONTAINING 15.454 ACRES, RESIDUAL TRACT B-2-1 (TMS NO. 346-00-00-004) CONTAINING 24.895 ACRES, AND RESIDUAL TRACT B-2-2 (TMS NO. 346-00-00-076) CONTAINING 22.856 ACRES PREPARED FOR PENNY CREEK ASSOCIATES, LLC AND FENWICK TARRAGON APARTMENTS, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by HLA, Inc., dated December 6, 2004, and recorded March 25, 2005, in the RMC Office for Charleston County, South Carolina in Plat Book EH at Page 817. Said streets, roads, drives and cul-de-sacs butting and bounding, measuring and containing, and having such courses and distances as shown are shown on said plat, it being the intent of this legal description to convey the entire right-of-way. Reference being had to the aforesaid plat for a more full and complete description, being all of the said dimensions, a little more or a little less. Together with an exclusive easement for drainage and maintenance purposes over all drainage easement shown on the said plat.

LESS AND EXCEPTING: ALL that certain piece, parcel or lot of land, situate, lying and being in the City of Charleston, Charleston County, South Carolina, and described as "LOT 1" on a plat prepared by GPA Professional Land Surveyors entitled, "SUBDIVISION PLAT SHOWING THE SUBDIVISION OF TMS# 346-00-00-002 TO CREATE NEW LOTS 1, 2, 3, and RESIDUAL, THE PRESERVE AT FENWICK PLANTATION OWNED BY PENNY CREEK

ASSOCIATES, LLC," dated April 12, 2005, and recorded April 26, 2005, in Plat Book EH at Page 884 in the RMC Office for Charleston County, South Carolina.

LESS AND EXCEPTING: ALL that parcel, piece or lot of land, situate, lying and being located on Johns Island, Charleston County, South Carolina, shown as "LOT 15 7,871 SF 0.181 AC" on a plat entitled, "A FINAL SUBDIVISION PLAT OF A PORTION OF THE PRESERVE AT FENWICK PLANTATION LOTS 19 THRU 25, LOTS 31 THRU 35 AND PUBLIC RIGHT-OF-WAY BEING A PORTION OF LOT 1, OWNED BY EPIC DEVELOPMENT GROUP, LLC AND LOT 15, HELD IN TRUST AND TO BE CONVEYED TO EPIC DEVELOPMENT GROUP, LLC, BEING A PORTION OF LOT 3 AND EASEMENTS LOCATED ON LOT 2, OWNED BY PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated January 25, 2006, last revised April 13, 2006, and recorded May 5, 2006, in Plat Book EJ at Pages 722-727, in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL those pieces, parcels or lots of land located in the City of Charleston, Charleston County, South Carolina and shown and designated as "P.O.A. OPEN SPACE 9,701 SF 0.223 AC," "P.O.A. OPEN SPACE 23,630 SF 0.543 AC" and "P.O.A. OPEN SPACE 26,343 SF 0.605 AC" on a plat entitled, "A FINAL SUBDIVISION PLAT OF A PORTION OF THE PRESERVE AT FENWICK PLANTATION LOTS 19 THRU 25, LOTS 31 THRU 35 AND PUBLIC RIGHT-OF-WAY BEING A PORTION OF LOT 1, OWNED BY EPIC DEVELOPMENT GROUP, LLC AND LOT 15, HELD IN TRUST AND TO BE CONVEYED TO EPIC DEVELOPMENT GROUP, LLC, BEING A PORTION OF LOT 3 AND EASEMENTS LOCATED ON LOT 2, OWNED BY PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated January 25, 2006, last revised April 13, 2006, and recorded May 5, 2006, in Plat Book EJ at Pages 722-727, in the RMC Office for Charleston County. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL that parcel, piece or lot of land, situate, lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown as "LOT A-1" on a plat entitled, "A SUBDIVISION PLAT OF LOT 3 OWNED BY PENNY CREEK ASSOCIATES, LLC TO CREATE LOT A-1 LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Southeastern Surveying of Charleston, Inc., dated May 10, 2006, and recorded June 15, 2006, in Plat Book DF at Page 133, in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL that parcel, piece or lot of land, situate, lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as "LOT 40 12,690 SF 0.291 AC #1648" on a plat entitled, "A SUBDIVISION PLAT OF LOT 2 OWNED BY PENNY CREEK

ASSOCIATES, LLC THE PRESERVE AT FENWICK PLANTATION TO CREATE LOT 40, CONTAINING 0.291 ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated June 25, 2008, and recorded March 4, 2009, in Plat Book L09 at Page 0097, in the RMC Office for Charleston County, South Carolina. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL those certain pieces, parcels or lots of land, situate lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as "LOT 52" and "LOT 53" on that certain plat entitled, "A SUBDIVISION PLAT OF LOT 2 OWNED BY PENNY CREEK ASSOCIATES, LLC TO CREATE LOT 52, LOT 53 AND ZURLO WAY RIGHT-OF-WAY, THE PRESERVE AT FENWICK PLANTATION LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by SWA Surveying LLC, dated June 9, 2013, and recorded July 2, 2013, in Plat Book L13 at Page 0238, in the RMC Office for Charleston County. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

DERIVATION: BEING a portion of the same property conveyed to Penny Creek Associates, L.L.C. by (i) deed of Fenwick Acres, a Partnership, dated March 25, 1999, and recorded March 25, 1999, in the RMC Office for Charleston County, South Carolina in Book D-323 at Page 311; and (ii) deed of Julius H. Weil, Jr. dated March 25, 1999, and recorded March 25, 1999, in the said RMC Office in Book D-323 at Page 439.

<u>Property</u>	<u>TMS#</u>
Residual Tract C (55.19 acres)	346-00-00-002
Lot 2 Residual (14.46 acres)	346-00-00-258
Lot 3 Residual (9.76 acres)	346-00-00-259
Lot 13	346-00-00-775
Zurlo Way (Private R/W)	346-00-00-781
Lot 58	346-00-00-782
Lot 59	346-00-00-783

EXHIBIT "A-2"

ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as Tract B-2-1, said to contain 11.645 total acres, as shown on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT B-2-1 TMS NO. 346-00-00-004 CONTAINING 24.895 ACRES INTO TRACT B-2-3 (12.250 ACRES) AND RESIDUAL TRACT B-2-1 (12.645 ACRES) PROPERTY OF PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by HLA INC., dated December 10, 2004, and recorded in Plat Book EH at Page 903, in the R.M.C. Office for Charleston County (herein after "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING a portion of the same property conveyed to Penny Creek Associates, LLC by deed of FHP Realty Company, a Partnership, dated August 7, 2000, and recorded August 8, 2000, in the RMC Office for Charleston County, South Carolina in Book O-352 at Page 691.

TMS#: 346-00-00-004

ALSO

ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as Tract B-2-2, said to contain 22.91 acres total, more or less, as shown on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT B-2-1 TMS NO. 346-00-00-004 CONTAINING 24.895 ACRES INTO TRACT B-2-3 (12.250 ACRES) AND RESIDUAL TRACT B-2-1 (12.645 ACRES) PROPERTY OF PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by HLA INC., dated December 10, 2004, and recorded in Plat Book EH at Page 903, in the R.M.C. Office for Charleston County (herein after "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING a portion of the same property conveyed to Penny Creek Associates, LLC by deed of FHP Realty Company, a Partnership, dated August 7, 2000, and recorded August 8, 2000, in the RMC Office for Charleston County, South Carolina in Book O-352 at Page 691.

TMS#: 346-00-00-076

ALSO

ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, State of South Carolina, shown and designated as Lot 2, said to contain 16.41 total acres, more or less, as shown on a plat entitled, "SHOWING THE SUBDIVISION OF TMS# 346-00-00-002 TO CREATE NEW LOTS 1, 2, 3, AND RESIDUAL THE PRESERVE AT FENWICK PLANTATION TO BE OWNED BY EPIC DEVELOPMENT, LLC THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by GPA Professional Land Surveyors, dated May 15, 2005, and recorded in Plat Book EJ at Page 107, in the R.M.C. Office for Charleston County, South Carolina (hereinafter "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

LESS AND EXCEPTING: ALL that parcel, piece or lot of land, situate, lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as "LOT 40 12,690.SF 0.291 AC.#1648" on a plat entitled, "A SUBDIVISION PLAT OF LOT 2 OWNED BY PENNY CREEK ASSOCIATES, LLC THE PRESERVE AT FENWICK PLANTATION TO CREATE LOT 40, CONTAINING 0.291 ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated June 25, 2008, and recorded March 4, 2009, in Plat Book L09 at Page 0097, in the RMC Office for Charleston County, South Carolina. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL those certain pieces, parcels or lots of land, situate lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as "LOT 52" and "LOT 53" on that certain plat entitled, "A SUBDIVISION PLAT OF LOT 2 OWNED BY PENNY CREEK ASSOCIATES, LLC TO CREATE LOT 52, LOT 53 AND ZURLO WAY RIGHT-OF-WAY, THE PRESERVE AT FENWICK PLANTATION LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by SWA Surveying LLC, dated June 9, 2013, and recorded July 2, 2013, in Plat Book L13 at Page 0238, in the RMC Office for Charleston County. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

BEING a portion of the same property conveyed to Penny Creek Associates, L.L.C. by (i) deed of Fenwick Acres, a Partnership, dated March 25, 1999, and recorded March 25, 1999, in the RMC Office for Charleston County, South Carolina in Book D-323 at Page 311; and (ii) deed of Julius H. Weil, Jr. dated March 25, 1999, and recorded March 25, 1999, in the said RMC Office in Book D-323 at Page 439.

<u>Property</u>	<u>TMS#</u>
Lot 2 Residual (14.46 acres)	346-00-00-258
Zurlo Way (Private R/W)	346-00-00-781
Lot 58	346-00-00-782
Lot 59	346-00-00-783

ALSO

ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, State of South Carolina, shown and designated as Lot 3, said to contain 11.96 total acres, more or less, as shown on a plat entitled, "SHOWING THE SUBDIVISION OF TMS# 346-00-00-002 TO CREATE NEW LOTS 1, 2, 3, AND RESIDUAL THE PRESERVE AT FENWICK PLANTATION TO BE OWNED BY EPIC DEVELOPMENT, LLC THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by GPA Professional Land Surveyors, dated May 15, 2005, and recorded in Plat Book EJ at Page 107, in the R.M.C. Office for Charleston County, South Carolina (hereinafter "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

LESS AND EXCEPTING: ALL that parcel, piece or lot of land, situate, lying and being located on Johns Island, Charleston County, South Carolina, shown as "LOT 15 7,871 SF 0.181 AC" on a plat entitled, "A FINAL SUBDIVISION PLAT OF A PORTION OF THE PRESERVE AT FENWICK PLANTATION LOTS 19 THRU 25, LOTS 31 THRU 35 AND PUBLIC RIGHT-OF-WAY BEING A PORTION OF LOT 1, OWNED BY EPIC DEVELOPMENT GROUP, LLC AND LOT 15, HELD IN TRUST AND TO BE CONVEYED TO EPIC DEVELOPMENT GROUP, LLC, BEING A PORTION OF LOT 3 AND EASEMENTS LOCATED ON LOT 2, OWNED BY PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated January 25, 2006, last revised April 13, 2006, and recorded May 5, 2006, in Plat Book EJ at Pages 722-727, in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL those pieces, parcels or lots of land located in the City of Charleston, Charleston County, South Carolina and shown and designated as "P.O.A. OPEN SPACE 9,701 SF 0.223 AC," "P.O.A. OPEN SPACE 23,630 SF 0.543 AC" and "P.O.A. OPEN SPACE 26,343 SF 0.605 AC" on a plat entitled, "A FINAL SUBDIVISION PLAT OF A PORTION OF THE PRESERVE AT FENWICK PLANTATION LOTS 19 THRU 25, LOTS 31 THRU 35 AND PUBLIC RIGHT-OF-WAY BEING A PORTION OF LOT 1, OWNED BY EPIC DEVELOPMENT GROUP, LLC AND LOT 15, HELD IN TRUST AND TO BE CONVEYED TO EPIC DEVELOPMENT GROUP, LLC, BEING A PORTION OF LOT 3 AND EASEMENTS LOCATED ON LOT 2, OWNED BY PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated January 25, 2006, last revised April 13, 2006, and recorded May 5, 2006, in Plat Book EJ at Pages 722-727, in the RMC Office for Charleston County. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL that parcel, piece or lot of land, situate, lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown as "LOT A-1" on a plat entitled, "A SUBDIVISION PLAT OF LOT 3 OWNED BY PENNY CREEK ASSOCIATES, LLC TO CREATE LOT A-1 LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Southeastern Surveying of Charleston, Inc., dated May 10, 2006, and recorded June 15, 2006, in Plat Book DF at Page 133, in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

BEING a portion of the same property conveyed to Penny Creek Associates, L.L.C. by (i) deed of Fenwick Acres, a Partnership, dated March 25, 1999, and recorded March 25, 1999, in the RMC Office for Charleston County, South Carolina in Book D-323 at Page 311; and (ii) deed of Julius H. Weil, Jr. dated March 25, 1999, and recorded March 25, 1999, in the said RMC Office in Book D-323 at Page 439.

<u>Property</u>	<u>TMS#</u>
Lot 3 Residual (9.76 acres)	346-00-00-259
Lot 13	346-00-00-775

EXHIBIT "A-3"

Units 1A, 1B, 1C, 1D, 2F, 3A, 3B, 3C, 3D, 3E, 3F, 4A, 4B, 4D, 4E, 4F, 5A, 5B, 5C, 5D, 5E, 5F, 5G, 5H, 6A, 6B, 6C, 6D, 7A, 7B, 7C, 7D, 8A, 8B, 8C, 8D, 8E, 8F, 9A, 9B, 9C, 9D, 10A, 10B, 10E, 10F, 11A, 11B, 11C, 11D, 11E, 11F, 12A, 12B, 12C, 12D, 12E, 12F, 13A, 13B, 13C, 13D, 13E, 13F, 13G, 13H, 14A, 14B, 14C, 14D, 14E and 14F in THE GROVE AT FENWICK PLANTATION HORIZONTAL PROPERTY REGIME located on Johns Island in the City of Charleston, Charleston County, South Carolina, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act (Section 27-31-10, et seq., S.C. Code Ann. (1976) as amended) by Master Deed dated January 11, 2008, with appended By-laws and other Exhibits, and recorded in the Charleston County RMC Office on January 25, 2008, in Book P-649 at Page 739, et seq., as amended by that certain First Amendment to Master Deed of The Grove at Fenwick Plantation Horizontal Property Regime dated May 7, 2008, and recorded in the Charleston County RMC Office in Book B-659 at Page 666, as amended and restated by that certain Amended and Restated Master Deed of The Grove at Fenwick Plantation Horizontal Property Regime dated June 26, 2009, and recorded in the Charleston County RMC Office on July 7, 2009, in Book 0066 at Page 394 with appended By-laws and other Exhibits, as amended by that certain First Amendment to Amended and Restated Master Deed of The Grove at Fenwick Plantation Horizontal Property Regime dated January 31, 2011, and recorded in the Charleston County RMC Office in Book 0169 at Page 380 (the "Restated Master Deed"), which Units are shown on the Plans attached as Exhibit "C" to the Restated Master Deed and described in the Restated Master Deed; together with the undivided interest in the Common Elements declared by the Restated Master Deed to be appurtenance to the Units being conveyed. The Restated Master Deed and all Exhibits thereto are incorporated herein and by this reference are made a part hereof.

BEING the same property conveyed to The Grove at Fenwick Plantation, LLC by deed of St. Andrews Garden Investors, LLC dated January 31, 2011, and recorded February 1, 2001, in the RMC Office for Charleston County, South Carolina in Book 0169 at Page 390.

<u>Unit</u>	<u>TMS#</u>
1A	312-00-00-399
1B	312-00-00-400
1C	312-00-00-401
1D	312-00-00-402
2F	312-00-00-408
3A	312-00-00-409
3B	312-00-00-410
3C	312-00-00-411
3D	312-00-00-412
3E	312-00-00-413
3F	312-00-00-414
4A	312-00-00-415
4B	312-00-00-416
4D	312-00-00-418

4E	312-00-00-419
4F	312-00-00-420
5A	312-00-00-421
5B	312-00-00-422
5C	312-00-00-423
5D	312-00-00-424
5E	312-00-00-425
5F	312-00-00-426
5G	312-00-00-427
5H	312-00-00-428
6A	312-00-00-429
6B	312-00-00-430
6C	312-00-00-431
6D	312-00-00-432
7A	312-00-00-433
7B	312-00-00-434
7C	312-00-00-435
7D	312-00-00-436
8A	312-00-00-437
8B	312-00-00-438
8C	312-00-00-439
8D	312-00-00-440
8E	312-00-00-441
8F	312-00-00-442
9A	312-00-00-443
9B	312-00-00-444
9C	312-00-00-445
9D	312-00-00-446
10A	312-00-00-447
10B	312-00-00-448
10E	312-00-00-451
10F	312-00-00-452
11A	312-00-00-453
11B	312-00-00-454
11C	312-00-00-455
11D	312-00-00-456
11E	312-00-00-457
11F	312-00-00-458
12A	312-00-00-459
12B	312-00-00-460
12C	312-00-00-461
12D	312-00-00-462
12E	312-00-00-463
12F	312-00-00-464
13A	312-00-00-465
13B	312-00-00-466
13C	312-00-00-467
13D	312-00-00-468
13E	312-00-00-469
13F	312-00-00-470
13G	312-00-00-471
13H	312-00-00-472

14A	312-00-00-473
14B	312-00-00-474
14C	312-00-00-475
14D	312-00-00-476
14E	312-00-00-477
14F	312-00-00-478

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Wells Fargo Bank, N.A., as Successor by
Merger to Wachovia Bank, National
Association, as Successor by Merger to First
Union National Bank,

Plaintiff,

vs.

Penny Creek Associates, L.L.C. a/k/a Penny
Creek Associates, LLC; The Grove at Fenwick
Plantation, LLC; Michel F. LaPlante a/k/a
Michel Laplante a/k/a Mitch Laplante;
Charlotte R. Zurlo; Eugene J. Zurlo; Charlotte
R. Zurlo and Eugene J. Zurlo, as Co-Trustees
of The Nicklaus Lane Realty Trust No. 1 under
Declaration of Trust dated May 22, 1998, and
The Zurlo Investment Trust No. 1 pursuant to
trust agreement dated August 10, 1998;
Fenwick Hall Plantation Property Owners
Assn., Inc. a/k/a Fenwick Hall Plantation
Property Owners' Association, Inc.; Preserve
at Fenwick Hall Property Owners Association,
Inc. a/k/a The Preserve at Fenwick Hall
Property Owners' Association, Inc.; and The
Grove At Fenwick Plantation Condominium
Association, Inc.,

Defendants.

IN THE CIRCUIT COURT

Case No. 2014-CP-10- 4946

NOTICE OF INTENT TO REFER

FILED
2014 AUG 14 PM 4:32
JULIE A. ARMSTRONG
CLERK OF COURT
BY _____

YOU WILL ALSO TAKE NOTICE, the Plaintiff will move for an Order of Reference of
this cause to the Master-in-Equity for Charleston County, which Order shall, pursuant to Rule
53, SCRPC and Section 14-11-85 of the Code of Laws of South Carolina (1976), as amended,
specifically provide that the said Master-in-Equity is authorized and empowered to enter a final
judgment in this case, which judgment shall be appealable to the South Carolina Supreme Court
or Court of Appeals as provided by the South Carolina Appellate Court Rules.



Robert C. Byrd
Frank B. Ulmer
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650

Attorneys for the Plaintiff
Wells Fargo Bank, N.A., as Successor by Merger to
Wachovia Bank, National Association, as Successor
by Merger to First Union National Bank

August 14, 2014

Charleston, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF CHARLESTON

Wells Fargo Bank, N.A., as Successor by
Merger to Wachovia Bank, National
Association, as Successor by Merger to First
Union National Bank,

Plaintiff,

vs.

Penny Creek Associates, L.L.C. a/k/a Penny
Creek Associates, LLC; The Grove at Fenwick
Plantation, LLC; Michel F. LaPlante a/k/a
Michel Laplante a/k/a Mitch Laplante;
Charlotte R. Zurlo; Eugene J. Zurlo; Charlotte
R. Zurlo and Eugene J. Zurlo, as Co-Trustees
of The Nicklaus Lane Realty Trust No. 1 under
Declaration of Trust dated May 22, 1998, and
The Zurlo Investment Trust No. 1 pursuant to
trust agreement dated August 10, 1998;
Fenwick Hall Plantation Property Owners
Assn., Inc. a/k/a Fenwick Hall Plantation
Property Owners' Association, Inc.; Preserve
at Fenwick Hall Property Owners Association,
Inc. a/k/a The Preserve at Fenwick Hall
Property Owners' Association, Inc.; and The
Grove At Fenwick Plantation Condominium
Association, Inc.,

Defendants.

IN THE CIRCUIT COURT

Case No. 2014-CP-10- 4946

SUMMONS

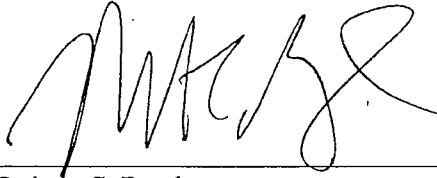
(Non-Jury)
(Mortgage Foreclosure; Guaranty)

FILED
2014 AUG 14 PM 4:32
JULIE ARMSTRONG
CLERK OF COURT
BY _____

TO: THE DEFENDANTS ABOVE NAMED:

YOU ARE HEREBY SUMMONED AND REQUIRED to answer the Complaint in the
above entitled action, a copy of which is herewith served upon you, and to serve a copy of your
Answer upon the subscribers at their offices located at 200 Meeting Street, Suite 301,
Charleston, South Carolina 29401, within thirty (30) days after the date of such service,

exclusive of the day of service; and if you fail to answer the said Complaint within the time aforesaid, judgment by default will be rendered against you for the relief demanded in the Complaint.



Robert C. Byrd
Frank B. Ulmer
PARKER POE ADAMS & BERNSTEIN LLP
200 Meeting Street, Suite 301
Charleston, SC 29401
(843) 727-2650

Attorneys for the Plaintiff
Wells Fargo Bank, N.A., as Successor by Merger to
Wachovia Bank, National Association, as Successor
by Merger to First Union National Bank

August 14, 2014

Charleston, South Carolina

STATE OF SOUTH CAROLINA
COUNTY OF CHARLESTON

Wells Fargo Bank, N.A., as Successor by
Merger to Wachovia Bank, National
Association, as Successor by Merger to First
Union National Bank,

Plaintiff,

vs.

Penny Creek Associates, L.L.C. a/k/a Penny
Creek Associates, LLC; The Grove at Fenwick
Plantation, LLC; Michel F. LaPlante a/k/a
Michel Laplante a/k/a Mitch Laplante;
Charlotte R. Zurlo; Eugene J. Zurlo; Charlotte
R. Zurlo and Eugene J. Zurlo, as Co-Trustees
of The Nicklaus Lane Realty Trust No. 1 under
Declaration of Trust dated May 22, 1998, and
The Zurlo Investment Trust No. 1 pursuant to
trust agreement dated August 10, 1998;
Fenwick Hall Plantation Property Owners
Assn., Inc. a/k/a Fenwick Hall Plantation
Property Owners' Association, Inc.; Preserve
at Fenwick Hall Property Owners Association,
Inc. a/k/a The Preserve at Fenwick Hall
Property Owners' Association, Inc.; and The
Grove At Fenwick Plantation Condominium
Association, Inc.,

Defendants.

IN THE CIRCUIT COURT

Case No. 2014-CP-10- 4946

COMPLAINT

(Non-Jury)
(Mortgage Foreclosure; Guaranty)

FILED
2014 AUG 14 PM 4:33
JULIE M. STRONG
CLERK OF COURT
BY _____

PLB
pg. 1
The plaintiff, Wells Fargo Bank, N.A., as Successor by Merger to Wachovia Bank,
National Association, as Successor by Merger to First Union National Bank (the "Plaintiff"),
complaining of the defendants herein, would show unto this Court as follows:

1. The Plaintiff is a national banking association duly organized and existing under
the laws of the United States of America and is authorized to transact business in the State of
South Carolina.

2. Upon information and belief, the defendants are business entities or individuals doing business, residing and/or owning an interest in real property in Charleston County, South Carolina.

3. The properties that are the subject of this action, which are described more fully in Exhibits "A-1", "A-2" and "A-3" attached hereto and incorporated herein by reference, are situate and located in Charleston County, South Carolina.

4. This foreclosure action involves a mortgage on investment property, and therefore, the Home Affordable Modification Program is inapplicable.

5. This foreclosure action does not involve an Owner-Occupied dwelling, and therefore, the May 2, 2011, South Carolina Supreme Court Order relating to mortgage foreclosures is inapplicable.

6. This Court has jurisdiction over the parties and subject matter of this action, and venue is proper in Charleston County.

FOR A FIRST CAUSE OF ACTION
(Foreclosure of Penny Creek Mortgages)

PHB
PS-2
7. The allegations of the preceding paragraphs are reasserted and incorporated herein as if restated verbatim.

The \$5,300,000.00 Loan

8. Heretofore, defendant Penny Creek Associates, L.L.C. a/k/a Penny Creek Associates, LLC ("Penny Creek"), for consideration, made, executed and delivered that certain Promissory Note dated August 7, 2000 (the "Original Penny Creek Note 1"), payable to the order of First Union National Bank ("First Union"), in the original principal sum of \$5,300,000.00, together with interest as provided therein.

9. To secure payment of the indebtedness evidenced by the Original Penny Creek Note 1, in accordance with the terms and conditions thereof, defendant Penny Creek, for

consideration, made, executed and delivered to First Union a certain Mortgage and Absolute Assignment of Leases dated August 7, 2000 ("Penny Creek Mortgage 1"), covering certain real property located in Charleston County, South Carolina and described more fully therein.

10. Penny Creek Mortgage 1 was recorded in the RMC Office for Charleston County on August 8, 2000, in Book P-352 at Page 613. A true and correct copy of Penny Creek Mortgage 1 is attached hereto as Exhibit "B" and incorporated herein by reference.

PWB
pg. 3
11. Wells Fargo Bank, N.A. is the successor by merger to Wachovia Bank, National Association who is the successor by merger to First Union and is the sole owner and holder of the Original Penny Creek Note 1, the Penny Creek Mortgage 1, and all other related loan documents.

12. Certain terms of the Original Penny Creek Note 1 were amended, modified and/or renewed by, among other things, that certain renewal Promissory Note dated April 28, 2008, in the original principal sum of \$3,142,781.92 (the "Penny Creek Renewal Note 1"). (The Original Penny Creek Note 1 and the Penny Creek Renewal Note 1 are hereinafter referred to, collectively, as "Penny Creek Note 1.")

The \$2,200,000.00 Loan

13. Heretofore, defendant Penny Creek, for consideration, made, executed and delivered that certain Promissory Note dated April 5, 2006 (the "Original Penny Creek Note 2"), payable to the order of the Plaintiff, then known as Wachovia Bank, National Association, in the original principal sum of \$2,200,000.00, together with interest as provided therein. A true and correct copy of the Original Penny Creek Note 2 is attached hereto as Exhibit "C" and incorporated herein by reference.

14. To secure payment of the indebtedness evidenced by the Original Penny Creek Note 2, in accordance with the terms and conditions thereof, defendant Penny Creek, for consideration, made, executed and delivered to the Plaintiff a certain Mortgage and Assignment

of Rents dated April 5, 2006 ("Penny Creek Mortgage 2"), covering certain real property located in Charleston County, South Carolina and described more fully therein.

15. Penny Creek Mortgage 2 was recorded in the RMC Office for Charleston County on April 7, 2006, in Book G-579 at Page 249. A true and correct copy of Penny Creek Mortgage 2 is attached hereto as Exhibit "D" and incorporated herein by reference. (Penny Creek Mortgage 1 and Penny Creek Mortgage 2 are hereinafter referred to, collectively, as the "Penny Creek Mortgages.")

16. Certain terms of the Original Penny Creek Note 2 were thereafter amended, modified and/or renewed by: (i) that certain renewal Promissory Note dated July 5, 2007, in the original principal sum of \$4,450,000.00; and (ii) that certain Modification Number One to Promissory Note dated April 28, 2008 (collectively, the "Penny Creek Renewal Note 2"). True and correct copies of the Penny Creek Renewal Note 2 are attached hereto, collectively, as Exhibit "E" and incorporation herein by reference. (The Original Penny Creek Note 2 and the Penny Creek Renewal Note 2 are hereinafter referred to, collectively, as "Penny Creek Note 2.")

17. Thereafter, Penny Creek Mortgage 2 was amended and/or modified by that certain Modification of Mortgage and Notice of Future Advance dated July 5, 2007, and recorded in the RMC Office for Charleston County on July 27, 2007, in Book V-633 at Page 342, a copy of which is attached hereto as Exhibit "F" and incorporated herein by reference.

2009 Modification and Consolidation

18. Thereafter, certain terms of Penny Creek Note 1 and Penny Creek Note 2 were amended, modified and/or renewed by, among other things, that certain renewal Promissory Note dated July 28, 2009, in the original principal sum of \$7,592,781.92, which, among other things, consolidated Penny Creek Note 1 and Penny Creek Note 2 (collectively, the "Penny Creek Note"). A true and correct copy of the Penny Creek Note is attached hereto as Exhibit "G" and incorporated herein by reference.

2012 and 2013 Modifications

19. Thereafter, certain terms of the Penny Creek Note were amended, modified and/or renewed by: (i) that certain First Modification to Promissory Note dated August 14, 2012; and (ii) that certain Second Modification to Promissory Note dated May 23, 2013 (collectively, the "Penny Creek Note Modifications"). True and correct copies of the Penny Creek Note Modifications are attached hereto, collectively, as Exhibit "H" and incorporated herein by reference.

20. In connection with the aforesaid modifications, Penny Creek Mortgage 1 and Penny Creek Mortgage 2 were amended and/or modified by that certain Modification of Mortgages dated October 1, 2012 (the "Mortgage Modification"), and recorded in the RMC Office for Charleston County on October 15, 2012, in Book 0284 at Page 614. A true and correct copy of the Mortgage Modification is attached hereto as Exhibit "I" and incorporated herein by reference.

21. Under the express terms of the aforesaid Mortgage Modification, Penny Creek Mortgage 1 and Penny Creek Mortgage 2 (collectively, the "Penny Creek Mortgages") secure the Penny Creek Note in its entirety.

22. Certain lots were released from the lien of the Penny Creek Mortgages, as amended and/or modified, but the Penny Creek Mortgages still encumber the property described more fully in Exhibits "A-1" and "A-2" (collectively, the "Penny Creek Property").

Loan Defaults

23. The obligations under the terms and conditions of the Penny Creek Note are in default for, among other reasons, failing to repay the indebtedness in accordance with the terms thereof, including without limitation failing to repay the loan in full at maturity on April 18, 2014. The defendants have been duly notified, in writing, of the outstanding defaults.

24. As a result of the aforesaid defaults, the Plaintiff is entitled to foreclosure of its Penny Creek Mortgages, as amended and/or modified.

25. There is now due and owing to the Plaintiff under the Penny Creek Note as of July 1, 2014, exclusive of costs and attorneys' fees, the sum of \$6,291,974.34, which represents: (1) unpaid principal in the amount of \$6,275,289.35; (2) unpaid and accrued interest in the amount of \$13,334.99; and (3) appraisal fees in the amount of \$3,350.00.

26. It is provided in the loan documents that the maker would pay all costs and expenses of collection, including, but not limited to, reasonable attorneys' fees.

27. Therefore, the Plaintiff is entitled to judgment of foreclosure on its Penny Creek Mortgages in the amount of Six Million Two Hundred Ninety-One Thousand Nine Hundred Seventy-Four and 34/100 Dollars (\$6,291,974.34), plus additional interest and other amounts properly chargeable to the aforesaid loan, including without limitation, attorneys' fees and the costs of this action.

28. The Plaintiff is informed and believes that its Penny Creek Mortgages constitute valid first priority mortgage liens on the Penny Creek Property.

29. The Plaintiff is further informed and believes that the following defendants claim or may claim an interest in all or a portion of the Penny Creek Property:

- (a) Fenwick Hall Plantation Property Owners Assn., Inc. a/k/a Fenwick Hall Plantation Property Owners' Association, Inc., by virtue of any and all unpaid assessments and/or fines that may constitute a lien on the Penny Creek Property; and
- (b) Preserve at Fenwick Hall Property Owners Association, Inc. a/k/a The Preserve at Fenwick Hall Property Owners' Association, Inc., by virtue of any and all unpaid assessments and/or fines that may constitute a lien on the Penny Creek Property.

30. The interests of the defendants, if any, are junior and subordinate to the lien of the Plaintiff's Penny Creek Mortgages, as amended and/or modified, and the Plaintiff is entitled

to judgment barring the defendants and all persons claiming by or through the defendants from any and all right, title and interest in or to the Penny Creek Property, and each and every part thereof.

31. The Plaintiff does not waive, but expressly demands, the right to seek a personal judgment against defendant Penny Creek for any deficiency remaining after the sale of the Penny Creek Property.

FOR A SECOND CAUSE OF ACTION
(Foreclosure of Fenwick Mortgage)

32. The allegations of the preceding paragraphs are reasserted and incorporated herein as if restated verbatim.

33. Heretofore, defendant The Grove at Fenwick Plantation, LLC ("The Grove"), for consideration, made, executed and delivered that certain Promissory Note dated January 31, 2011 (the "Fenwick Note"), payable to the order of the Plaintiff, in the original principal sum of \$3,536,250.00, together with interest as provided therein. A true and correct copy of the Fenwick Note is attached hereto as Exhibit "J" and incorporated herein by reference.

34. To secure payment of the indebtedness evidenced by the Fenwick Note, in accordance with the terms and conditions thereof, defendant The Grove for consideration, made, executed and delivered to the Plaintiff a certain Mortgage and Assignment of Rents dated January 31, 2011 (the "Fenwick Mortgage"), covering certain real property located in Charleston County, South Carolina and described more fully in Exhibit "A-3" attached hereto (the "Fenwick Property").

35. The Fenwick Mortgage was recorded in the RMC Office for Charleston County on February 1, 2011, in Book 0169 at Page 391. A true and correct copy of the Fenwick Mortgage is attached hereto as Exhibit "K" and incorporated herein by reference.

36. Certain terms of the Fenwick Note were thereafter amended and/or modified by, among other things: (i) that certain First Modification to Promissory Note dated June 15, 2012; and (ii) that certain Second Modification to Promissory Note dated May 28, 2013 (collectively, the Fenwick Note Modifications"). True and correct copies of the Fenwick Note Modifications are attached hereto, collectively, as Exhibit "L" and incorporated herein by reference.

37. The obligations under the terms and conditions of the Fenwick Note, as amended and/or modified, are in default for, among other reasons, failing to repay the indebtedness in accordance with the terms thereof, including without limitation failing to repay the loan in full at maturity on April 18, 2014. The defendants has been duly notified, in writing, of the outstanding defaults.

203
pg. 8
38. As a result of the aforesaid defaults, the Plaintiff is entitled to foreclosure of its Fenwick Mortgage.

39. There is now due and owing to the Plaintiff under the Fenwick Note, as amended and/or modified, as of July 1, 2014, exclusive of costs and attorneys' fees, the sum of \$3,205,533.86, which represents: (1) unpaid principal in the amount of \$3,198,671.93; (2) unpaid and accrued interest in the amount of \$6,041.93; and (3) appraisal fees in the amount of \$3,100.00.

40. It is provided in the loan documents that the maker would pay all costs and expenses of collection, including, but not limited to, reasonable attorneys' fees.

41. Therefore, the Plaintiff is entitled to judgment of foreclosure on its Fenwick Mortgage in the amount of Three Million Two Hundred Five Thousand Five Hundred Thirty-Three and 86/100 Dollars (\$3,205,533.86), plus additional interest and other amounts properly chargeable to the aforesaid loans, including without limitation, attorneys' fees and the costs of this action.

42. The Plaintiff is informed and believes that its Fenwick Mortgage constitutes a valid first priority mortgage lien on the Fenwick Property.

43. The Plaintiff is further informed and believes that defendant The Grove At Fenwick Plantation Condominium Association, Inc. claims or may claim an interest in all or a portion of the Fenwick Property by virtue of any and all unpaid assessments and/or fines that may constitute a lien on the Fenwick Property.

44. The interests of the defendants, if any, are junior and subordinate to the lien of the Plaintiff's Fenwick Mortgage, and the Plaintiff is entitled to judgment barring the defendants and all persons claiming by or through the defendants from any and all right, title and interest in or to the Fenwick Property, and each and every part thereof.

45. The Plaintiff does not waive, but expressly demands, the right to seek a personal judgment against defendant The Grove for any deficiency remaining after the sale of the Fenwick Property.

FOR A THIRD CAUSE OF ACTION
(Guaranty of the Penny Creek Note)

46. The allegations of the preceding paragraphs are reasserted and incorporated herein as if restated verbatim.

47. In order to induce the Plaintiff to modify or extend the aforesaid loan as evidenced by the Penny Creek Note, and to further secure the same, defendants Michel F. LaPlante a/k/a Michel Laplante a/k/a Mitch Laplante ("LaPlante"); Charlotte R. Zurlo and Eugene J. Zurlo (the "Zurlos"); and the Zurlos, as Co-Trustees of The Nicklaus Lane Realty Trust No. 1 under Declaration of Trust dated May 22, 1998 (the "Nicklaus Lane Trust") and The Zurlo Investment Trust No. 1 (the "Zurlo Trust") pursuant to trust agreement dated August 10, 1998, for consideration, executed separate, written Unconditional Guaranties dated July 28, 2009 (collectively, the "Penny Creek Guaranties"), whereby the said defendants absolutely,

unconditionally and irrevocably guaranteed to the Plaintiff the full and prompt payment of the obligations of defendant Penny Creek to the Plaintiff under the Penny Creek Note, as consolidated. True and correct copies of the Penny Creek Guaranties are attached hereto, collectively, as Exhibit "M" and incorporated herein by reference.

48. As described more fully hereinabove, the obligations under the terms and conditions of the subject loan is in default for the reasons stated, and the said defendants were duly notified, in writing, of the outstanding defaults.

49. There is now due and owing to the Plaintiff under the subject loan as evidenced by the Penny Creek Note, as of July 1, 2014, exclusive of costs and attorneys' fees, the sum of \$6,291,974.34.

RSB
pg. 10
50. Therefore, the Plaintiff is entitled to judgment against defendants Laplante; the Zurlos; and the Zurlos, as Co-Trustees of the Nicklaus Lane Trust and the Zurlo Trust, jointly and severally, in the amount of Six Million Two Hundred Ninety-One Thousand Nine Hundred Seventy-Four and 34/100 Dollars (\$6,291,974.34), plus additional interest and other amounts properly chargeable to the aforesaid loan, including without limitation, attorneys' fees and the costs of this action.

FOR A FOURTH CAUSE OF ACTION
(Guaranty of the Fenwick Note)

51. The allegations of the preceding paragraphs are reasserted and incorporated herein as if restated verbatim.

52. In order to induce the Plaintiff to modify or extend the aforesaid loan, as evidenced by the Fenwick Note, and to further secure the same, defendants Laplante; the Zurlos; and the Zurlos, as Co-Trustees of the Zurlo Trust, for consideration, executed separate, written Unconditional Guaranties dated January 31, 2011 (collectively, the "Fenwick Guaranties"), whereby the said defendants absolutely, unconditionally and irrevocably guaranteed to the

Plaintiff the full and prompt payment of the obligations of defendant The Grove to the Plaintiff under the Fenwick Note, as amended and/or modified. True and correct copies of the Fenwick Guaranties are attached hereto, collectively, as Exhibit "N" and incorporated herein by reference.

53. As described more fully hereinabove, the obligations under the terms and conditions of the subject loan is in default for the reasons stated, and the said defendants were duly notified, in writing, of the outstanding defaults.

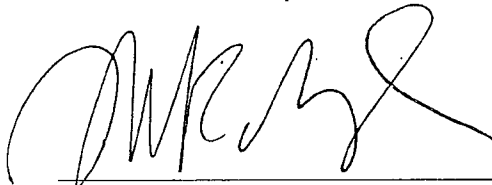
54. There is now due and owing to the Plaintiff under the subject loan as evidenced by the Fenwick Note, as amended and/or modified, as of July 1, 2014, exclusive of costs and attorneys' fees, the sum of \$3,205,533.86.

PLB
pg. 1
55. Therefore, the Plaintiff is entitled to judgment against defendants Laplante; the Zurlos; and the Zurlos, as Co-Trustees of the Zurlo Trust, jointly and severally, in the amount of Three Million Two Hundred Five Thousand Five Hundred Thirty-Three and 86/100 Dollars (\$3,205,533.86), plus additional interest and other amounts properly chargeable to the aforesaid loan, including without limitation, attorneys' fees and the costs of this action.

WHEREFORE, the Plaintiff prays:

- (a) That the amounts due under the subject loans be ascertained and determined under the direction of the Court, together with attorneys fees and the costs of this action;
- (b) For a judgment of foreclosure for the amount so found to be due and owing to the Plaintiff, together with reasonable attorneys' fees and the costs of this action;
- (c) That the mortgaged properties be sold pursuant to Order of this Court, the equity of redemption be barred, and the proceeds of sale be first applied to the costs and expenses of this action, with the remaining proceeds being applied upon the Plaintiff's judgment and attorneys' fees, any amount in excess to be held by the Court until further ordered;
- (d) That the defendants and all persons whomsoever claiming by or through the defendants be forever barred of all right, title and interest in and to the mortgaged Property, and each and every part thereof;

- RM
pg. 12
- (e) For the entry of judgment against defendants Michel F. LaPlante a/k/a Michel Laplante a/k/a Mitch Laplante; Charlotte R. Zurlo; Eugene J. Zurlo; and Charlotte R. Zurlo and Eugene J. Zurlo, as Co-Trustees of The Nicklaus Lane Realty Trust No. 1 under Declaration of Trust dated May 22, 1998, and The Zurlo Investment Trust No. 1 pursuant to trust agreement dated August 10, 1998, jointly and severally, on their Penny Creek Guaranties, in the amount of \$6,291,974.34, plus additional interest and other amounts properly chargeable to the subject loans, including without limitation, attorneys' fees and the costs of this action;
 - (f) For the entry of judgment against defendants Michel F. LaPlante a/k/a Michel Laplante a/k/a Mitch Laplante; Charlotte R. Zurlo; Eugene J. Zurlo; and Charlotte R. Zurlo and Eugene J. Zurlo, as Co-Trustees of The Zurlo Investment Trust No. 1 pursuant to trust agreement dated August 10, 1998, jointly and severally, on their Fenwick Guaranties, in the amount of \$3,205,533.86, plus additional interest and other amounts properly chargeable to the subject loans, including without limitation, attorneys' fees and the costs of this action; and
 - (g) For such other and further relief as the Court may deem just and proper.



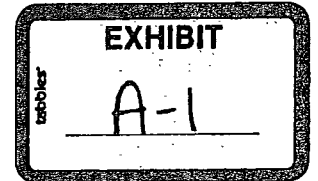
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Charleston, SC 29401
(843) 727-2680

Attorneys for the Plaintiff
Wells Fargo Bank, N.A., as Successor by Merger
to Wachovia Bank, National Association, as
Successor by Merger to First Union National Bank

August 14, 2014

Charleston, South Carolina

EXHIBIT A-1



Tract B-2:

ALL that piece, parcel or tract of land, together with the improvements thereon, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as "Tract 'B-2' 42.7 Acres," on a plat entitled, "SUBDIVISION OF PROPERTY IN THE NAME OF F-H-P REALTY LOCATED ON JOHNS ISLAND, CHARLESTON COUNTY, S.C.," by Forrest G. Calvert, RLS, dated September 17, 1979, and recorded in the RMC Office for Charleston County, South Carolina (hereinafter the "RMC Office") in Plat Book AO at Page 74, said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully be shown.

And Tract A:

ALL that piece, parcel or tract of land, together with the improvements thereon, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as "FHP Realty Tract 'A' 5.503 Acres" on a plat entitled, "PLAT SHOWING THE ABANDONMENT OF PROPERTY LINES FOR TMS NO. 346-00-00-12 AND TMS NO. 346-00-00-011, AND THE SUBSEQUENT SUBDIVISION OF TMS NO. 346-00-00-007 INTO TRACT 'A' CONTAINING 5.503 ACRES AND TRACT 'B' CONTAINING 7.497 ACRES OWNED BY FHP REALTY LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Hoffman Lester Associates, Inc., dated September 24, 1997, and recorded January 20, 1998, in the aforesaid RMC Office in Plat Book EC at Page 263.

The aforesaid Tract B-2 and Tract A are also more particularly shown on that certain plat entitled, "PLAT SHOWING PROPERTY LINE BETWEEN TMS NO. 346-00-00-004, TRACT B-2 (CONTAINING 42.49 ACRES) AND TMS NO. 346-00-00-007, RESIDUAL TRACT B (CONTAINING 5.50 ACRES) TO FORM TRACT B-2 (CONTAINING 47.99 ACRES), OWNED BY FHP REALTY LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Hoffman Lester and Associates, Inc., dated April 7, 2000, and recorded as Exhibit "___" [sic: "C"] to that certain deed of conveyance from FHP Realty Company, a Partnership, to Penny Creek Associates, L.L.C., and also about to be recorded in the RMC Office for Charleston County, S.C.

Note: The above-referenced deed from FHP Realty Company, a Partnership, to Penny Creek Associates, L.L.C. is dated August 7, 2000, and recorded in the RMC Office for Charleston County on August 8, 2000, in Book O-352 at Page 691.

TOGETHER WITH a twenty-foot (20') non-exclusive easement in common with Helena Igoe Blanchard, her heirs and assigns, and others entitled thereto, in favor of "Tract B" above-described, for ingress and egress over, upon and across that certain twenty-foot (20') easement extending from Maybank Highway on the

south to "Tract A" on the north, as said Tract A is shown on that certain plat recorded in Plat Book AK at Page 76 in the RMC Office, which easement is granted in that certain deed of conveyance from Helena Igoe Blanchard to FHP Realty Company, a Partnership, dated April 27, 1978, and recorded in Book P-115 at Page 273, in the RMC Office.

LESS AND EXCEPTING: ALL that certain streets, roads, drives and cul-de-sacs situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina and being shown and designated as "FENWICK HALL ALLEÉ R/W VARIES" on a plat entitled, "PLAT DEDICATING FENWICK HALL ALLEÉ, VARIABLE RIGHT-OF-WAY (TMS NO 346-00-00-078 TRACT C) TO THE USE OF THE PUBLIC CONTAINING 0.71 ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Hoffman Lester Associates, Inc., dated August 27, 2001, and recorded November 1, 2001, in the RMC Office for Charleston County, South Carolina in Plat Book EF at Page 157. Said streets, roads, drives and cul-de-sacs butting and bounding, measuring and containing, and having such courses and distances as shown are shown on said plat, it being the intent of this legal description to convey the entire right-of-way. Reference being had to the aforesaid plat for a more full and complete description, being all of the said dimensions, a little more or a little less. Together with an exclusive easement for drainage and maintenance purposes over all drainage easement shown on the said plat.

LESS AND EXCEPTING: ALL that certain streets, roads, drives and cul-de-sacs situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina and being shown and designated as "EXTENSION OF FENWICK HALL ALLEÉ" on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT C-1 (TMS NO. 346-00-00-077), TRACT B-2-1 (TMS NO. 346-00-00-004), AND TRACT B-2-2 (TMS NO. 346-00-00-076) TO CREATE AN EXTENSION OF FENWICK HALL ALLEÉ (CONTAINING 0.272 ACRES) AND CREATING RESIDUAL TRACT C-1 (TMS NO. 346-00-00-077) CONTAINING 15.454 ACRES, RESIDUAL TRACT B-2-1 (TMS NO. 346-00-00-004) CONTAINING 24.895 ACRES, AND RESIDUAL TRACT B-2-2 (TMS NO. 346-00-00-076) CONTAINING 22.856 ACRES PREPARED FOR PENNY CREEK ASSOCIATES, LLC AND FENWICK TARRAGON APARTMENTS, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by HLA, Inc., dated December 6, 2004, and recorded March 25, 2005, in the RMC Office for Charleston County, South Carolina in Plat Book EH at Page 817. Said streets, roads, drives and cul-de-sacs butting and bounding, measuring and containing, and having such courses and distances as shown are shown on said plat, it being the intent of this legal description to convey the entire right-of-way. Reference being had to the aforesaid plat for a more full and complete description, being all of the said dimensions, a little more or a little less. Together with an exclusive easement for drainage and maintenance purposes over all drainage easement shown on the said plat.

LESS AND EXCEPTING: ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, measuring and containing 12.250 acres as more fully shown and designated as "PROPOSED TRACT B-2-3" on that plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT B-2-1 TMS NO. 346-00-00-004 CONTAINING 24.895 ACRES INTO TRACT B-2-3 (12.250 ACRES) AND RESIDUAL TRACT B-2-1 (12.645 ACRES) PROPERTY OF PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by HLA INC., dated December 10, 2004, and recorded in Plat Book EH at Page 903, in the RMC Office for Charleston County, South Carolina, said parcel having such location, buttings, boundings, courses and distances as by references to said plat more fully appear.

THE ABOVE REFERENCED PROPERTY IS ALSO KNOWN AS

ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as **Tract B-2-1**, said to contain 11.645 total acres, as shown on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT B-2-1 TMS NO. 346-00-00-004 CONTAINING 24.895 ACRES INTO TRACT B-2-3 (12.250 ACRES) AND RESIDUAL TRACT B-2-1 (12.645 ACRES) PROPERTY OF PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by HLA INC., dated December 10, 2004, and recorded in Plat Book EH at Page 903, in the R.M.C. Office for Charleston County (herein after "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING a portion of the same property conveyed to Penny Creek Associates, LLC by deed of FHP Realty Company, a Partnership, dated August 7, 2000, and recorded August 8, 2000, in the RMC Office for Charleston County, South Carolina in Book O-352 at Page 691.

TMS#: 346-00-00-004

AND

ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as **Tract B-2-2**, said to contain 22.91 acres total, more or less, as shown on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT B-2-1 TMS NO. 346-00-00-004 CONTAINING 24.895 ACRES INTO TRACT B-2-3 (12.250 ACRES) AND RESIDUAL TRACT B-2-1 (12.645 ACRES) PROPERTY OF PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by HLA INC., dated December 10, 2004, and recorded in Plat Book EH at Page 903, in the R.M.C. Office for Charleston County (herein after "R.M.C. Office"); said

parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING a portion of the same property conveyed to Penny Creek Associates, LLC by deed of FHP Realty Company, a Partnership, dated August 7, 2000, and recorded August 8, 2000, in the RMC Office for Charleston County, South Carolina in Book O-352 at Page 691.

TMS#: 346-00-00-076

ALSO

Tract C:

ALL that certain piece, parcel or lot of land, situate, lying and being in the City of Charleston, County of Charleston, South Carolina, and being shown and delineated as TRACT "C," 59.280 acres of highland and 95.063 acres of marshland, on a plat by Forrest G. Calvert, dated November, 1977, entitled in part "PLAT SHOWING SUBDIVISION OF FENWICK HALL PLANTATION, 237.176 AC. HIGHLAND 148.058 AC. MARSH LOCATED ON JOHNS ISLAND, CHARLESTON COUNTY, SOUTH CAROLINA. PROPERTY OF MRS. HELENA IGOE BLANCHARD," and recorded in Plat Book AK at Page 76, in the RMC Office for Charleston County, South Carolina (the "RMC Office"), and having such location, size, shape, buttings, boundings, and dimensions as will appear by reference to said plat which is incorporated herein by reference, be all the dimensions and measurements shown thereon a little more or less.

SAVING AND EXCEPTING that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, described as 0.97 acres of land as conveyed to the South Carolina Department of Transportation in that certain deed of conveyance from Fenwick Acres dated April 16, 1998, and recorded July 28, 1998, in Book R-307 at Page 246, in the RMC Office.

The aforesaid property and said 0.97 acre parcel are more particularly shown on that certain plat prepared by Southeastern Surveying, Inc. entitled, "A BOUNDARY SURVEY OF TRACT 'C' CONTAINING 153.53 ACRES, OWNED BY FENWICK ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," dated March 23, 1999, and recorded in the RMC Office in Plat Book ED at Page 70.

LESS AND EXCEPTING: ALL that certain piece, parcel or tract of land, situate, lying and being in the City of Charleston, Charleston County, South Carolina, containing 15.63 acres, more or less, shown and designated as "TRACT C-1" on that certain plat entitled, "PLAT SHOWING THE ADJUSTMENT OF THE PROPERTY LINE BETWEEN TMS 346-00-00-078 (TRACT C, R/W), TMS 346-00-00-076 (TRACT B-2-2) & TMS 346-00-00-002 (TRACT C), TO FORM RESIDUAL TRACT C 137.1 ± ACRES, RESIDUAL TRACT B-2-2 22.91

ACRES AND TRACT C, R/W 0.71 ACRES TO DEDICATED AS A PUBLIC RIGHT OF WAY AND SHOWING TRACT C-1 (TMS NO. 346-00-00-077) CONTAINING 15.63 ACRES PREPARED FOR PENNY CREEK ASSOCIATES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Hoffman Lester & Associates, Inc., dated June 11, 2001, and recorded August 29, 2001, in the Charleston County RMC Office in Plat Book EF at Page 23 (the "Plat"), said property having such location, size, shape, dimensions, courses, distances, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL that certain streets, roads, drives and cul-de-sacs situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina and being shown and designated as "FENWICK HALL ALLEÉ R/W VARIES" on a plat entitled, "PLAT DEDICATING FENWICK HALL ALLEÉ, VARIABLE RIGHT-OF-WAY (TMS NO 346-00-00-078 TRACT C) TO THE USE OF THE PUBLIC CONTAINING 0.71 ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Hoffman Lester Associates, Inc., dated August 27, 2001, and recorded November 1, 2001, in the RMC Office for Charleston County, South Carolina in Plat Book EF at Page 157. Said streets, roads, drives and cul-de-sacs butting and bounding, measuring and containing, and having such courses and distances as shown are shown on said plat, it being the intent of this legal description to convey the entire right-of-way. Reference being had to the aforesaid plat for a more full and complete description, being all of the said dimensions, a little more or a little less. Together with an exclusive easement for drainage and maintenance purposes over all drainage easement shown on the said plat.

LESS AND EXCEPTING: ALL that certain streets, roads, drives and cul-de-sacs situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina and being shown and designated as "EXTENSION OF FENWICK HALL ALLEÉ" on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT C-1 (TMS NO. 346-00-00-077), TRACT B-2-1 (TMS NO. 346-00-00-004), AND TRACT B-2-2 (TMS NO. 346-00-00-076) TO CREATE AN EXTENSION OF FENWICK HALL ALLEÉ (CONTAINING 0.272 ACRES) AND CREATING RESIDUAL TRACT C-1 (TMS NO. 346-00-00-077) CONTAINING 15.454 ACRES, RESIDUAL TRACT B-2-1 (TMS NO. 346-00-00-004) CONTAINING 24.895 ACRES, AND RESIDUAL TRACT B-2-2 (TMS NO. 346-00-00-076) CONTAINING 22.856 ACRES PREPARED FOR PENNY CREEK ASSOCIATES, LLC AND FENWICK TARRAGON APARTMENTS, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by HLA, Inc., dated December 6, 2004, and recorded March 25, 2005, in the RMC Office for Charleston County, South Carolina in Plat Book EH at Page 817. Said streets, roads, drives and cul-de-sacs butting and bounding, measuring and containing, and having such courses and distances as shown are shown on said plat, it being the intent of this legal description to convey the entire right-of-way. Reference being had to the aforesaid plat for a more full and complete description, being all of the said dimensions, a little more or a little less. Together with an exclusive easement for

drainage and maintenance purposes over all drainage easement shown on the said plat.

LESS AND EXCEPTING: ALL that certain piece, parcel or lot of land, situate, lying and being in the City of Charleston, Charleston County, South Carolina, and described as "LOT 1" on a plat prepared by GPA Professional Land Surveyors entitled, "SUBDIVISION PLAT SHOWING THE SUBDIVISION OF TMS# 346-00-00-002 TO CREATE NEW LOTS 1, 2, 3, and RESIDUAL, THE PRESERVE AT FENWICK PLANTATION OWNED BY PENNY CREEK ASSOCIATES, LLC," dated April 12, 2005, and recorded April 26, 2005, in Plat Book EH at Page 884 in the RMC Office for Charleston County, South Carolina.

LESS AND EXCEPTING: ALL that parcel, piece or lot of land, situate, lying and being located on Johns Island, Charleston County, South Carolina, shown as "LOT 15 7,871 SF 0.181 AC" on a plat entitled, "A FINAL SUBDIVISION PLAT OF A PORTION OF THE PRESERVE AT FENWICK PLANTATION LOTS 19 THRU 25, LOTS 31 THRU 35 AND PUBLIC RIGHT-OF-WAY BEING A PORTION OF LOT 1, OWNED BY EPIC DEVELOPMENT GROUP, LLC AND LOT 15, HELD IN TRUST AND TO BE CONVEYED TO EPIC DEVELOPMENT GROUP, LLC, BEING A PORTION OF LOT 3 AND EASEMENTS LOCATED ON LOT 2, OWNED BY PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated January 25, 2006, last revised April 13, 2006, and recorded May 5, 2006, in Plat Book EJ at Pages 722-727, in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL those pieces, parcels or lots of land located in the City of Charleston, Charleston County, South Carolina and shown and designated as "P.O.A. OPEN SPACE 9,701 SF 0.223 AC," "P.O.A. OPEN SPACE 23,630 SF 0.543 AC" and "P.O.A. OPEN SPACE 26,343 SF 0.605 AC" on a plat entitled, "A FINAL SUBDIVISION PLAT OF A PORTION OF THE PRESERVE AT FENWICK PLANTATION LOTS 19 THRU 25, LOTS 31 THRU 35 AND PUBLIC RIGHT-OF-WAY BEING A PORTION OF LOT 1, OWNED BY EPIC DEVELOPMENT GROUP, LLC AND LOT 15, HELD IN TRUST AND TO BE CONVEYED TO EPIC DEVELOPMENT GROUP, LLC, BEING A PORTION OF LOT 3 AND EASEMENTS LOCATED ON LOT 2, OWNED BY PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated January 25, 2006, last revised April 13, 2006, and recorded May 5, 2006, in Plat Book EJ at Pages 722-727, in the RMC Office for Charleston County. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL that parcel, piece or lot of land, situate, lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown as "LOT A-1" on a plat entitled, "A SUBDIVISION PLAT OF LOT 3

OWNED BY PENNY CREEK ASSOCIATES, LLC TO CREATE LOT A-1 LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Southeastern Surveying of Charleston, Inc., dated May 10, 2006, and recorded June 15, 2006, in Plat Book DF at Page 133, in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

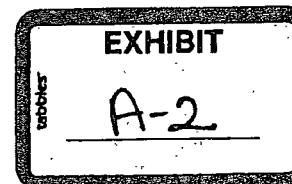
LESS AND EXCEPTING: ALL that parcel, piece or lot of land, situate, lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as "LOT 40 12,690 SF 0.291 AC #1648" on a plat entitled, "A SUBDIVISION PLAT OF LOT 2 OWNED BY PENNY CREEK ASSOCIATES, LLC THE PRESERVE AT FENWICK PLANTATION TO CREATE LOT 40, CONTAINING 0.291 ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated June 25, 2008, and recorded March 4, 2009, in Plat Book L09 at Page 0097, in the RMC Office for Charleston County, South Carolina. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL those certain pieces, parcels or lots of land, situate lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as "LOT 52" and "LOT 53" on that certain plat entitled, "A SUBDIVISION PLAT OF LOT 2 OWNED BY PENNY CREEK ASSOCIATES, LLC TO CREATE LOT 52, LOT 53 AND ZURLO WAY RIGHT-OF-WAY, THE PRESERVE AT FENWICK PLANTATION LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by SWA Surveying LLC, dated June 9, 2013, and recorded July 2, 2013, in Plat Book L13 at Page 0238, in the RMC Office for Charleston County. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

DERIVATION: BEING a portion of the same property conveyed to Penny Creek Associates, L.L.C. by (i) deed of Fenwick Acres, a Partnership, dated March 25, 1999, and recorded March 25, 1999, in the RMC Office for Charleston County, South Carolina in Book D-323 at Page 311; and (ii) deed of Julius H. Weil, Jr. dated March 25, 1999, and recorded March 25, 1999, in the said RMC Office in Book D-323 at Page 439.

<u>Property</u>	<u>TMS#</u>
Residual Tract C (55.19 acres)	346-00-00-002
Lot 2 Residual (14.46 acres)	346-00-00-258
Lot 3 Residual (9.76 acres)	346-00-00-259
Lot 13	346-00-00-775
Zurlo Way (Private R/W)	346-00-00-781
Lot 58	346-00-00-782
Lot 59	346-00-00-783

EXHIBIT "A-2"



ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as Tract B-2-1, said to contain 11.645 total acres, as shown on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT B-2-1 TMS NO. 346-00-00-004 CONTAINING 24.895 ACRES INTO TRACT B-2-3 (12.250 ACRES) AND RESIDUAL TRACT B-2-1 (12.645 ACRES) PROPERTY OF PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by HLA INC., dated December 10, 2004, and recorded in Plat Book EH at Page 903, in the R.M.C. Office for Charleston County (herein after "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING a portion of the same property conveyed to Penny Creek Associates, LLC by deed of FHP Realty Company, a Partnership, dated August 7, 2000, and recorded August 8, 2000, in the RMC Office for Charleston County, South Carolina in Book O-352 at Page 691.

TMS#: 346-00-00-004

ALSO

ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as Tract B-2-2, said to contain 22.91 acres total, more or less, as shown on a plat entitled, "PLAT SHOWING THE SUBDIVISION OF TRACT B-2-1 TMS NO. 346-00-00-004 CONTAINING 24.895 ACRES INTO TRACT B-2-3 (12.250 ACRES) AND RESIDUAL TRACT B-2-1 (12.645 ACRES) PROPERTY OF PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by HLA INC., dated December 10, 2004, and recorded in Plat Book EH at Page 903, in the R.M.C. Office for Charleston County (herein after "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

BEING a portion of the same property conveyed to Penny Creek Associates, LLC by deed of FHP Realty Company, a Partnership, dated August 7, 2000, and recorded August 8, 2000, in the RMC Office for Charleston County, South Carolina in Book O-352 at Page 691.

TMS#: 346-00-00-076

ALSO

ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, State of South Carolina, shown and designated as Lot 2, said to contain 16.41 total acres, more or less, as shown on a plat entitled, "SHOWING THE SUBDIVISION OF TMS# 346-00-00-002 TO CREATE NEW LOTS 1, 2, 3, AND RESIDUAL THE PRESERVE AT FENWICK PLANTATION TO BE OWNED BY EPIC DEVELOPMENT, LLC THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by GPA Professional Land Surveyors, dated May 15, 2005, and recorded in Plat Book EJ at Page 107, in the R.M.C. Office for Charleston County, South Carolina (hereinafter "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

LESS AND EXCEPTING: ALL that parcel, piece or lot of land, situate, lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as "LOT 40 12,690 SF 0.291 AC #1648" on a plat entitled, "A SUBDIVISION PLAT OF LOT 2 OWNED BY PENNY CREEK ASSOCIATES, LLC THE PRESERVE AT FENWICK PLANTATION TO CREATE LOT 40, CONTAINING 0.291 ACRES LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated June 25, 2008, and recorded March 4, 2009, in Plat Book L09 at Page 0097, in the RMC Office for Charleston County, South Carolina. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL those certain pieces, parcels or lots of land, situate lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown and designated as "LOT 52" and "LOT 53" on that certain plat entitled, "A SUBDIVISION PLAT OF LOT 2 OWNED BY PENNY CREEK ASSOCIATES, LLC TO CREATE LOT 52, LOT 53 AND ZURLO WAY RIGHT-OF-WAY, THE PRESERVE AT FENWICK PLANTATION LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by SWA Surveying LLC, dated June 9, 2013, and recorded July 2, 2013, in Plat Book L13 at Page 0238, in the RMC Office for Charleston County. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

BEING a portion of the same property conveyed to Penny Creek Associates, L.L.C. by (i) deed of Fenwick Acres, a Partnership, dated March 25, 1999, and recorded March 25, 1999, in the RMC Office for Charleston County, South Carolina in Book D-323 at Page 311; and (ii) deed of Julius H. Weil, Jr. dated March 25, 1999, and recorded March 25, 1999, in the said RMC Office in Book D-323 at Page 439.

<u>Property</u>	<u>TMS#</u>
Lot 2 Residual (14.46 acres)	346-00-00-258
Zurlo Way (Private R/W)	346-00-00-781
Lot 58	346-00-00-782
Lot 59	346-00-00-783

ALSO

ALL that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, State of South Carolina, shown and designated as Lot 3, said to contain 11.96 total acres, more or less, as shown on a plat entitled, "SHOWING THE SUBDIVISION OF TMS# 346-00-00-002 TO CREATE NEW LOTS 1, 2, 3, AND RESIDUAL THE PRESERVE AT FENWICK PLANTATION TO BE OWNED BY EPIC DEVELOPMENT, LLC THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA," prepared by GPA Professional Land Surveyors, dated May 15, 2005, and recorded in Plat Book EJ at Page 107, in the R.M.C. Office for Charleston County, South Carolina (hereinafter "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

LESS AND EXCEPTING: ALL that parcel, piece or lot of land, situate, lying and being located on Johns Island, Charleston County, South Carolina, shown as "LOT 15 7,871 SF 0.181 AC" on a plat entitled, "A FINAL SUBDIVISION PLAT OF A PORTION OF THE PRESERVE AT FENWICK PLANTATION LOTS 19 THRU 25, LOTS 31 THRU 35 AND PUBLIC RIGHT-OF-WAY BEING A PORTION OF LOT 1, OWNED BY EPIC DEVELOPMENT GROUP, LLC AND LOT 15, HELD IN TRUST AND TO BE CONVEYED TO EPIC DEVELOPMENT GROUP, LLC, BEING A PORTION OF LOT 3 AND EASEMENTS LOCATED ON LOT 2, OWNED BY PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated January 25, 2006, last revised April 13, 2006, and recorded May 5, 2006, in Plat Book EJ at Pages 722-727, in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

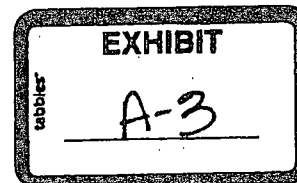
LESS AND EXCEPTING: ALL those pieces, parcels or lots of land located in the City of Charleston, Charleston County, South Carolina and shown and designated as "P.O.A. OPEN SPACE 9,701 SF 0.223 AC," "P.O.A. OPEN SPACE 23,630 SF 0.543 AC" and "P.O.A. OPEN SPACE 26,343 SF 0.605 AC" on a plat entitled, "A FINAL SUBDIVISION PLAT OF A PORTION OF THE PRESERVE AT FENWICK PLANTATION LOTS 19 THRU 25, LOTS 31 THRU 35 AND PUBLIC RIGHT-OF-WAY BEING A PORTION OF LOT 1, OWNED BY EPIC DEVELOPMENT GROUP, LLC AND LOT 15, HELD IN TRUST AND TO BE CONVEYED TO EPIC DEVELOPMENT GROUP, LLC, BEING A PORTION OF LOT 3 AND EASEMENTS LOCATED ON LOT 2, OWNED BY PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," by Southeastern Surveying of Charleston, Inc., dated January 25, 2006, last revised April 13, 2006, and recorded May 5, 2006, in Plat Book EJ at Pages 722-727, in the RMC Office for Charleston County. Said lots having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

LESS AND EXCEPTING: ALL that parcel, piece or lot of land, situate, lying and being on Johns Island, City of Charleston, Charleston County, South Carolina shown as "LOT A-1" on a plat entitled, "A SUBDIVISION PLAT OF LOT 3 OWNED BY PENNY CREEK ASSOCIATES, LLC TO CREATE LOT A-1 LOCATED IN THE CITY OF CHARLESTON, CHARLESTON COUNTY, SOUTH CAROLINA," prepared by Southeastern Surveying of Charleston, Inc., dated May 10, 2006, and recorded June 15, 2006, in Plat Book DF at Page 133, in the RMC Office for Charleston County. Said lot having such size, shape, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

BEING a portion of the same property conveyed to Penny Creek Associates, L.L.C. by (i) deed of Fenwick Acres, a Partnership, dated March 25, 1999, and recorded March 25, 1999, in the RMC Office for Charleston County, South Carolina in Book D-323 at Page 311; and (ii) deed of Julius H. Weil, Jr. dated March 25, 1999, and recorded March 25, 1999, in the said RMC Office in Book D-323 at Page 439.

<u>Property</u>	<u>TMS#</u>
Lot 3 Residual (9.76 acres)	346-00-00-259
Lot 13	346-00-00-775

EXHIBIT "A-3"



Units 1A, 1B, 1C, 1D, 2F, 3A, 3B, 3C, 3D, 3E, 3F, 4A, 4B, 4D, 4E, 4F, 5A, 5B, 5C, 5D, 5E, 5F, 5G, 5H, 6A, 6B, 6C, 6D, 7A, 7B, 7C, 7D, 8A, 8B, 8C, 8D, 8E, 8F, 9A, 9B, 9C, 9D, 10A, 10B, 10E, 10F, 11A, 11B, 11C, 11D, 11E, 11F, 12A, 12B, 12C, 12D, 12E, 12F, 13A, 13B, 13C, 13D, 13E, 13F, 13G, 13H, 14A, 14B, 14C, 14D, 14E and 14F in **THE GROVE AT FENWICK PLANTATION HORIZONTAL PROPERTY REGIME** located on Johns Island in the City of Charleston, Charleston County, South Carolina, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act (Section 27-31-10, et seq., S.C. Code Ann. (1976) as amended) by Master Deed dated January 11, 2008, with appended By-laws and other Exhibits, and recorded in the Charleston County RMC Office on January 25, 2008, in Book P-649 at Page 739, et seq., as amended by that certain First Amendment to Master Deed of The Grove at Fenwick Plantation Horizontal Property Regime dated May 7, 2008, and recorded in the Charleston County RMC Office in Book B-659 at Page 666, as amended and restated by that certain Amended and Restated Master Deed of The Grove at Fenwick Plantation Horizontal Property Regime dated June 26, 2009, and recorded in the Charleston County RMC Office on July 7, 2009, in Book 0066 at Page 394 with appended By-laws and other Exhibits, as amended by that certain First Amendment to Amended and Restated Master Deed of The Grove at Fenwick Plantation Horizontal Property Regime dated January 31, 2011, and recorded in the Charleston County RMC Office in Book 0169 at Page 380 (the "Restated Master Deed"), which Units are shown on the Plans attached as Exhibit "C" to the Restated Master Deed and described in the Restated Master Deed; together with the undivided interest in the Common Elements declared by the Restated Master Deed to be appurtenance to the Units being conveyed. The Restated Master Deed and all Exhibits thereto are incorporated herein and by this reference are made a part hereof.

BEING the same property conveyed to The Grove at Fenwick Plantation, LLC by deed of St. Andrews Garden Investors, LLC dated January 31, 2011, and recorded February 1, 2001, in the RMC Office for Charleston County, South Carolina in Book 0169 at Page 390.

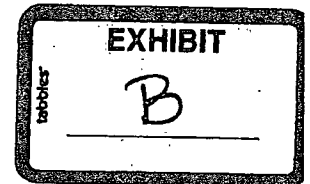
<u>Unit</u>	<u>TMS#</u>
1A	312-00-00-399
1B	312-00-00-400
1C	312-00-00-401
1D	312-00-00-402
2F	312-00-00-408
3A	312-00-00-409
3B	312-00-00-410
3C	312-00-00-411
3D	312-00-00-412
3E	312-00-00-413
3F	312-00-00-414

4A	312-00-00-415
4B	312-00-00-416
4D	312-00-00-418
4E	312-00-00-419
4F	312-00-00-420
5A	312-00-00-421
5B	312-00-00-422
5C	312-00-00-423
5D	312-00-00-424
5E	312-00-00-425
5F	312-00-00-426
5G	312-00-00-427
5H	312-00-00-428
6A	312-00-00-429
6B	312-00-00-430
6C	312-00-00-431
6D	312-00-00-432
7A	312-00-00-433
7B	312-00-00-434
7C	312-00-00-435
7D	312-00-00-436
8A	312-00-00-437
8B	312-00-00-438
8C	312-00-00-439
8D	312-00-00-440
8E	312-00-00-441
8F	312-00-00-442
9A	312-00-00-443
9B	312-00-00-444
9C	312-00-00-445
9D	312-00-00-446
10A	312-00-00-447
10B	312-00-00-448
10E	312-00-00-451
10F	312-00-00-452
11A	312-00-00-453
11B	312-00-00-454
11C	312-00-00-455
11D	312-00-00-456
11E	312-00-00-457
11F	312-00-00-458
12A	312-00-00-459
12B	312-00-00-460
12C	312-00-00-461
12D	312-00-00-462
12E	312-00-00-463
12F	312-00-00-464
13A	312-00-00-465
13B	312-00-00-466

13C	312-00-00-467
13D	312-00-00-468
13E	312-00-00-469
13F	312-00-00-470
13G	312-00-00-471
13H	312-00-00-472
14A	312-00-00-473
14B	312-00-00-474
14C	312-00-00-475
14D	312-00-00-476
14E	312-00-00-477
14F	312-00-00-478



BK P 352PG613



PREPARED BY: Jean Dooley
RETURN TO: Quality Control
First Union National Bank
P.O. Box 13327
Roanoke, Virginia 24040-7381

MORTGAGE AND ABSOLUTE ASSIGNMENT OF LEASES

This MORTGAGE (hereafter referred to as "Mortgage") made August 7, 2000, by and between, PENNY CREEK ASSOCIATES, L.L.C., whose address is 4 Nicklaus Lane, Klawah Island, South Carolina 29455 ("Mortgagor") and FIRST UNION NATIONAL BANK, a national banking association, whose address is 55 Beattie Place, Greenville, South Carolina 29602 ("Bank").

WITNESSETH:

To secure payment and performance of obligations under a Promissory Note (the "Note") of even date herewith, in the amount of \$5,300,000.00, made by Mortgagor payable to Bank, this Mortgage, other loan documents as defined in the Note (the "Loan Documents"), and swap agreements between Bank and Mortgagor as defined in 11 U.S.C. § 101, all other indebtedness of Mortgagor to Bank whenever borrowed or incurred, and any renewals, extensions, novations, or modifications of the foregoing (collectively the "Obligations"), and in consideration of these premises and for other consideration, Mortgagor does mortgage, grant and convey unto Bank, its successors and assigns, all of Mortgagor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "Property"): (i) all those certain tracts of land in the County of Charleston, State of South Carolina described in EXHIBIT A attached hereto and made part hereof (the "Land"); (ii) all buildings and improvements now or hereafter erected on the Land; (iii) all fixtures attached to the Land or any buildings or improvements situated thereon; and (iv) all estates, rights, tenements, hereditaments, privileges, rents, issues, profits easements, and appurtenances of any kind benefiting the Land; all means of access to and from the Land, whether public or private; and all water and mineral rights.

TO HAVE AND TO HOLD the Property and all the estate, right, title and interest, in law and in equity, of Mortgagor's in and to the Property unto Bank, its successors and assigns, forever.

Mortgagor WARRANTS AND REPRESENTS that Mortgagor is lawfully seized of the Property, in fee simple, absolute, that Mortgagor has the legal right to convey and encumber the same, and that the Property is free and clear of all liens and encumbrances. Mortgagor further warrants and will forever defend all and singular the Property and title thereto to Bank and Bank's successors and assigns, against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS that if all Obligations are timely paid and performed each and every representation, warranty, agreement, and condition of this Mortgage, the other Loan Documents and any swap agreements, are complied with and abided by, this Mortgage and the estate hereby created shall cease and be null, void, and canceled of record.

To protect the security of this Mortgage, Mortgagor further represents and agrees with Bank as follows:

Payment of Obligations. That the Obligations shall be timely paid and performed.

Future Advances. This Mortgage is given to secure not only existing Obligations, but also future advances to the same extent as if such future advances are made on the date of the execution of this Mortgage. The principal amount (including any swap agreements and future advances) that may be so secured may decrease or increase from time to time, but the total amount so secured at any one time shall not exceed the maximum principal amount of \$5,300,000.00, plus all interest, costs, reimbursements, fees and expenses due under this Mortgage and secured hereby. Mortgagor shall not execute any document that impairs or otherwise impacts the priority of any future advances secured by this Mortgage.

Leases, Subleases and Easements. Mortgagor shall maintain, enforce and cause to be performed all of the terms and conditions under any lease, sublease or easement which may constitute a portion of the Property. Mortgagor shall not, without the consent of Bank, enter into any new lease of all or any portion of the Property, agree to the cancellation or surrender under any lease of all or any portion of the Property, agree to prepayment of rents, issues or profits (other than rent paid at the signing of a lease or sublease), modify any such lease so as to shorten the term, decrease the rent, accelerate the payment of rent, or change the terms of any renewal option; and any such purported new lease, cancellation, surrender, prepayment or modification made without the consent of Bank shall be void as against Bank.

Required Insurance. Mortgagor shall maintain with respect to the Property: (i) during construction of any improvements on the Property, "all-risk" builders risk insurance (non-reporting Completed Value with Special Cause of Loss form), in an amount not less than the total value of the improvements under construction, naming Bank as mortgagee and loss payee; (ii) upon completion of construction and at all other times, insurance against loss or damage by fire and other casualties and hazards by insurance written on an "all risks" basis, including specifically windstorm and/or hail damage, in an amount not less than the replacement cost thereof, naming Bank as loss payee and mortgagee; (iii) if the Property is required to be insured pursuant to the National Flood Reform Act of 1994, and the regulations promulgated thereunder, flood insurance in an amount at least equal to the lesser of the completed replacement value of the improvements on the Property or the maximum limit of coverage available thereunder, naming Bank as mortgagee and loss payee; and (iv) liability insurance providing coverage in such amount as Bank may require but in no event less than \$1,000,000.00 combined single limit, naming Bank as an additional insured; and (v) such other insurance as Bank may require from time to time.

All casualty insurance policies shall contain an endorsement or agreement by the Insurer in form satisfactory to Bank that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor and the further agreement of the Insurer waiving rights of subrogation against Bank, and rights of set-off, counterclaim or deductions against Mortgagor.

All insurance policies shall be in form, provide coverages, be issued by companies and be in amounts satisfactory to Bank. At least 30 days prior to the expiration of each such policy, Mortgagor shall furnish Bank with evidence satisfactory to Bank that such policy has been renewed or replaced or is no longer required hereunder. All such policies shall provide that the policy will not be canceled or materially amended without at least 30 days prior written notice to Bank. In the event Mortgagor fails to provide, maintain, keep in force, and furnish to Bank the policies of insurance required by this paragraph, Bank may procure such insurance or single-interest insurance in such amounts, at such premium, for such risks and by such means as Bank chooses, at Mortgagor's expense; provided however, Bank shall have no responsibility to obtain any insurance, but if Bank does obtain insurance, Bank shall have no responsibility to assure that the insurance obtained shall be adequate or provide any protection to Mortgagor.

Insurance Proceeds. After occurrence of any loss to any of the Property, Mortgagor shall give prompt written notice thereof to Bank.

In the event of such loss all insurance proceeds shall be payable to Bank, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Bank. Bank is hereby authorized by Mortgagor to settle, adjust or compromise any claims for loss or damage under any policy or policies of insurance and Mortgagor appoints Bank as its attorney-in-fact to receive and endorse any insurance proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied.

In the event of any damage to or destruction of the Property, Bank shall have the option of applying or paying all or part of the insurance proceeds to (i) the Obligations in such order as Bank may determine, (ii) restoration of the Property, or (iii) Mortgagor. Nothing herein shall be deemed to excuse Mortgagor from restoring, repairing and maintaining the Property as required herein.

Impositions; Escrow Deposit. Mortgagor will pay all taxes, levies, assessments and other fees and charges imposed upon or which may become a lien upon the Property under any law or ordinance (all of the foregoing collectively "Impositions") before they become delinquent and in any event in the same calendar year in which they first become due. Upon request of Bank, Mortgagor shall add to each periodic payment required under the Note the amount estimated by Bank to be sufficient to enable Bank to pay, as they come due, all Impositions and insurance premiums which Mortgagor is required to pay hereunder. Payments requested under this provision shall be supplemented or adjusted as required by Bank from time to time. Such funds may be commingled with the general funds of Bank and shall not earn interest. Upon the occurrence of a Default, Bank may apply such funds to pay any of the Obligations.

Use of Property. Mortgagor shall use and operate, and require its lessees or licensees to use and operate, the Property in compliance with all applicable laws and ordinances, covenants, and restrictions, and with all applicable requirements of any lease or sublease now or hereafter affecting the Property. Mortgagor shall not permit any unlawful use of the Property or any use that may give rise to a claim of forfeiture of any of the Property. Mortgagor shall not allow changes in the stated use of Property from that disclosed to Bank at the time of execution hereof. Mortgagor shall not initiate or acquiesce to a zoning change of the Property without prior notice to, and written consent of, Bank.

Maintenance, Repairs and Alterations. Mortgagor shall keep and maintain the Property in good condition and repair and fully protected from the elements to the satisfaction of Bank. Mortgagor will not remove, demolish or structurally alter any of the buildings or other improvements on the Property (except such alterations as may be required by laws, ordinances or regulations) without the prior written consent of Bank. Mortgagor shall promptly notify Bank in writing of any material loss, damage or adverse condition affecting the Property.

Eminent Domain. Should the Property or any interest therein be taken or damaged by reason of any public use or improvement or condemnation proceeding ("Condemnation"), or should Mortgagor receive any notice or other information regarding such Condemnation, Mortgagor shall give prompt written notice thereof to Bank. Bank shall be entitled to all compensation, awards and other payments or relief granted in connection with such Condemnation and, at its option, may commence, appear in and prosecute in its own name any action or proceedings relating thereto. Bank shall be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, and damages awarded to Mortgagor related to any Condemnation (the "Proceeds") are hereby assigned to Bank and Mortgagor agrees to execute such further assignments of the Proceeds as Bank may require. Bank shall have the option of applying or paying the Proceeds in the same manner as insurance proceeds as provided herein. Mortgagor appoints Bank as its attorney-in-fact to receive and endorse the Proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied.

Environmental Condition of Property and Indemnity. Mortgagor warrants and represents to Bank, except as reported by Mortgagor to Bank in writing, that: (i) Mortgagor has inspected and is familiar with the environmental condition of the Property; (ii) the Property and Mortgagor, and any occupants of the Property, are in compliance with and shall continue to be in compliance with all applicable federal, state and local laws and regulations intended to protect the environment and public health and safety as the same may be amended from time to time ("Environmental Laws"); (iii) the Property is not and has never been used to generate, handle, treat, store or dispose of, in any quantity, oil, petroleum products, hazardous or toxic substances, hazardous waste, regulated substances or hazardous air pollutants ("Hazardous Materials") in violation of any Environmental Laws; and (iv) no Hazardous Materials (including asbestos or lead paint in any form) are located on or under the Property or emanate from the Property. Further, Mortgagor represents to Bank that no portion of the Property is a protected wetland. Mortgagor agrees to notify Bank immediately upon receipt of any citations, warnings, orders, notices, consent agreements, process or claims alleging or relating to violations of any Environmental Laws or to the environmental condition of the Property.

Mortgagor shall indemnify, hold harmless, and defend Bank from and against any and all damages, penalties, fines, claims, suits, liabilities, costs, judgments and expenses, including attorneys', consultants' or experts' fees of every kind and nature incurred, suffered by or asserted against Bank as a direct or indirect result of: (i) representations made by Mortgagor in this Section being or becoming untrue in any material respect; (ii) Mortgagor's violation of or failure to meet the requirements of any Environmental Laws; or (iii) Hazardous Materials which, while the Property is subject to this Mortgage, exist on the Property. Bank shall have the right to arrange for or conduct environmental inspections of the Property from time to time (including the taking of soil, water, air or material samples). The cost of such inspections made after Default or which are required by laws or regulations applicable to Bank shall be borne by Mortgagor. Mortgagor's obligations under this Section shall continue, survive and remain in full force and effect notwithstanding foreclosure, satisfaction of this Mortgage or full satisfaction of the Obligations. However, Mortgagor's indemnity shall not apply to any negligent or intentional act of Bank which takes place after foreclosure or satisfaction of this Mortgage.

Appraisals. Mortgagor agrees that Bank may obtain an appraisal of the Property when required by the regulations of the Federal Reserve Board or the Office of the Comptroller of the Currency or at such other times as Bank may reasonably require. Such appraisals shall be performed by an independent third party appraiser selected by Bank. The cost of such appraisals shall be borne by Mortgagor. If requested by Bank, Mortgagor shall execute an engagement letter addressed to the appraiser selected by Bank. Mortgagor failure or refusal to sign such an engagement letter, however, shall not impair Bank's right to obtain such an appraisal. Mortgagor agrees to pay the cost of such appraisal within 10 days after receiving an invoice for such appraisal.

Inspections. Bank, or its representatives or agents, are authorized to enter at any reasonable time upon any part of the Property for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage.

Liens and Subrogation. Mortgagor shall pay and promptly discharge all liens, claims and encumbrances upon the Property. Mortgagor shall have the right to contest in good faith the validity of any such lien, claim or encumbrance, provided: (i) such contest suspends the collection thereof or there is no danger of the Property being sold or forfeited while such contest is pending; (ii) Mortgagor first deposits with Bank a bond or other security satisfactory to Bank in such amounts as Bank shall reasonably require; and (iii) Mortgagor thereafter diligently proceeds to cause such lien, claim or encumbrance to be removed and discharged.

Bank shall be subrogated to any liens, claims and encumbrances against Mortgagor or the Property that are paid or discharged through payment by Bank or with loan proceeds, notwithstanding the record cancellation or satisfaction thereof.

Waiver of Mortgagor's Rights. Mortgagor waives any: (i) rights of homestead or other exemption with regard to any of the Property; (ii) rights or claims of equitable or statutory redemption; (iii) rights of appraisal; and (iv) rights to require marshaling of assets.

Payments by Bank; Indemnification. In the event of default in the timely payment or performance of any of the Obligations, Bank, at its option and without any duty on its part to determine the validity or necessity thereof, may pay the sums for which Mortgagor is obligated. Further, Bank may pay such sums as Bank deems appropriate for the protection and maintenance of the Property including, without limitation, sums to pay Impositions and other levies, assessments or liens, maintain insurance, make repairs, secure the Property, maintain utility service, intervene in any condemnation and pay attorneys' fees and other fees and costs to enforce this Mortgage or protect the lien hereof (including foreclosure) or collect the Obligations, without limitation, including those incurred in any proceeding including Bankruptcy or arbitration. Any amounts so paid shall bear interest at the default rate stated in the Note and shall be secured by this Mortgage.

In the event Bank shall become party to any suit or legal proceeding by reason of its status as holder of this Mortgage, Mortgagor shall indemnify and hold harmless Bank and reimburse Bank for any amounts paid or incurred by Bank, including all reasonable costs, charges and attorneys' fees in any such suit or proceeding.

Assignment of Rents. Mortgagor hereby absolutely assigns and transfers to Bank all the leases, rents, issues and profits of the Property (collectively "Rents"). Although this assignment is effective immediately, so long as no Default exists, Bank gives to and confers upon Mortgagor the privilege under a revocable license to collect as they become due, but not prior to accrual, the Rents and to demand, receive and enforce payment, give receipts, releases and satisfactions, and sue in the name of Mortgagor for all such Rents. Mortgagor represents there has been no prior assignment of leases or Rents, and agrees not to further assign such leases or Rents. Upon any occurrence of Default, the license granted to Mortgagor herein shall be automatically revoked without further notice to or demand upon Mortgagor, and Bank shall have the right, in its discretion, without notice, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, (i) to enter upon and take possession of the Property, (ii) notify tenants, subtenants and any property manager to pay Rents to Bank or its designee, and upon receipt of such notice such persons are authorized and directed to make payment as specified in the notice and disregard any contrary direction or instruction by Mortgagor, and (iii) in its own name, sue for or otherwise collect Rents, including those past due, and apply Rents, less costs and expenses of operation and collection, including attorneys' fees, to the Obligations in such order and manner as Bank may determine or as otherwise provided for herein. Bank's exercise of any one or more of the foregoing rights shall not cure or waive any Default or notice of Default hereunder.

Due on Sale or Further Encumbrance. The direct or indirect sale, assignment, or conveyance of the Property, or any interest therein, or the further encumbrance of the Property, without Bank's written consent shall, at Bank's option, constitute a Default under this Mortgage. Transfer of control of or a controlling interest in the Mortgage shall be deemed a transfer of the Property.

Remedies of Bank on Default. Failure of Mortgagor or any other person liable to timely pay or perform any of the Obligations is a default ("Default") under this Mortgage. Upon the occurrence of Default the following remedies are available, without limitation, to Bank: (i) Bank may exercise any or all of Bank's remedies under this Mortgage or other Loan Documents including, without limitation, acceleration of maturity of all payments and Obligations; (ii) Bank may take immediate possession of the Property or any part thereof (which Mortgagor agrees to surrender to Bank) and manage, control or lease the same to such persons and at such rental as it may deem proper and collect and apply Rents to the payment of: (a) the Obligations, together with all costs and attorneys' fees; (b) all Impositions and any other levies, assessments or liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items; and (c) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Bank in its sole discretion may determine. The taking of

possession shall not prevent concurrent or later proceedings for the foreclosure sale of the Property; (iii) Bank may apply to any court of competent jurisdiction for the appointment of a receiver for all purposes including, without limitation, to manage and operate the Property or any part thereof, and to apply the Rents therefrom as hereinabove provided. In the event of such application, Mortgagor consents to the appointment of a receiver, and agrees that a receiver may be appointed without notice to Mortgagor, without regard to whether Mortgagor has committed waste or permitted deterioration of the Property, without regard to the adequacy of any security for the Obligations, and without regard to the solvency of Mortgagor or any other person, firm or corporation who or which may be liable for the payment of the Obligations; (iv) Bank may exercise all the remedies of a mortgagee as provided by law and in equity including, without limitation, foreclosure upon this Mortgage and sale of the Property, or any part of the Property, at public sale conducted according to applicable law (referred to as "Sale") and conduct additional Sales as may be required until all of the Property is sold or the Obligations are satisfied; (v) With respect to any portion of the Property governed by the UCC, Bank shall have all of the rights and remedies of a secured party thereunder. Bank may elect to foreclose upon any Property that is fixtures under law applicable to foreclosure of interests in real estate or law applicable to personal property; (vi) Bank may bid at Sale and may accept, as successful bidder, credit of the bid amount against the Obligations as payment of any portion of the purchase price; and (vii) Bank shall apply the proceeds of Sale, first to any fees or attorney fees permitted Bank by law in connection with Sale, second to expenses of foreclosure, publication, and sale permitted Bank by law in connection with Sale, third to the Obligations, and any remaining proceeds as required by law.

Miscellaneous Provisions. Mortgagor agrees to the following: (i) All remedies available to Bank with respect to this Mortgage or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Bank in exercising any remedy shall operate as a waiver of that remedy or of any Default. Any payment by Bank or acceptance by Bank of any partial payment shall not constitute a waiver by Bank of any Default; (ii) The provisions hereof shall be binding upon and inure to the benefit of Mortgagor, its heirs, personal representatives, successors and assigns including, without limitation, subsequent owners of the Property or any part thereof, and shall be binding upon and inure to the benefit of Bank, its successors and assigns and any future holder of the Note or other Obligations; (iii) Any notices, demands or requests shall be sufficiently given Mortgagor if in writing and mailed or delivered to the address of Mortgagor shown above or to another address as provided herein and to Bank if in writing and mailed or delivered to Bank's office address shown above, or such other address as Bank may specify from time to time and in the event that either party hereto changes its address at any time prior to the date the Obligations are paid in full, that party shall promptly give written notice of such change of address by registered or certified mail, return receipt requested, all charges prepaid; (iv) This Mortgage may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (v) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Mortgage; (vi) If the lien of this Mortgage is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made shall be deemed to have first been applied to payment of the unsecured portion of the Obligations) prior to payment of the secured portion of the Obligations and if any clause, provision or obligation hereunder is determined invalid or unenforceable the remainder of this Mortgage shall be construed and enforced as if such clause, provision or obligation had not been contained herein; (vii) This Mortgage shall be governed by and construed under the laws of the jurisdiction where this Mortgage is recorded; (viii) Mortgagor by execution and Bank by acceptance of this Mortgage agree to be bound by the terms and provisions hereof.

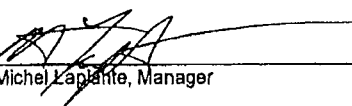
Waiver of Appraisal Rights. Mortgagor understands that upon the occurrence of an Event of Default hereunder, among the other remedies set out herein or in the other Loan Documents, Mortgagee may foreclose upon the Property and proceed for a deficiency judgment pursuant to South Carolina law. The laws 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. **MORTGAGOR HEREBY EXPRESSLY WAIVES AND RELINQUISHES ANY APPRAISAL**

BK P 352PG619

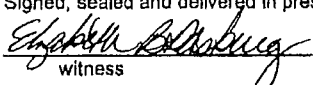
RIGHTS WHICH MORTGAGOR MAY HAVE UNDER SECTION 29-3-680 THROUGH SECTION 29-3-770 OF THE SOUTH CAROLINA CODE OF LAWS (1976), AS SUCH MAY BE AMENDED, AND UNDERSTANDS AND AGREES THAT A DEFICIENCY JUDGMENT, IF PURSUED BY MORTGAGEE, SHALL BE DETERMINED BY THE HIGHEST PRICE BID AT THE JUDICIAL SALE OF THE PROPERTY REGARDLESS OF ANY APPRAISED VALUE OF THE PROPERTY.

IN WITNESS WHEREOF, Mortgagor has signed and sealed this Instrument as of the day and year first above written.

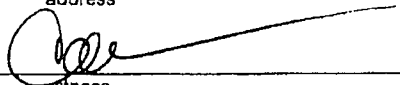
Mortgagor
PENNY CREEK ASSOCIATES, L.L.C.

By:  (SEAL)
Michel Lapointe, Manager

Signed, sealed and delivered in presence of:


witness

1208 Oakcrest Dr. Charleston SC 29412
address


witness

10 NASHMORE ROAD, CHARLESTON, SC 29407
address

2352
Buist & Byars, LLC
192 East Bay Street, Suite 300
Charleston, SC 29401

BK P 352PG620

State of South Carolina
County of Charleston

PARTNERSHIP, LIMITED PARTNERSHIP or L.L.C. PROBATE

I, Elizabeth B. Darburg Notary Public, do hereby certify that Michel Laplante, a Manager of PENNY CREEK ASSOCIATES, L.L.C., a limited liability company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and official seal, this the 7 day of August, 2000.

My commission expires:
7-17-08

Elizabeth B. Darburg
Notary Public

36307

EXHIBIT ATract B-2

ALL that piece, parcel or tract of land, together with the improvements thereon, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as "Tract 'B-2' 42.7 Acres", on a plat entitled "SUBDIVISION OF PROPERTY IN THE NAME OF F-H-P REALTY LOCATED ON JOHNS ISLAND, CHARLESTON COUNTY, S.C.", by Forrest G. Calvert, RLS, dated September 27, 1979, and recorded in the RMC Office for Charleston County, South Carolina (hereinafter the "RMC Office") in Plat Book AO at page 74, said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully be shown. (TMS Number 346-00-00-004)

And Tract 'A':

ALL that piece, parcel or tract of land, together with the improvements thereon, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as "FHP Realty Tract 'A' 5.503 Acres" on a plat entitled "PLAT SHOWING THE ABANDONMENT OF PROPERTY LINES FOR TMS NO. 346-00-00-012 AND TMS NO. 346-00-00-011, AND THE SUBSEQUENT SUBDIVISION OF TMS NO. 346-00-00-007 INTO TRACT 'A' CONTAINING 5.503 ACRES AND TRACT 'B' CONTAINING 7.497 ACRES OWNED BY FHP REALTY LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA" by Hoffman Lester Associates, Inc., dated September 24, 1997, and recorded January 20, 1998, in the aforesaid RMC Office in Plat Book EC at page 263. (TMS Number 346-00-00-066)

The aforesaid Tract B-2 and Tract A are also more particularly shown on that certain plat entitled "PLAT SHOWING PROPERTY LINE BETWEEN TMS NO. 346-00-00-004, TRACT B-2 (CONTAINING 42.49 ACRES) AND TMS NO. 346-00-00-007, RESIDUAL TRACT B (CONTAINING 5.50 ACRES) TO FORM TRACT B-2 (CONTAINING 47.99 ACRES), OWNED BY FHP REALTY LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA", prepared by Hoffman Lester Associates, Inc., dated April 7, 2000, and recorded as Exhibit "____" to that certain deed of conveyance from FHP Realty Company, A Partnership, to Penny Creek Associates, L.L.C., and also about to be recorded in the RMC Office for Charleston County, S.C.

TOGETHER WITH a twenty-foot (20') non-exclusive easement in common with Helena Igoe Blanchard, her heirs and assigns, and others entitled thereto, in favor of "Tract B" above-described, for ingress and egress over, upon and across that certain twenty-foot (20') easement extending from Maybank Highway on the south to "Tract A" on the north, as said Tract A is shown on that certain plat recorded in Plat Book AK at page 76 in the RMC Office, which easement is granted in that certain deed of conveyance from Helena Igoe Blanchard to FHP Realty Company, A Partnership, dated April 27, 1978, and recorded in Book P115, page 273, in the RMC office.

This conveyance is subject, however, to the following:

1. Easement from Helena I. Blanchard to South Carolina Electric & Gas Company, recorded in Book K66, page 587, in the RMC Office.
2. Covenants, conditions and restrictions filed for record in Book V142, page 430, in the RMC Office.

3. Covenants, conditions and restrictions filed for record in Book V142, page 434, in the RMC Office.
4. Easement from FHP Realty Company, a Partnership to Commissioners of Public Works of the City of Charleston, recorded in Book S146, page 835, in the RMC Office.
5. Easement from FHP Realty Company to South Carolina Electric & Gas Company, recorded in Book A178, page 263, in the RMC Office.
6. Easement from FHP Realty Company to South Carolina Electric & Gas Company, recorded in Book E202, page 769, in the RMC Office.
7. Easement from FHP Realty Company, a Partnership to Commissioners of Public Works of the City of Charleston, South Carolina, recorded in Book O202, page 833, in the RMC Office.
8. Agreement dated September 16, 1991, between The Valley Vista Apartments Limited Partnership; Fenwick Acres Partnership; Claude W. Blanchard, et al.; FHP Realty Company; and Fenwick Hall, Inc., recorded in Book S207, page 136, in the RMC Office.
9. Declaration of Restrictive Covenants dated January 23, 1998, and recorded on May 13, 1998, in Book S302, page 688, in the RMC Office, as amended by that Amendment to Declaration of Restrictive Covenants dated June 20, 2000, and recorded July 6, 2000, in Book V350, page 9, in the aforesaid RMC Office.
10. Twenty-foot (20') non-exclusive easement in favor of Helena Igoe Blanchard, her heirs and assigns, for ingress and egress as set forth in that certain deed of conveyance from Helena Igoe Blanchard to FHP Realty Company, A Partnership, dated April 27, 1978, and recorded in Book P115, page 273, in the RMC office.
11. Matters of survey as set forth on the above referenced boundary plat prepared by Hoffman Lester Associates as set forth below:
 - a. Existing 20' Sanitary Sewer Easement along the northern property line adjacent to Tract C-1.
 - b. Existing 20' Sanitary Sewer Easement parallel with the right-of-way of Maybank Highway and also extending from Maybank Highway through the insured property and continuing to the right-of-way of River Road.
 - c. A portion of Tract B-2 as leased to David C. Swann, D.D.S. under an unrecorded lease, of approximately 50 feet by 120 feet, "until such time public water or public sewer is available to Lot 'B-3'".
 - d. "Existing Pond", "Existing Wetlands", and "Wetland Buffer".
12. Plat entitled "PLAT SHOWING ABANDONMENT OF PROPERTY LINES FOR TMS NO. 346-00-00-012 AND TMS NO. 346-00-00-011, AND THE SUBSEQUENT SUBDIVISION OF TMS NO. 346-00-00-007 INTO TRACT 'A' CONTAINING 5.503 ACRES AND TRACT 'B' CONTAINING 7.497 ACRES OWNED BY FHP REALTY LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA" by Hoffman Lester Associates, Inc., dated September 24, 1997, and recorded January 20, 1998, in the aforesaid RMC

Office in Plat Book EC at page 263, discloses a small area of pavement encroachment into Tract B-2.

13. Plat entitled "PLAT SHOWING ABANDONMENT OF PROPERTY LINES FOR TMS NO. 346-00-00-012 AND TMS NO. 346-00-00-011, AND THE SUBSEQUENT SUBDIVISION OF TMS NO. 346-00-00-007 INTO TRACT 'A' CONTAINING 5.503 ACRES AND TRACT 'B' CONTAINING 7.497 ACRES OWNED BY FHP REALTY LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY, SOUTH CAROLINA" by Hoffman Lester Associates, Inc., dated September 24, 1997, and recorded January 20, 1998, in the aforesaid RMC Office in Plat Book EC at page 263, discloses a portion of Tract B-2 as leased to David C. Swann, D.D.S., of approximately 50 feet by 120 feet, "until such time public water or public sewer is available to Lot 'B-3'".
14. Easement from FHP Realty Company, a Partnership to Commissioners of Public Works of the City of Charleston, recorded in Book S146, page 855, in the RMC Office.
15. Right-of-way Easement for Ingress, Egress, and Utilities from FHP Realty Company, A Partnership, in favor of Penny Creek Associates, L.L.C. dated June 5, 2000, and recorded June 6, 2000, in Book X348, page 296, and re-recorded June 26, 2000, in Book A350, page 737 in the aforesaid RMC Office, which is to be extinguished by virtue of the within contemplated acquisition of Tract B-2 from FHP Realty Company, A Partnership, by Penny Creek Associates, L.L.C.

This is the same property conveyed to the mortgagor herein by deed of conveyance of FHP Realty Company, A Partnership, dated August 7, 2000, and recorded simultaneously herewith.

ALSO:

Parcel A, River Road:

ALL that piece, parcel or tract of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as "Parcel A 44,273 sq. ft. 10.11 acres" on that certain plat by Forsberg Engineering & Surveying, Inc., dated February 18, 1998, and recorded February 20, 1998, in Plat Book EC at page 328, in the RMC Office for Charleston County, S.C., said property having such location, size, shape, metes, courses, distances, buttings and boundings as will by reference to said plat more fully appear.

This conveyance is subject, however, to the following:

1. Plat of survey recorded in Plat Book EC at page 328 in the RMC Office for Charleston County discloses the following:
 - a. "Old Hog Wire Fence Along Property Line" along the southern property line.
 - b. New 20' Sewer Easement along the property line adjacent to and parallel with the right-of-way of River Road.
 - c. "Power Pole" on property line adjacent to the right-of-way of River Road.
 - d. Building setbacks as set forth in the "Notes" on said plat.
2. Plat of survey entitled "Wetland Drawing, Santos/River Road City of Charleston, South Carolina" prepared by Hoffman Lester Associates, Inc., dated April 18, 2000, discloses the following:
 - a. "Remains of Wood Post and Wire Fence" along the southern property line.

- b. "Wetlands" through portions of the parcel.
 - c. "Existing Commissioners of Public Works 20' Sanitary Sewer Easement" along the property line adjacent to and parallel with the right-of-way of River Road.
3. Matters of survey subsequent to the aforesaid plat recorded in Plat Book EC at page 328 in the aforesaid RMC Office.
 4. Agreement in favor of Berkeley Electric Cooperative, Inc., dated March 12, 1973, and recorded in Book J102, page 77, in the aforesaid RMC Office.
 5. Right-of-way Easement in favor of the Commissioners of Public Works of the City of Charleston, South Carolina, recorded July 19, 1985, in Book S146, page 866, in the aforesaid RMC Office.
 6. Restrictive Covenants granted by Nan W. Molony and Yvonne K. Santos dated August 20, 1984, and recorded November 29, 1984, in Book R141, page 402, in the aforesaid RMC Office.
 7. Restrictive Covenants granted by Nan W. Molony and Yvonne K. Santos dated October 24, 1986, and recorded October 28, 1992, in Book T219, page 822, in the aforesaid RMC Office.
 8. Right-of-way Easement in favor of the Commissioners of Public Works of the City of Charleston, South Carolina, recorded January 29, 1998, in Book O296, page 335, in the aforesaid RMC Office.

Lender agrees with borrower to release the lien of the within mortgage from the above described "Parcel A, River Road (10.11 acres) upon the payment to lender of a sum not exceeding One Hundred Fifty Thousand and 00/100 Dollars (\$150,000.00).

This is the same property conveyed to the mortgagor herein by deed of conveyance of Yvonne K. Santos and Nan W. Molony dated August 7, 2000, and recorded simultaneously herewith.

ALSO:

Tract C:

ALL that certain piece, parcel or lot of land, situate, lying and being in City of Charleston, County of Charleston, South Carolina, and being shown and delineated as TRACT "C", 59.280 acres of highland and 95.063 acres of marshland, on a plat by Forrest G. Calvert, dated November, 1977, entitled in part "Plat Showing Subdivision of Fenwick Hall Plantation, 237.176 Ac. Highland 148.058 Ac. Marsh Located on Johns Island, Charleston County, South Carolina. Property of Mrs. Helena Igoe Blanchard", and recorded in Plat Book AK, at page 76, in the RMC Office for Charleston County, South Carolina (the "RMC Office"), and having such location, size, shape, buttings, boundings, and dimensions as will appear by reference to said plat which is incorporated herein by reference, be all the dimensions and measurements shown thereon a little more or less.

SAVING AND EXCEPTING that certain piece, parcel or lot of land, situate, lying and being in Charleston County, South Carolina, described as 0.97 acres of land as conveyed to the South Carolina Department of Transportation in that certain deed of conveyance from Fenwick Acres dated April 16,

1998, and recorded July 28, 1998, in Book R307, page 246, in the RMC Office.

The aforesaid property and said 0.97 acre parcel are more particularly shown on that certain plat prepared by Southeastern Surveying, Inc., entitled "A Boundary Survey of Tract "C" Containing 153.153 Acres, Owned by Fenwick Acres Located in the City of Charleston, Charleston County, South Carolina", dated March 23, 1999, and recorded in the RMC Office in Plat Book ED, at page 70.

This conveyance is subject; however, to the following:

1. Covenants, conditions and restrictions dated September 8, 1986, and filed for record in Book Y166, page 522, Charleston County RMC;
2. Non-exclusive easement for ingress and egress, being twenty feet (20') in width, ten feet on either side of the center line of an existing private road extending from Maybank Highway on the south to Tract A on the north, for the benefit of the owners of Tracts A, B and C, their heirs, assigns, guests, invitees, and licensees. Tracts A, B and C are shown on the aforesaid plat recorded in Plat Book AK at page 76, in the RMC Office.
3. Easement dated December 12, 1958, from Helene I. Blanchard to South Carolina Electric & Gas Company, recorded in Book K66, page 587, Charleston County Records.
4. Easement dated August, 1974, from Helena Igoe Blanchard to South Carolina Electric & Gas Company, recorded in Book Y105, page 126, Charleston County Records.
5. Easement dated August 8, 1985, from Fenwick Acres, A Partnership to Commissioners of Public Works of the City of Charleston, recorded in Book E147, page 865, Charleston County Records.
6. Easement dated September 2, 1988, from Fenwick Acres to South Carolina Electric & Gas Company, recorded in Book P179, page 865, Charleston County Records.
7. Easement dated April 22, 1991, from Fenwick Acres to South Carolina Electric & Gas Company, recorded in Book E202, page 765, Charleston County Records.
8. Agreement dated September 16, 1991, between The Valley Vista Apartments Limited Partnership; Fenwick Acres Partnership; Claude W. Blanchard, et al.; FHP Realty Company; and Fenwick Hall, Inc., recorded in Book S207, page 136, Charleston County Records.
9. Right of Way Easement dated October 7, 1991, from Fenwick Acres Partnership, a South Carolina Partnership to Commissioners of Public Works of the City of Charleston, recorded in Book J207, page 889, Charleston County Records.
10. Amendatory Right-of-Way Easement, and Quitclaim dated May 13, 1992, between Fenwick Acres Partnership, a South Carolina partnership, and the Commissioners of Public Works of the City of Charleston, recorded in Book Y217, page 725, Charleston County Records.
11. Survey prepared by Southeastern Surveying, Inc., dated March 23, 1999 and recorded in Plat Book ED at page 70, discloses the following, to which exception is also taken:

- (a) "Existing 20' Ingress/Egress Easement" along southern boundary

- of insured property;
 - (b) "Existing 30' Sanitary Sewer Easement" running in a generally east-west direction from the property line to the west and Maybank Highway to the east, and continuing in a generally southwesterly direction parallel with the property line adjacent to the Right of Way of Maybank Highway;
 - (c) "Existing Sanitary Sewer Easement" running in a generally north-northeasterly direction along western property line;
 - (d) "Existing 120' SCE&G Transmission Easement" and "Existing 50' SCE&G Transmission Easement" running from the extreme northern tip of the insured property in a generally southeasterly direction to the eastern property line adjacent to the Right of Way of Maybank Highway;
 - (e) Tidal creek identified as "Penny Creek" running through the property in a generally east-west direction from the western property line to the far eastern boundary line near its intersection with the Right of Way of Maybank Highway.
 - (f) Concrete pad located at western edge of property adjacent to the Existing 30' Sanitary Sewer Easement referenced in (b) above; and
 - (g) Overhead power line running in a generally east-west direction, along with power poles, across the southern portion of the insured property;
 - (h) Approximate location of 12' SCE&G easement for underground line adjacent to sanitary sewer easements along western property line, running in a generally east-west direction from the western property line to the far eastern boundary line, and parallel to the right of way of Maybank Highway; and
 - (i) Transformers located within the 12' SCE&G easement noted above.
12. DHEC - OCRM critical lines as set forth on the aforesaid plat of survey prepared by Southeastern Surveying, Inc., dated March 9, 1999, and recorded in the Charleston County RMC Office in Plat Book ED at page 70.

This is the same property conveyed to the mortgagor herein by deed of conveyance of Fenwick Acres, A Partnership, dated March 25, 1999, and recorded in Book D323, page 311, in the RMC Office for Charleston County, South Carolina, and also by deed of Julius H. Weil, Jr., dated March 25, 1999, and recorded in Book D323, page 439, in the aforesaid RMC Office.

BK P 352PG627

✓
B

Bulst & Byars, LLC
P.O. Box 570
Charleston, SC 29402

FILED

P352-613

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CHARLIE LYBRAND
REGISTER
CHARLESTON COUNTY SC

20.00
A

PROMISSORY NOTE

\$2,200,000.00

April 5, 2006

Penny Creek Associates, L.L.C.
 c/o Mitch Laplante
 151 Treeduck Court
 Kiawah Island, South Carolina 29455
 (Hereinafter referred to as "Borrower")

Wachovia Bank, National Association
 Greenville, South Carolina 29601
 (Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America, at its office indicated above or wherever else Bank may specify, the sum of Two Million, Two Hundred Thousand and No/100 Dollars (\$2,200,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

LINE OF CREDIT. Borrower may borrow, repay and reborrow, and, upon the request of Borrower, Bank shall advance and readvance under this Note from time to time until the maturity hereof (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in any loan agreement to which this Note is subject. Bank's obligation to make Advances under this Note shall terminate if Borrower is in Default. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true as of such date.

If Borrower subscribes to Bank's cash management services and such services are applicable to this line of credit, the terms of such service shall control the manner in which funds are transferred between the applicable demand deposit account and the line of credit for credit or debit to the line of credit.

USE OF PROCEEDS. Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: to refinance existing debt and fund project costs including capitalized interest and taxes associated with The Grove at Fenwick Plantation.

SECURITY. Borrower has granted Bank a security interest in the collateral described in the Loan Documents, including, but not limited to, real and personal property collateral described in that certain security instrument of even date herewith.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of each Advance during each Interest Period from the date of such Advance at a rate per annum equal to 1-month LIBOR plus 1.75% ("Interest Rate"). Interest for each Interest Period shall accrue each day during such Interest Period, commencing on and including the first day to but excluding the last day. "Interest Period" means, in respect of each Advance, each period commencing on the first day of the calendar month and ending on the first day of the next succeeding calendar month; provided (i) the first Interest Period shall commence on the date of such Advance and (ii) any Interest Period that would otherwise extend past the maturity date of this Note shall end on the maturity date of this Note. "LIBOR" means, with respect to each Interest Period, the rate for U.S. dollar deposits with a maturity equal to the number of months specified above, as reported on Telerate page 3750 as of 11:00 a.m., London time, on the second London business day before such Interest Period begins, or, in the case of the first Interest Period, the second

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London business day before the first day of the calendar month during which such Interest Period begins (or if not so reported, then as determined by the Bank from another recognized source or interbank quotation).

DEFAULT RATE. In addition to all other rights contained in this Note, if a Default (as defined herein) occurs and as long as a Default continues, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from acceleration until the Obligations or any judgment thereon is paid in full.

INTEREST AND FEE(S) COMPUTATION (ACTUAL/360). Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective interest rate exceeding the nominal rate.

REPAYMENT TERMS. This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on April 13, 2006, and continuing on the same day of each month thereafter until fully paid. In any event, all principal and accrued interest shall be due and payable on March 13, 2008.

APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. If a Default occurs, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

DEFINITIONS. Loan Documents. The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

LATE CHARGE. If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 15 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof, unless such late payment is in an amount not greater than the highest periodic payment due hereunder.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

If this Note is secured by owner-occupied residential real property located outside the state in which the office of Bank first shown above is located, the late charge laws of the state where the real property is located shall apply to this Note and the late charge shall be the highest amount allowable under such laws. If no amount is stated thereunder, the late charge shall be 5% of each payment past due for 10 or more days.

ATTORNEYS' FEES AND OTHER COLLECTION COSTS. Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

USURY. If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

DEFAULT. If any of the following occurs, a default ("Default") under this Note shall exist: **Nonpayment; Nonperformance.** The failure of timely payment or performance of the Obligations or Default under this Note or any other Loan Documents. **False Warranty.** A warranty or representation made or deemed made in the Loan Documents or furnished Bank in connection with the loan evidenced by this Note proves materially false, or if of a continuing nature, becomes materially false. **Cross Default.** At Bank's option, any default in payment or performance of any obligation under any other loans, contracts or agreements of Borrower, any Subsidiary or Affiliate of Borrower, any general partner of or the holder(s) of the majority ownership interests of Borrower with Bank or its affiliates ("Affiliate" shall have the meaning as defined in 11 U.S.C. § 101, as in effect from time to time, except that the term "Borrower" shall be substituted for the term "Debtor" therein; "Subsidiary" shall mean any business in which Borrower holds, directly or indirectly, a controlling interest). **Cessation; Bankruptcy.** The death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or commencement of any bankruptcy or insolvency proceeding by or against Borrower, its Subsidiaries or Affiliates, if any, or any general partner of or the holder(s) of the majority ownership interests of Borrower, or any party to the Loan Documents. **Material Capital Structure or Business Alteration.** Without prior written consent of Bank, (i) a material alteration in the kind or type of Borrower's business or that of Borrower's Subsidiaries or Affiliates; if any; (ii) the sale of substantially all of the business or assets of Borrower, any of Borrower's Subsidiaries or Affiliates or any guarantor, or a material portion (10% or more) of such business or assets if such a sale is outside the ordinary course of business of Borrower, or any of Borrower's Subsidiaries or Affiliates or any guarantor, or more than 50% of the outstanding stock or voting power of or in any such entity in a single transaction or a series of transactions; (iii) the acquisition of substantially all of the business or assets or more than 50% of the outstanding stock or voting power of any other entity; or (iv) should any Borrower or any of Borrower's Subsidiaries or Affiliates or any guarantor enter into any merger or consolidation. **Material Adverse Change.** Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Obligations are impaired or there has occurred a material adverse change in the business or prospects of Borrower, financial or otherwise.

REMEDIES UPON DEFAULT. If a Default occurs under this Note or any Loan Documents, Bank may at any time thereafter, take the following actions: **Bank Lien.** Foreclose its security interest or lien against Borrower's accounts without notice. **Acceleration Upon Default.** Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; whereupon this Note and the accelerated Obligations shall be immediately due and payable; provided, however, if the Default is based upon a bankruptcy or insolvency proceeding commenced by or against Borrower or any guarantor or endorser of this Note, all Obligations (other than Obligations under any swap agreement as referenced above) shall automatically and immediately be due and payable.

Cumulative. Exercise any rights and remedies as provided under the Note and other Loan Documents, or as provided by law or equity.

TAX RETURNS. Borrower shall deliver to Bank, within 30 days of filing, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Borrower to be true and complete copies of such returns. In the event an extension is filed, Borrower shall deliver a copy of the extension within 30 days of filing.

FINANCIAL AND OTHER INFORMATION. Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

WAIVERS AND AMENDMENTS. No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

MISCELLANEOUS PROVISIONS. Assignment. This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Organization; Powers.** Borrower represents that Borrower (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. **Compliance with Laws.** Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, any federal or state laws relating to liquor (including 18 U.S.C. § 3617, et seq.) or narcotics (including 21 U.S.C. § 801, et seq.) and/or any commercial crimes; all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of

Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/sanctions/>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and construed under the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's accounts with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or other such document. **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the office of Bank first shown above shall be deemed received at the opening of the next banking day. **Joint and Several Obligations.** If there is more than one Borrower, each is jointly and severally obligated. **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO

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THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **FINAL AGREEMENT.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

IN WITNESS WHEREOF, Borrower, on the day and year first above written, has caused this Note to be executed under seal.

Penny Creek Associates, L.L.C.

Members:

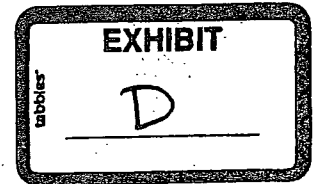
The Eugene J. Zurlo Living Trust dated December 11, 1997

By: Eugene J. Zurlo (SEAL)
Eugene J. Zurlo, Co-Trustee

By: Charlotte R. Zurlo (SEAL)
Charlotte R. Zurlo, Co-Trustee

Michel Laplante (SEAL)
Michel Laplante, Manager/Member

Tracking #: 67529rke
CAT - Deal # 642716 Facility ID 443803



BKG 579PG249

PREPARED BY: Helen Dickinson
RETURN TO: Collateral Maintenance NC 6038
Wachovia Bank, National Association
P.O. Box 2705
Winston Salem, NC 27101-2705

MORTGAGE AND ASSIGNMENT OF RENTS

This MORTGAGE AND ASSIGNMENT OF RENTS (hereafter referred to as "Mortgage") made April 5, 2006, by and between, Penny Creek Associates, L.L.C., whose address is c/o Mitch Laplante, 151 Treeduck Court, Kiawah Island, South Carolina 29455 ("Mortgagor") and Wachovia Bank, National Association, a national banking association, whose address is Greenville, South Carolina 29601 ("Bank").

WITNESSETH:

To secure payment and performance of obligations under a Promissory Note (the "Note") dated April 5, 2006, in the amount of \$2,200,000.00, made by Mortgagor payable to Bank, this Mortgage, any present or future Letters of Credit issued by Bank for the account of Mortgagor, other loan documents as defined in the Note (the "Loan Documents"), and swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Bank or any of its affiliates and Mortgagor, all other indebtedness of Mortgagor to Bank whenever borrowed or incurred, whether or not reasonably contemplated by the parties hereto as of the date hereof, and any renewals, extensions, novations, or modifications of the foregoing (collectively the "Obligations"), and in consideration of these premises and for other consideration, Mortgagor does mortgage, grant and convey unto Bank (for itself and its affiliates), its successors and assigns, all of Mortgagor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "Property"): (i) all those certain tracts of land in the Town of John's Island, County of Charleston, State of South Carolina described in EXHIBIT A attached hereto and made part hereof (the "Land"); (ii) all buildings and improvements now or hereafter erected on the Land; (iii) all fixtures attached to the Land or any buildings or improvements situated thereon; and (iv) all estates, rights, tenements, hereditaments, privileges, rents, issues, profits easements, and appurtenances of any kind benefiting the Land; all means of access to and from the Land, whether public or private; and all water and mineral rights.

In the event that Mortgagor is the owner of a leasehold estate with respect to any portion of the Property and Mortgagor obtains a fee estate in such portions of the Property, then, such fee estate shall automatically, and without further action of any kind on the part of the Mortgagor, be and become subject to the security title and lien of this Agreement.

TO HAVE AND TO HOLD the Property and all the estate, right, title and interest, in law and in equity, of Mortgagor's in and to the Property unto Bank, its successors and assigns, forever.

Mortgagor WARRANTS AND REPRESENTS that Mortgagor is lawfully seized of the Property, in fee simple, absolute, that Mortgagor has the legal right to convey and encumber the same, and that the Property is free and clear of all liens and encumbrances. Mortgagor further warrants and will forever defend all and singular the Property and title thereto to Bank and Bank's successors and assigns, against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS that if (i) all the Obligations (including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder) are paid in full, (ii) each and every representation, warranty, agreement, covenant and condition of this Mortgage, and the other Loan Documents, are complied with and abided by, and (iii) any and all swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder have matured or been terminated, then this Mortgage and the estate hereby created shall cease and be null, void, and canceled of record.

To protect the security of this Mortgage, Mortgagor further represents and agrees with Bank as follows:

Payment of Obligations. That the Obligations shall be timely paid and performed.

Future Advances. This Mortgage is given to secure not only existing Obligations, but also future advances, including obligations under swap agreements to the same extent as if such future advances and obligations under swap agreements are made on the date of the execution of this Mortgage. The principal amount (including any swap agreements and future advances) that may be so secured may decrease or increase from time to time, but the total amount so secured at any one time shall not exceed \$4,400,000.00, plus all interest, costs, reimbursements, fees and expenses due under this Mortgage and secured hereby. Mortgagor shall not execute any document that impairs or otherwise impacts the priority of any existing or future Obligations secured by this Mortgage.

Grant of Security Interest in Personal Property. This Mortgage constitutes a security agreement under the UCC and shall be deemed to constitute a fixture financing statement. Mortgagor hereby grants a security interest in any personal property included in the Property. On request of Bank, Mortgagor will execute one or more Financing Statements in form satisfactory to Bank and will pay all costs and expenses of filing the same in all public filing offices, where filing is deemed desirable by Bank. Bank is authorized to file Financing Statements relating to the Property without Mortgagor's signature where permitted by law. Mortgagor appoints Bank as its attorney-in-fact to execute such documents necessary to perfect Bank's security interest on Mortgagor's behalf. The appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain outstanding.

Nothing herein obligates Bank to provide credit in excess of the Obligations.

Leases, Subleases and Easements. Mortgagor shall maintain, enforce and cause to be performed all of the terms and conditions under any lease, sublease or easement which may constitute a portion of the Property. Mortgagor shall not, without the consent of Bank (which consent shall not be unreasonably withheld or delayed), enter into any new lease of all or any portion of the Property, agree to the cancellation or surrender under any lease of all or any portion of the Property, agree to prepayment of rents, issues or profits (other than rent paid at the signing of a lease or sublease), modify any such lease so as to shorten the term, decrease the rent, accelerate the payment of rent, or change the terms of any renewal option; and any such purported new lease, cancellation, surrender, prepayment or modification made without the consent of Bank shall be void as against Bank.

Required Insurance. Mortgagor shall maintain with respect to the Property: (i) during construction of any improvements on the Property, "all-risk" builders risk insurance which must include windstorm, hail damage, fire and vandalism (non-reporting Completed Value with Special Cause of Loss form), in an amount not less than the completed replacement value of the improvements under construction, naming Bank as mortgagee and loss payee; (ii) upon completion of construction, upon occupancy of any improvements, and at all other times, insurance against loss or damage by fire and other casualties and hazards by insurance written on an "all risks" basis, including malicious mischief coverage, in an amount not less than the replacement cost thereof, including coverage for loss of rents or business interruption if applicable, naming Bank as loss payee and mortgagee; (iii) if the Property is required to be insured pursuant to the National Flood Reform Act of 1994, and the regulations promulgated thereunder, flood insurance is required in the amount equal to the lesser of the loan amount or maximum available under the National Flood Insurance Program, but in no event should the amount of

coverage be less than the value of the improved structure, naming Bank as mortgagee and loss payee. If, after closing, the Property (or any part thereof) is remapped and if the vertical improvements are determined to be located in a special flood hazard area, Mortgagor must obtain and maintain a flood insurance policy. If, within forty-five (45) days of receipt of notification from Bank that the Property has been reclassified by FEMA as being located in a special flood hazard area, Mortgagor has not provided sufficient evidence of flood insurance, Bank is mandated under federal law to purchase flood insurance on behalf of Mortgagor, and Bank will add the associated costs to the principal balance of the Note. If the land or any portion thereof is located in a special flood hazard area, this Agreement may be terminated by Bank at its sole option; (iv) as applicable, insurance which complies with the workers' compensation and employers' liability laws of all states in which Mortgagor shall be required to maintain such insurance; and (v) liability insurance providing coverage in such amount as Bank may require but in no event less than \$1,000,000.00 combined single limit, naming Bank as an additional insured; and (vi) such other insurance as Bank may require from time to time.

All property insurance policies shall contain an endorsement or agreement by the insurer in form satisfactory to Bank that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor and the further agreement (within both the property and liability policies) of the insurer waiving rights of subrogation against Bank, and rights of set-off, counterclaim or deductions against Mortgagor.

All insurance policies shall be in form, provide coverages, be issued by companies and be in amounts satisfactory to Bank. At least 30 days prior to the expiration of each such policy, Mortgagor shall furnish Bank with evidence satisfactory to Bank that such policy has been renewed or replaced or is no longer required hereunder. All such policies shall provide that the policy will not be canceled or materially amended without at least 30 days prior written notice to Bank. In the event Mortgagor fails to provide, maintain, keep in force, and furnish to Bank the policies of insurance required by this paragraph, Bank may procure such insurance or single-interest insurance in such amounts, at such premium, for such risks and by such means as Bank chooses, at Mortgagor's expense; provided however, Bank shall have no responsibility to obtain any insurance, but if Bank does obtain insurance, Bank shall have no responsibility to assure that the insurance obtained shall be adequate or provide any protection to Mortgagor.

Insurance Proceeds. After occurrence of any loss to any of the Property, Mortgagor shall give prompt written notice thereof to Bank.

In the event of such loss all insurance proceeds, including unearned premiums, shall be payable to Bank, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Bank and not to Bank and Mortgagor jointly. Bank is hereby authorized by Mortgagor to make proof of loss if not promptly made by Mortgagor, settle, adjust or compromise any claims for loss or damage under any policy or policies of insurance and Mortgagor appoints Bank as its attorney-in-fact to receive and endorse any insurance proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied. Mortgagor shall pay the costs of collection, including attorneys' fees, of insurance proceeds payable on account of such damage or destruction. Mortgagor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Bank as security for payment of the Obligations.

In the event of any damage to or destruction of the Property, Bank shall have the option of applying or paying all or part of the insurance proceeds to (i) the Obligations in such order as Bank may determine, (ii) restoration, replacement or repair of the Property in accordance with Bank's standard construction loan disbursement conditions and requirements, or (iii) Mortgagor. Nothing herein shall be deemed to excuse Mortgagor from restoring, repairing and maintaining the Property as required herein.

Minimum Standards. In addition to the requirements set forth in the Loan Documents, all surveys, insurance, title policies, construction documents, environmental reports, payment and performance bonds, and any other due diligence or additional documents required in connection with this

Loan, shall comply with Bank's minimum standards in place from time to time for such documents, which shall be provided in writing by Bank to Borrower upon request.

Impositions; Escrow Deposit. Mortgagor will pay all taxes, levies, assessments and other fees and charges imposed upon or which may become a lien upon the Property under any law or ordinance (all of the foregoing collectively "Impositions") before they become delinquent and in any event in the same calendar year in which they first become due. Upon request of Bank, Mortgagor shall add to each periodic payment required under the Note the amount estimated by Bank to be sufficient to enable Bank to pay, as they come due, all Impositions and insurance premiums which Mortgagor is required to pay hereunder. Payments requested under this provision shall be supplemented or adjusted as required by Bank from time to time. Such funds may be commingled with the general funds of Bank and shall not earn interest. Upon the occurrence of a Default, Bank may apply such funds to pay any of the Obligations.

Use of Property. Mortgagor shall use and operate, and require its lessees or licensees to use and operate, the Property in compliance with all applicable laws (including, for example, the Americans with Disabilities Act and the Fair Housing Act) and ordinances, covenants, and restrictions, and with all applicable requirements of any lease or sublease now or hereafter affecting the Property. Mortgagor shall not permit any unlawful use of the Property or any use that may give rise to a claim of forfeiture of any of the Property. Mortgagor shall not allow changes in the stated use of Property from that disclosed to Bank at the time of execution hereof. Mortgagor shall not initiate or acquiesce to a zoning change of the Property without prior notice to, and written consent of, Bank.

Maintenance, Repairs and Alterations. Mortgagor shall keep and maintain the Property in good condition and repair and fully protected from the elements to the satisfaction of Bank. Mortgagor will not remove, demolish or structurally alter any of the buildings or other improvements on the Property (except such alterations as may be required by laws, ordinances or regulations) without the prior written consent of Bank. Mortgagor shall promptly notify Bank in writing of any material loss, damage or adverse condition affecting the Property.

Eminent Domain. Should the Property or any interest therein be taken or damaged by reason of any public use or improvement or condemnation proceeding ("Condemnation"), or should Mortgagor receive any notice or other information regarding such Condemnation, Mortgagor shall give prompt written notice thereof to Bank. Bank shall be entitled to all compensation, awards and other payments or relief granted in connection with such Condemnation and, at its option, may commence, appear in and prosecute in its own name any action or proceedings relating thereto. Bank shall be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, and damages awarded to Mortgagor related to any Condemnation (the "Proceeds") are hereby assigned to Bank and Mortgagor agrees to execute such further assignments of the Proceeds as Bank may require. Bank shall have the option of applying or paying the Proceeds in the same manner as insurance proceeds as provided herein. Mortgagor appoints Bank as its attorney-in-fact to receive and endorse the Proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied.

Environmental Condition of Property and Indemnity. Mortgagor warrants and represents to Bank, except as reported by Mortgagor to Bank in writing, that: (i) Mortgagor has inspected and is familiar with the environmental condition of the Property; (ii) the Property and Mortgagor, and any occupants of the Property, are in compliance with and shall continue to be in compliance with all applicable federal, state and local laws and regulations intended to protect the environment and public health and safety as the same may be amended from time to time ("Environmental Laws"); (iii) the Property is not and has never been used to generate, handle, treat, store or dispose of, in any quantity, oil, petroleum products, hazardous or toxic substances, hazardous waste, regulated substances or hazardous air pollutants ("Hazardous Materials") in violation of any Environmental Laws; (iv) no Hazardous Materials (including asbestos, mold or lead paint in any form) are located on or under the Property or emanate from the Property; (v) there are no unregistered underground storage tanks on the Property that are subject to any underground storage tank registration laws or regulations; (vi) no notice

has been received with regard to any Hazardous Material on the Property; (vii) no action, investigation or proceeding is pending or to Mortgagor's knowledge threatened which seeks to enforce any right or remedy against Mortgagor or the Property under any Environmental Law; and (viii) all licenses, permits and other governmental or regulatory actions necessary for the Property to comply with Environmental Laws shall be obtained and maintained and Mortgagor shall assure compliance therewith.

Further, Mortgagor represents to Bank that no portion of the Property is a protected wetland. Mortgagor agrees to notify Bank immediately upon receipt of any citations, warnings, orders, notices, consent agreements, process or claims alleging or relating to violations of any Environmental Laws or to the environmental condition of the Property and shall conduct and complete all investigations and all cleanup actions necessary to comply with the Environmental Laws and to remove, in accordance with Environmental Laws, any Hazardous Material from the Property.

Mortgagor shall indemnify, hold harmless, and defend Bank from and against any and all damages, penalties, fines, claims, suits, liabilities, costs, judgments and expenses, including attorneys', consultants' or experts' fees of every kind and nature incurred, suffered by or asserted against Bank as a direct or indirect result of: (i) representations made by Mortgagor in this Section being or becoming untrue in any material respect; (ii) Mortgagor's violation of or failure to meet the requirements of any Environmental Laws; or (iii) Hazardous Materials which, while the Property is subject to this Mortgage, exist on the Property. Bank shall have the right to arrange for or conduct environmental inspections of the Property from time to time (including the taking of soil, water, air or material samples). The cost of such inspections made after Default or which are required by laws or regulations applicable to Bank shall be borne by Mortgagor. However, Mortgagor's indemnity shall not apply to any negligent or intentional act of Bank which takes place after foreclosure or satisfaction of this Mortgage. These indemnification obligations are in addition to General Indemnification provisions set forth hereafter. Mortgagor's Obligations under this section shall continue, survive and remain in full force and effect notwithstanding the repayment of the Obligations, a foreclosure of or exercise of power of sale under this instrument, a delivery of a deed in lieu of foreclosure, a cancellation or termination of record of this instrument and the transfer of the Property.

Appraisals. Mortgagor agrees that Bank may obtain an appraisal of the Property when required by the regulations of the Federal Reserve Board or the Office of the Comptroller of the Currency, or any other regulatory agency or at such other times as Bank may reasonably require. Such appraisals shall be performed by an independent third party appraiser selected by Bank. The cost of such appraisals shall be borne by Mortgagor. If requested by Bank, Mortgagor shall execute an engagement letter addressed to the appraiser selected by Bank. Mortgagor's failure or refusal to sign such an engagement letter, however, shall not impair Bank's right to obtain such an appraisal. Mortgagor agrees to pay the cost of such appraisal within 10 days after receiving an invoice for such appraisal.

Inspections. Bank, or its representatives or agents, are authorized to enter at any reasonable time upon any part of the Property for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage.

Liens and Subrogation. Mortgagor shall pay and promptly discharge all liens, claims and encumbrances upon the Property. Mortgagor shall have the right to contest in good faith the validity of any such lien, claim or encumbrance, provided: (i) such contest suspends the collection thereof or there is no danger of the Property being sold or forfeited while such contest is pending; (ii) Mortgagor first deposits with Bank a bond or other security satisfactory to Bank in such amounts as Bank shall reasonably require; and (iii) Mortgagor thereafter diligently proceeds to cause such lien, claim or encumbrance to be removed and discharged.

Bank shall be subrogated to any liens, claims and encumbrances against Mortgagor or the Property that are paid or discharged through payment by Bank or with loan proceeds, notwithstanding the record cancellation or satisfaction thereof.

Waiver of Mortgagor's Rights. To the fullest extent permitted by law, Mortgagor waives the

benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisalment before sale of any portion of the Property, (ii) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or any of the other Obligations, and any rights to hearing prior to the exercise by Bank of any right, power, or remedy herein provided to Bank.

To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption), appraisalment, valuation, stay, extension or redemption, and Mortgagor for themselves and their respective heirs, devisees, representatives, successors and assigns, and for any and all persons claiming any interest in the Property, to the extent permitted by law, hereby waive and release all rights of valuation, appraisalment, redemption, stay of execution, the benefit of all exemption laws, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. Mortgagor further waives any and all notices including, without limitation, notice of intention to accelerate and of acceleration of the Obligations.

Payments by Bank. In the event of default in the timely payment or performance of any of the Obligations, Bank, at its option and without any duty on its part to determine the validity or necessity thereof, may pay the sums for which Mortgagor is obligated. Further, Bank may pay such sums as Bank deems appropriate for the protection and maintenance of the Property including, without limitation, sums to pay impositions and other levies, assessments or liens, maintain insurance, make repairs, secure the Property, maintain utility service, intervene in any condemnation and pay attorneys' fees and other fees and costs to enforce this Mortgage or protect the lien hereof (including foreclosure) or collect the Obligations, without limitation, including those incurred in any proceeding including Bankruptcy or arbitration. Any amounts so paid shall bear interest at the default rate stated in the Note and shall be secured by this Mortgage.

Indemnification. Mortgagor shall protect, indemnify and save harmless Bank from and against all losses, liabilities, obligations, claims, damages, penalties, fines, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Damages") imposed upon, incurred by or asserted or assessed against Bank on account of or in connection with (i) the Loan Documents or any failure or alleged failure of Mortgagor to comply with any of the terms of, or the inaccuracy or breach of any representation in, the Loan Documents; (ii) the Collateral or any claim of loss or damage to the Property or any injury or claim of injury to, or death of, any person or property that may be occasioned by any cause whatsoever pertaining to the Property or the use, occupancy or operation thereof, (iii) any failure or alleged failure of Mortgagor to comply with any law, rule or regulation applicable to it or to the Property or the use, occupancy or operation of the Property (including, without limitation, the failure to pay any taxes, fees or other charges), provided that such indemnity shall be effective only to the extent of any Damages that may be sustained by Bank in excess of any net proceeds received by it from any insurance of Mortgagor (other than self-insurance) with respect to such Damages, (iv) any Damages whatsoever by reason of any alleged action, obligation or undertaking of Bank relating in any way to or any matter contemplated by the Loan Documents, (v) any claim for brokerage fees or such other commissions relating to the Property or any other Obligations, or (vi) any and all liability arising from any leases related to the Property. Nothing contained herein shall require Mortgagor to indemnify Bank for any Damages resulting from Bank's gross negligence or its willful and wrongful acts. The indemnity provided for herein shall survive payment of the Obligations and shall extend to the officers, directors, employees and duly authorized agents of Bank. In the event the Bank incurs any Damages arising out of or in any way relating to the transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such Damages shall be added to the Obligations, shall bear interest, to the extent permitted by law, at the interest rate borne by the Obligations from the date incurred until paid and shall be payable on demand.

Assignment of Rents. Mortgagor hereby absolutely assigns and transfers to Bank all the leases, rents, issues and profits of the Property (collectively "Rents"). Although this assignment is effective immediately, so long as no Default exists, Bank gives to and confers upon Mortgagor the privilege under a revocable license to collect as they become due, but not prior to accrual, the Rents and

to demand, receive and enforce payment, give receipts, releases and satisfactions, and sue in the name of Mortgagor for all such Rents. Mortgagor represents there has been no prior assignment of leases or Rents, and agrees not to further assign such leases or Rents. Upon any occurrence of Default, the license granted to Mortgagor herein shall be automatically revoked without further notice to or demand upon Mortgagor, and Bank shall have the right, in its discretion, without notice, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, (i) to enter upon and take possession of the Property, (ii) notify tenants, subtenants and any property manager to pay Rents to Bank or its designee, and upon receipt of such notice such persons are authorized and directed to make payment as specified in the notice and disregard any contrary direction or instruction by Mortgagor, and (iii) in its own name, sue for or otherwise collect Rents, including those past due, and apply Rents, less costs and expenses of operation and collection, including attorneys' fees, to the Obligations in such order and manner as Bank may determine or as otherwise provided for herein. Bank's exercise of any one or more of the foregoing rights shall not cure or waive any Default or notice of Default hereunder.

Due on Sale or Further Encumbrance or Transfer of an Interest in Mortgagor. Without the prior written consent of Bank in each instance, Mortgagor shall not (i) sell, convey, transfer or encumber the Property, or any part thereof or interest therein, whether legal or equitable, (ii) cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, or (iii) enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes: (a) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (c) if Mortgagor or any general partner or member of Mortgagor, is a corporation, partnership, limited liability company, trust or other business entity, the transfer (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity including, without limitation, changes in stockholders, partners, members, managers, trustees, beneficiaries, or their respective interests; (d) if Mortgagor, or any general partner or member of Mortgagor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.

Bank's consent to any conveyance or encumbrance may be conditioned upon an increase in the interest rate specified in the Note (or other Obligations), an extension or curtailment of the maturity of the Obligations, or other modification of the Note or this instrument.

Remedies of Bank on Default. Failure of Mortgagor or any other person liable to timely pay or perform any of the Obligations is a default ("Default") under this Mortgage. Upon the occurrence of Default the following remedies are available, without limitation, to Bank: (i) Bank may exercise any or all of Bank's remedies under this Mortgage or other Loan Documents including, without limitation, acceleration of the maturity of all payments and Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or any of its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; (ii) Bank may take immediate possession of the Property or any part thereof (which Mortgagor agrees to surrender to Bank) and manage, control or lease the same to such persons and at such rental as it may deem proper and collect and apply Rents to the payment of: (a) the Obligations, together with all costs and attorneys' fees; (b) all Impositions and any other levies, assessments or liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items; and (c) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Bank in its sole discretion may determine. The taking of possession shall not prevent concurrent or later proceedings for the foreclosure sale of the Property; (iii) Bank may apply to any court of competent jurisdiction for the appointment of a receiver for all purposes including, without limitation, to manage and operate the Property or any part thereof, and to apply the Rents therefrom as hereinabove provided. In the event of

such application, Mortgagor consents to the appointment of a receiver, and agrees that a receiver may be appointed without notice to Mortgagor, without regard to whether Mortgagor has committed waste or permitted deterioration of the Property, without regard to the adequacy of any security for the Obligations, and without regard to the solvency of Mortgagor or any other person, firm or corporation who or which may be liable for the payment of the Obligations; (iv) Bank may exercise all the remedies of a mortgagee as provided by law and in equity including, without limitation, foreclosure upon this Mortgage and sale of the Property, or any part of the Property, at public sale conducted according to applicable law (referred to as "Sale") and conduct additional Sales as may be required until all of the Property is sold or the Obligations are satisfied; (v) With respect to any portion of the Property governed by the UCC, Bank shall have all of the rights and remedies of a secured party thereunder. Bank may elect to foreclose upon any Property that is fixtures under law applicable to foreclosure of interests in real estate or law applicable to personal property; (vi) Bank may bid at Sale and may accept, as successful bidder, credit of the bid amount against the Obligations as payment of any portion of the purchase price; and (vii) Bank shall apply the proceeds of Sale, first to any fees or attorney fees permitted Bank by law in connection with Sale, second to expenses of foreclosure, publication, and sale permitted Bank by law in connection with Sale, third to the Obligations, and any remaining proceeds as required by law.

Miscellaneous Provisions. Mortgagor agrees to the following: (i) All remedies available to Bank with respect to this Mortgage or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Bank in exercising any remedy shall operate as a waiver of that remedy or of any Default. Any payment by Bank or acceptance by Bank of any partial payment shall not constitute a waiver by Bank of any Default; (ii) Mortgagor represents that Mortgagor (a) is (1) an adult individual and is sui juris, or (2) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (b) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Mortgage and any other Loan Document to which it is a party. (iii) The provisions hereof shall be binding upon and inure to the benefit of Mortgagor, its heirs, personal representatives, successors and assigns including, without limitation, subsequent owners of the Property or any part thereof, and shall be binding upon and inure to the benefit of Bank, its successors and assigns and any future holder of the Note or other Obligations; (iv) Any notices, demands or requests shall be sufficiently given Mortgagor if in writing and mailed or delivered to the address of Mortgagor shown above or to another address as provided herein and to Bank if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 10 South Jefferson Street, Roanoke, VA 24011, or such other address as Bank may specify from time to time and in the event that Mortgagor changes Mortgagor's address at any time prior to the date the Obligations are paid in full, that party shall promptly give written notice of such change of address by registered or certified mail, return receipt requested, all charges prepaid. Notices to Bank must include the mail code. (v) This Mortgage may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (vi) All references to "Bank" shall mean to "Bank (for itself and its affiliate)"; (vii) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Mortgage; (viii) If the lien of this Mortgage is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made shall be deemed to have first been applied to payment of the unsecured portion of the Obligations) prior to payment of the secured portion of the Obligations and if any clause, provision or obligation hereunder is determined invalid or unenforceable the remainder of this Mortgage shall be construed and enforced as if such clause, provision or obligation had not been contained herein; (ix) This Mortgage shall be governed by and construed under the laws of the jurisdiction where this Mortgage is recorded; (x) Mortgagor by execution and Bank by acceptance of this Mortgage agree to be bound by the terms and provisions hereof). **FINAL AGREEMENT.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent oral agreements of the parties. There are no unwritten oral agreements between the parties.

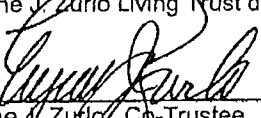
IN WITNESS WHEREOF, Mortgagor has signed and sealed this instrument as of the day and year first above written.

Mortgagor

Penny Creek Associates, L.L.C.

Members:

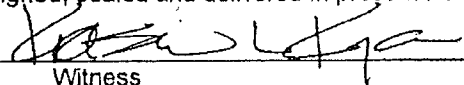
The Eugene J. Zurlo Living Trust dated December 11, 1997

By:  (SEAL)
Eugene J. Zurlo, Co-Trustee

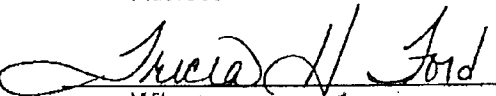
By:  (SEAL)
Charlotte R. Zurlo, Co-Trustee

 (SEAL)
Michel Laplante, Manager/Member

Signed, sealed and delivered in presence of:


Witness

John's Island, SC 29455
Address


Witness

John's Island, SC 29455
Address

State of South Carolina
County of Charleston

PARTNERSHIP, LIMITED PARTNERSHIP or L.L.C. PROBATE

I, Tricia H. Ford, Notary Public, do hereby certify that Eugene J. Zurlo, as Trustee of The Eugene J. Zurlo Living Trust dated December 11, 1997, a Member of Penny Creek Associates, L.L.C., a limited liability company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and official seal this the 5 day of APRIL, 2006.

My commission expires:

My Comm. Exp.
May 8, 2010

Tricia H Ford
Notary Public

State of South Carolina
County of Charleston

PARTNERSHIP, LIMITED PARTNERSHIP or L.L.C. PROBATE

I, Tricia H. Ford, Notary Public, do hereby certify that Charlotte R. Zurlo, as Trustee of The Eugene J. Zurlo Living Trust dated December 11, 1997, a Member of Penny Creek Associates, L.L.C., a limited liability company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and official seal this the 5 day of APRIL, 2006.

My commission expires:

My Comm. Exp.
May 8, 2010

Tricia H Ford
Notary Public

State of South Carolina
County of Charleston

PARTNERSHIP, LIMITED PARTNERSHIP or L.L.C. PROBATE

I, Tricia H. Ford, Notary Public, do hereby certify that Michel Laplante, a Manager/Member of Penny Creek Associates, L.L.C., a limited liability company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and official seal this the 5 day of April, 2006.

My commission expires:

My Comm. Exp.
May 8, 2010

Tricia H Ford
Notary Public

Tracking #: 67529rke

CAT - Deal # 642716 Facility

Exhibit "A"

BKG 579PG259

PARCEL 1 (Tract B-2-1):

All that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as Tract B-2-1, said to contain 11.645 total acres, as shown on a plat entitled "PLAT SHOWING THE SUBDIVISION OF TRACT B-2-1 TMS NO. 346-00-00-004 CONTAINING 24.895 ACRES INTO TRACT B-2-3 (12.250 ACRES) AND RESIDUAL TRACT B-2-1 (12.645 ACRES) PROPERTY OF PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA" prepared by HLA INC, dated December 10, 2004 and recorded in Plat Book EH at page 903, in the R.M.C. Office for Charleston County, South Carolina (hereinafter "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Said properties are subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being a portion of the same property conveyed to the Mortgagor herein by deed of conveyance from FHP Realty Company, a Partnership dated August 7, 2000 and recorded in Book O352, page 692, in the R.M.C. Office for Charleston County, SC.

TMS # 346-00-00-004

ALSO

PARCEL 2 (Tract B-2-2):

All that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as Tract B-2-2, said to contain 22.91 acres total more or less, as shown on a plat entitled "PLAT SHOWING THE SUBDIVISION OF TRACT B-2-1 TMS NO. 346-00-00-004 CONTAINING 24.895 ACRES INTO TRACT B-2-3 (12.250 ACRES) AND RESIDUAL TRACT B-2-1 (12.645 ACRES) PROPERTY OF PENNY CREEK ASSOCIATES, LLC LOCATED IN THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA" prepared by HLA INC, dated December 10, 2004 and recorded in Plat Book EH at page 903, in the R.M.C. Office for Charleston County, South Carolina (hereinafter "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Said properties are subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being a portion of the same property conveyed to the Mortgagor herein by deed of conveyance from FHP Realty Company, a Partnership dated August 7, 2000 and recorded in Book O352, page 692, in the R.M.C. Office for Charleston County, SC.

TMS # 346-00-00-076

ALSO

PARCEL 3 (Lot 2):

All that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as Lot 2, said to contain 16.41 total acres, more or less, as shown on a plat entitled "SHOWING THE SUBDIVISION OF TMS # 346-00-00-002 TO CREATE NEW LOTS 1, 2, 3, AND RESIDUAL THE PRESERVE AT FENWICK PLANTATION TO BE OWNED BY EPIC DEVELOPMENT, LLC THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA" prepared by GPA Professional

Land Surveyors, dated May 15, 2005 and recorded in Plat Book EJ at page 107, in the R.M.C. Office for Charleston County, South Carolina (hereinafter "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Said properties are subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being a portion of the same property conveyed to the Mortgagor herein by deed of conveyance from Julius H. Weil, Jr. dated March 25, 1999 and recorded in Book D323, page 439, and by deed of conveyance from Fenwick Acres, A Partnership dated March 25, 1999 and recorded in Book D323, page 312, in the R.M.C. Office for Charleston County, SC.

TMS # 346-00-00-258

ALSO

PARCEL 4 (Lot 3):

All that certain lot, piece or parcel of land, situate, lying and being in the City of Charleston, County of Charleston, State of South Carolina, shown and designated as Lot 3, said to contain 1.96 total acres, more or less, as shown on a plat entitled "SHOWING THE SUBDIVISION OF TMS # 346-00-00-002 TO CREATE NEW LOTS 1, 2, 3, AND RESIDUAL THE PRESERVE AT FENWICK PLANTATION TO BE OWNED BY EPIC DEVELOPMENT, LLC THE CITY OF CHARLESTON CHARLESTON COUNTY SOUTH CAROLINA" prepared by GPA Professional Land Surveyors, dated May 15, 2005 and recorded in Plat Book EJ at page 107, in the R.M.C. Office for Charleston County, South Carolina (hereinafter "R.M.C. Office"); said parcel having such location, size, shape, dimensions, buttings and boundings as will by reference to said plat more fully appear.

Said properties are subject to all applicable covenants, conditions, restrictions, limitations, obligations and easements of record.

This being a portion of the same property conveyed to the Mortgagor herein by deed of conveyance from Julius H. Weil, Jr. dated March 25, 1999 and recorded in Book D323, page 439, and by deed of conveyance from Fenwick Acres, A Partnership dated March 25, 1999 and recorded in Book D323, page 312, in the R.M.C. Office for Charleston County, SC.

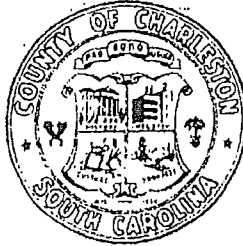
TMS # 346-00-00-259

This is a second mortgage junior in lien to that certain mortgage from Penny Creek Associates, L.L.C. to First Union National Bank dated August 7, 2000 and recorded in Book P352, page 613, RMC Office for Charleston County, a default under which shall be deemed an event of default hereunder.

BKG 579PG261

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



SAI

Filed By:

Buist, Byars, Pearce & Taylor, LLC
130 Gardners Circle
Suite 138
Johns Island SC 29455

[Handwritten signature]

FILED

April 7, 2006

4:16:23 PM

BKG 579PG249

Charlie Lybrand, Register
Charleston County, SC

DESCRIPTION

AMOUNT

	\$ 18.00
Postage	

TOTAL

\$ 18.00

DRAWER:

A - bmm

DO NOT STAMP BELOW THIS LINE

PROMISSORY NOTE

\$4,450,000.00

July
June 5, 2007

Penny Creek Associates, L.L.C.
C/O Mitch LaPlante
151 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America by mailing to the address specified hereinafter or wherever else Bank may specify, the sum of Four Million, Four Hundred Fifty Thousand and No/100 Dollars (\$4,450,000.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

RENEWAL/MODIFICATION/INCREASE. This Promissory Note renews, extends, increases and/or modifies that certain Promissory Note dated April 5, 2006 (the "Original Promissory Note"), evidencing an original principal amount of \$2,200,000.00. This Promissory Note is not a novation to the extent of the principal balance currently outstanding under the Original Promissory Note.

LINE OF CREDIT. Borrower may borrow, repay and reborrow, and, upon the request of Borrower, Bank shall advance and readvance under this Note from time to time until the maturity hereof (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in any loan agreement to which this Note is subject. Bank's obligation to make Advances under this Note shall terminate if Borrower is in Default. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true as of such date.

If Borrower subscribes to Bank's cash management services and such services are applicable to this line of credit, the terms of such service shall control the manner in which funds are transferred between the applicable demand deposit account and the line of credit for credit or debit to the line of credit.

USE OF PROCEEDS. Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: to increase existing facility.

SECURITY. Borrower has granted Bank a security interest in the collateral described in the Loan Documents, including, but not limited to, real and personal property collateral described in that certain security instrument dated April 5, 2006.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note from the date hereof at the LIBOR Market Index Rate plus 1.75%, as that rate may change from day to day in accordance with changes in the LIBOR Market Index Rate ("Interest Rate"). "LIBOR Market Index Rate", for any day, means the rate for 1 month U.S. dollar deposits as reported on Telerate Successor Page 3750 as of 11:00 a.m., London time, on such day, or if such day is not a London business day, then the immediately preceding London business day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

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DEFAULT RATE. In addition to all other rights contained in this Note, if a Default (as defined herein) occurs and as long as a Default continues, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from acceleration until the Obligations or any judgment thereon is paid in full.

INTEREST AND FEE(S) COMPUTATION (ACTUAL/360). Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective interest yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective rate exceeding the nominal rate.

REPAYMENT TERMS. This Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on July 13, 2007, and continuing on the same day of each month thereafter until fully paid. In any event, all principal and accrued interest shall be due and payable on March 13, 2008.

APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. If a Default occurs, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

DEFINITIONS. Loan Documents. The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

LATE CHARGE. If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 15 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof, unless such late payment is in an amount not greater than the highest periodic payment due hereunder.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

If this Note is secured by owner-occupied residential real property located outside the state in which the office of Bank first shown above is located, the late charge laws of the state where the real property is located shall apply to this Note and the late charge shall be the highest amount allowable under such

laws. If no amount is stated thereunder, the late charge shall be 5% of each payment past due for 10 or more days.

ATTORNEYS' FEES AND OTHER COLLECTION COSTS. Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

USURY. If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

DEFAULT. If any of the following occurs, a default ("Default") under this Note shall exist: **Nonpayment; Nonperformance.** The failure of timely payment or performance of the Obligations or Default under this Note or any other Loan Documents. **False Warranty.** A warranty or representation made or deemed made in the Loan Documents or furnished Bank in connection with the loan evidenced by this Note proves materially false, or if of a continuing nature, becomes materially false. **Cross Default.** At Bank's option, any default in payment or performance of any obligation under any other loans, contracts or agreements of Borrower, any Subsidiary or Affiliate of Borrower, any general partner of or the holder(s) of the majority ownership interests of Borrower with Bank or its affiliates ("Affiliate" shall have the meaning as defined in 11 U.S.C. § 101, as in effect from time to time, except that the term "Borrower" shall be substituted for the term "Debtor" therein; "Subsidiary" shall mean any business in which Borrower holds, directly or indirectly, a controlling interest). **Cessation; Bankruptcy.** The death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or commencement of any bankruptcy or insolvency proceeding by or against Borrower, its Subsidiaries or Affiliates, if any, or any general partner of or the holder(s) of the majority ownership interests of Borrower, or any party to the Loan Documents. **Material Capital Structure or Business Alteration.** Without prior written consent of Bank, (i) a material alteration in the kind or type of Borrower's business or that of Borrower's Subsidiaries or Affiliates, if any; (ii) the sale of substantially all of the business or assets of Borrower, any of Borrower's Subsidiaries or Affiliates or any guarantor, or a material portion (10% or more) of such business or assets if such a sale is outside the ordinary course of business of Borrower, or any of Borrower's Subsidiaries or Affiliates or any guarantor, or more than 50% of the outstanding stock or voting power of or in any such entity in a single transaction or a series of transactions; (iii) the acquisition of substantially all of the business or assets or more than 50% of the outstanding stock or voting power of any other entity; or (iv) should any Borrower or any of Borrower's Subsidiaries or Affiliates or any guarantor enter into any merger or consolidation. **Material Adverse Change.** Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Obligations are impaired or there has occurred a material adverse change in the business or prospects of Borrower, financial or otherwise.

REMEDIES UPON DEFAULT. If a Default occurs under this Note or any Loan Documents, Bank may at any time thereafter, take the following actions: **Bank Lien.** Foreclose its security interest or lien against Borrower's deposit accounts and investment property without notice. **Acceleration Upon Default.** Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; whereupon this Note and the accelerated Obligations shall be immediately due and payable; provided, however, if the Default is based upon a bankruptcy or insolvency proceeding commenced by or against Borrower or any guarantor or endorser of this Note, all Obligations (other than Obligations under any swap agreement as referenced above) shall automatically and immediately be due and payable. **Cumulative.** Exercise any rights and remedies as provided under the Note and other Loan Documents, or as provided by law or equity.

TAX RETURNS. Borrower shall deliver to Bank, within 30 days of filing, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Borrower to be true and complete copies of such returns. In the event an extension is filed, Borrower shall deliver a copy of the extension within 30 days of filing.

FINANCIAL AND OTHER INFORMATION. Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

WAIVERS AND AMENDMENTS. No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

MISCELLANEOUS PROVISIONS. Assignment. This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Organization; Powers.** Borrower represents that Borrower (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. **Compliance with Laws.** Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, any federal or state laws relating to liquor (including 18 U.S.C. § 3617, et seq.) or narcotics (including 21 U.S.C. § 801, et seq.) and/or any commercial crimes; all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic

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CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **Final Agreement.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

IN WITNESS WHEREOF, Borrower, on the day and year first above written, has caused this Note to be duly executed under seal.

Penny Creek Associates, L.L.C.

By:

Michel F. LaPlante, Manager

(SEAL)

By Curtis M. Byars
Attorney In Fact

By:

Eugene J. Zurlo Member

(SEAL)

Tracking #: 288544
CAT - Deal # 831238 Facility ID 639888

**MODIFICATION NUMBER ONE
TO PROMISSORY NOTE**

Penny Creek Associates, L.L.C.
151 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

THIS AGREEMENT is entered into as of April 28, 2008 by and between Bank and Borrower.

RECITALS

Bank is the holder of a Promissory Note, as modified from time to time, executed and delivered by Borrower, dated July 5, 2007, in the original principal amount of \$4,450,000.00 (the "Note");

Borrower and Bank have agreed to modify the terms of the Note.

In consideration of Bank's continued extension of credit and the agreements contained herein, the parties agree as follows:

AGREEMENT

ACKNOWLEDGMENT OF BALANCE. Borrower acknowledges that the most recent Commercial Loan Invoice sent to Borrower with respect to the Obligations under the Note is correct.

MODIFICATIONS.

The Note is hereby modified by deleting the provisions in the Note establishing the repayment terms and substituting the following in their place and stead:

REPAYMENT TERMS. The Note shall be due and payable in consecutive monthly payments of accrued interest only, commencing on May 13, 2008, and continuing on the same day of each month thereafter until fully paid. In any event, all principal and accrued interest shall be due and payable on March 13, 2009.

ACKNOWLEDGMENTS AND REPRESENTATIONS. Borrower acknowledges and represents that the Note and other Loan Documents, as amended hereby, are in full force and effect without any defense, counterclaim, right or claim of set-off; that, after giving effect to this Agreement, no default or event that with the passage of time or giving of notice would constitute a default under the Loan Documents has occurred, all representations and warranties contained in the Loan Documents are true and correct as of this date, all necessary action to authorize the execution and delivery of this Agreement has been taken; and this Agreement is a modification of an existing obligation and is not a novation.

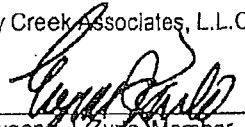
COLLATERAL. Borrower acknowledges and confirms that there have been no changes in the ownership of any collateral pledged to secure the Obligations (the "Collateral") since the Collateral was originally pledged; Borrower acknowledges and confirms that the Bank has existing, valid first priority security interests and liens in the Collateral; and that such security interests and liens shall secure Borrower's Obligations, including any modification of the Note or Loan Agreement, if any, and all future modifications, extensions, renewals and/or replacements of the Loan Documents.

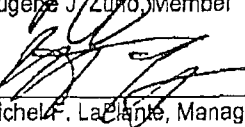
MISCELLANEOUS. This Agreement shall be construed in accordance with and governed by the laws of the applicable state as originally provided in the Loan Documents, without reference to that state's conflicts of law principles. This Agreement and the other Loan Documents constitute the sole agreement of the parties with respect to the subject matter thereof and supersede all oral negotiations and prior writings with respect to the subject matter thereof. No amendment of this Agreement, and no waiver of any one or more of the provisions hereof shall be effective unless set forth in writing and signed by the parties hereto. The illegality, unenforceability or inconsistency of any provision of this Agreement shall not in any way affect or impair the legality, enforceability or consistency of the remaining provisions of this Agreement or the other Loan Documents. This Agreement and the other Loan Documents are intended to be consistent. However, in the event of any inconsistencies among this Agreement and any of the Loan Documents, the terms of this Agreement, and then the Note, shall control. This Agreement may be executed in any number of counterparts and by the different parties on separate counterparts. Each such counterpart shall be deemed an original, but all such counterparts shall together constitute one and the same agreement. Terms used in this Agreement which are capitalized and not otherwise defined herein shall have the meanings ascribed to such terms in the Note. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS AGREEMENT, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY, WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS AGREEMENT. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS AGREEMENT.

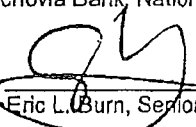
IN WITNESS WHEREOF, the undersigned have duly signed and sealed this Agreement the day and year first above written.

Penny Creek Associates, L.L.C.

By:  (SEAL)
Eugene J. Zupio, Member

By:  (SEAL)
Michel F. LaPlante, Manager

Wachovia Bank, National Association

By:  (SEAL)
Eric L. Burn, Senior Vice President

Tracking #: 501054
CAT - Deal # 920225 Facility ID 748104

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BK V633PG342

PREPARED BY: Nicki Zion
RETURN TO: Collateral Servicing Department, NC6038
Wachovia Bank, National Association
Commercial Loan Services
Collateral Servicing Department
P.O. Box 2705
Winston-Salem, NC 27199-8182

**MODIFICATION OF MORTGAGE
AND NOTICE OF FUTURE ADVANCE**

THIS MODIFICATION OF MORTGAGE is made ~~June~~ ^{July 5}, 2007, by Penny Creek Associates, L.L.C., whose address is C/O Mitch LaPlante, 151 Treeduck Court, Kiawah Island, South Carolina 29455, the Mortgagor under the Mortgage described below ("Mortgagor"), and delivered to Wachovia Bank, National Association, a national banking association as Mortgagee (referred to herein as "Bank"), whose address is Greenville, South Carolina 29601. Bank is the mortgagee hereunder for indexing purposes by the clerk of court.

RECITALS

Bank is owner and holder of a certain Mortgage (the "Mortgage") dated April 5, 2006, recorded in Book No. 6579, Page No. 249, of the public land records of the Town of John's Island, County of Charleston, State of South Carolina together with all extensions and modifications thereof whenever made.

Bank is owner and holder of a certain promissory note (the "Note") in the original amount of \$2,200,000.00, dated April 5, 2006, made by Mortgagor, payment of which is secured by the Mortgage.

Bank, and Mortgagor have modified the Note and accordingly have agreed to modify the Mortgage.

WITNESSETH:

In consideration of the foregoing premises Mortgagor and Bank hereby modify the Mortgage and any prior modifications thereof as follows:

Note Modified. Mortgagor has modified the Note (as modified, the "Modified Note") by modification dated of even date herewith, that modifies the terms of the Note. The stated principal amount due under the Modified Note is \$4,450,000.00.

Modified Note Secured. Mortgagor acknowledge(s) and agree(s) (i) that the Modified Note is a modification of the Note, (ii) that the payment and performance of the Obligations (as the term

"Obligations" is defined in the Modified Note) is secured by the Mortgage, (iii) that there are no defenses or impediments to enforcement of the lien of the Mortgage, and (iv) that the Modified Note evidences the same indebtedness as the Note and is not a novation.

Future Advances. This Mortgage is hereby modified to secure not only existing Obligations, but also future advances to the same extent as if such future advances are made on the date of the execution of this Mortgage. The principal amount (including any swap agreements and future advances) that may be so secured may decrease or increase from time to time, but the total amount so secured at any one time shall not exceed the maximum principal amount of \$8,900,000.00, plus all interest, costs, reimbursements, fees and expenses due under this Mortgage and secured hereby. Mortgagor shall not execute any document that impairs or otherwise impacts the priority of any future advances secured by this Mortgage.

Mortgage Confirmed. Mortgagor acknowledge(s) and agree(s) that the Mortgage and any prior modifications thereof, except as expressly modified by this Modification Agreement shall remain in full force and effect as originally executed and the terms of this Modification Agreement shall be part of the Mortgage.

Document Taxes and Other Charges. Mortgagor shall pay the full amount of any documentary stamp tax, intangible tax, interest, filing fees and penalties, if any, charged incident to the loan transaction and modification(s) described in or created by this Modification and the filing of this Agreement. If Mortgagor fails to pay the obligations under this paragraph, Bank may pay such obligations. Any amounts so paid by Bank shall bear interest at the default rate stated in the Modified Note and shall be secured by the Mortgage.

IN WITNESS WHEREOF, Mortgagor and Bank have duly signed and sealed this instrument as of the day and year first above written.

Mortgagor

Penny Creek Associates, LLC

By:

Michel F. LaPlante, Manager

(SEAL)

By Custis M. Byars
Attorney in Fact

Signed, sealed and delivered in presence of:

Maia E. Keeney
Witness

John's Island, SC
Address

Michael H. Ford
Witness

John's Island, SC
Address

BK V633PG344

By: Eugene J. Zurlo (SEAL)
Eugene J. Zurlo, Member

Signed, sealed and delivered in presence of:

Dale Hankley
Witness

18 Clinton St Rouses Point NY 12979
Address

Dolly Pettinger
Witness

370 Point au Fer Rd, Champlain, NY
Address



Bank
Wachovia Bank, National Association

By: Eric L. Burn
Eric L. Burn, Senior Vice President

Signed, sealed and delivered in presence of:

Eric L. Burn
Witness

177 Meeting St., Charleston, SC 29401
Address

Patricia H. Becker
Witness

177 Meeting St., Charleston, SC 29401
Address

State of South Carolina
County of Charleston

BK V633PG345

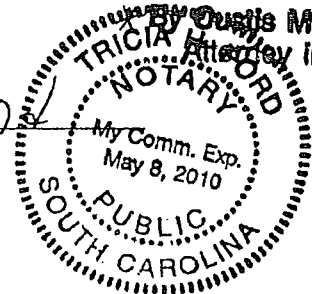
PARTNERSHIP, LIMITED PARTNERSHIP or L.L.C. PROBATE

I, TRICIA H FORD, Notary Public, do hereby certify that Michel F. LaPlante, ^{*}a Manager of Penny Creek Associates, L.L.C., a limited liability company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and official seal, this the 5th day of July, 2005

My commission expires: _____

Tricia H Ford
Notary Public



~~NEW YORK~~
~~State of South Carolina~~
~~County of Charleston~~
CLINTON

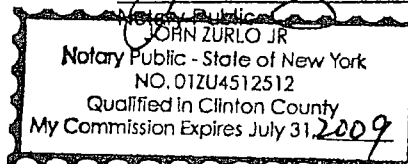
PARTNERSHIP, LIMITED PARTNERSHIP or L.L.C. PROBATE

I, JOHN ZURLO JR., Notary Public, do hereby certify that Eugene J. Zurlo, a Member of Penny Creek Associates, L.L.C., a limited liability company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and official seal, this the 5th day of July, 2007

My commission expires: _____

7/31/09



State of South Carolina
County of Charleston

BANK PROBATE

I, Patricia H. Becker, Notary Public, do hereby certify that Eric L. Burn, Senior Vice President of Wachovia Bank, National Association, a corporation, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the Wachovia Bank, National Association.

Witness my hand and official seal, this the 11 day of July, 2007

My commission expires: _____

2-14-2015

Patricia H. Becker
Notary Name

Tracking #: 288544
CAT - Deal # 831238 Facility ID 639888

BK V633PG346
RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



FILED

July 27, 2007

2:36:05 PM

BK V633PG342

Charlie Lybrand, Register
Charleston County, SC

Filed By:

Buist, Byars, & Taylor, LLC
130 Gardener's Circle
Suite 138
Johns Island SC 29455

Number of Pages:

5

DESCRIPTION AMOUNT

MTG/MOD	\$ 9.00
Postage	

TOTAL \$ 9.00

DRAWER:

C - tps

DO NOT STAMP BELOW THIS LINE

PROMISSORY NOTE

\$7,592,781.92

July 18, 2009

Penny Creek Associates, LLC
 C/O Mitch Laplante
 151 Treeduck Court
 Kiawah Island, South Carolina 29455
 (Hereinafter referred to as "Borrower")

Wachovia Bank, National Association
 Greenville, South Carolina 29601
 (Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America by mailing to the address specified hereinafter or wherever else Bank may specify, the sum of Seven Million, Five Hundred Ninety-Two Thousand, Seven Hundred Eighty-One and 92/100 Dollars (\$7,592,781.92) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

RENEWAL/CONSOLIDATION. This Promissory Note consolidates, renews, extends, and/or modifies that certain Promissory Note dated July 5, 2007, evidencing an original principal amount of \$4,450,000.00, as renewed, extended, and/or modified from time to time, and that certain Promissory Note dated April 28, 2008, evidencing an original principal amount of \$3,142,781.92, as renewed, extended and/or modified from time to time. This Promissory Note is not a novation.

LINE OF CREDIT. Borrower may borrow, repay and reborrow, and, upon the request of Borrower, Bank shall advance and readvance under this Note from time to time until the maturity hereof (each an "Advance" and together the "Advances"), so long as the total principal balance outstanding under this Note at any one time does not exceed the principal amount stated on the face of this Note, subject to the limitations described in any loan agreement to which this Note is subject. Bank's obligation to make Advances under this Note shall terminate if Borrower is in Default. As of the date of each proposed Advance, Borrower shall be deemed to represent that each representation made in the Loan Documents is true as of such date.

If Borrower subscribes to Bank's cash management services and such services are applicable to this line of credit, the terms of such service shall control the manner in which funds are transferred between the applicable demand deposit account and the line of credit for credit or debit to the line of credit.

USE OF PROCEEDS. Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: refinance and consolidation of existing debt.

SECURITY. (a) Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, real and personal property collateral described in that certain security instrument, dated August 5, 2000, as modified, restated or replaced from time to time. (b) Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, real and personal property collateral described in that certain security instrument, dated August 7, 2000, as modified, restated or replaced from time to time, and (c) Eugene J. Zurlo and Charlotte R. Zurlo, Trustees of the Nicklaus Lane

Realty Trust No. 1, Under Declaration of Trust Dated May 22, 1998 have granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, real and personal property collateral described in that certain security instrument, dated August 6, 2007, as modified, restated or replaced from time to time.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note from the date hereof at the LIBOR Market Index Rate plus 2.49%, as that rate may change from day to day in accordance with changes in the LIBOR Market Index Rate ("Interest Rate"). "LIBOR Market Index Rate", for any day, means the rate for 1 month U.S. dollar deposits as reported on Telerate Successor Page 3750 as of 11:00 a.m., London time, on such day, or if such day is not a London business day, then the immediately preceding London business day (or if not so reported, then as determined by Bank from another recognized source or interbank quotation).

DEFAULT RATE. In addition to all other rights contained in this Note, if a Default (as defined herein) occurs and as long as a Default continues, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from acceleration until the Obligations or any judgment thereon is paid in full.

INTEREST AND FEE(S) COMPUTATION (ACTUAL/360). Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective interest yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective rate exceeding the nominal rate.

REPAYMENT TERMS. The Note shall be due and payable as set forth hereinbelow. From the date of this Note until and including April 13, 2010, the Conversion Date, this Note shall be payable in consecutive monthly payments of accrued interest only, commencing on August 13, 2009, and continuing on the same day of each month thereafter. After the Conversion Date, this Note shall be payable in consecutive monthly payments of principal and interest in an amount equal to \$60,043.24, commencing on May 13, 2010 and continuing on the same day of each month thereafter. In any event, all principal and accrued interest shall be due and payable on June 13, 2012.

Scheduled Payment Adjustment. At Bank's option and with notice to Borrower, the scheduled payment amount will increase as is necessary (i) to pay all accruals of interest for the period and previous periods and (ii) to maintain principal repayment according to the amortization that would have occurred if the Interest Rate in effect on the date of this Note had remained constant. The increased payment amount shall remain in effect for as long as the original scheduled payment amount is insufficient to pay accrued interest and principal and shall be further adjusted upward or downward to reflect changes in the variable interest rate. The scheduled payment amount will not be reduced below the original scheduled payment amount.

APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. If a Default occurs, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

DEFINITIONS. **Loan Documents.** The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any

letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

LATE CHARGE. If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 15 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

If this Note is secured by owner-occupied residential real property located outside the state in which the office of Bank first shown above is located, the late charge laws of the state where the real property is located shall apply to this Note and the late charge shall be the highest amount allowable under such laws. If no amount is stated thereunder, the late charge shall be 5% of each payment past due for 10 or more days.

ATTORNEYS' FEES AND OTHER COLLECTION COSTS. Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

USURY. If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

DEFAULT. If any of the following occurs, a default ("Default") under this Note shall exist: **Nonpayment; Nonperformance.** The failure of timely payment or performance of the Obligations or Default under this Note or any other Loan Documents. **False Warranty.** A warranty or representation made or deemed made in the Loan Documents or furnished Bank in connection with the loan evidenced by this Note proves materially false, or if of a continuing nature, becomes materially false. **Cross Default.** At Bank's option, any default in payment or performance of any obligation under any other loans, contracts or agreements of Borrower, any Subsidiary or Affiliate of Borrower, any general partner of or the holder(s) of the majority ownership interests of Borrower with Bank or its affiliates ("Affiliate" shall have the meaning as defined in 11 U.S.C. § 101, as in effect from time to time, except that the term "Borrower" shall be substituted for the term "Debtor" therein; "Subsidiary" shall mean any business in which Borrower holds, directly or indirectly, a controlling interest). **Cessation; Bankruptcy.** The death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or commencement of any bankruptcy or insolvency proceeding by or against Borrower, its Subsidiaries or Affiliates, if any, or any general partner of or the holder(s) of the majority ownership interests of Borrower, or any party to the Loan Documents. **Material Capital Structure or Business Alteration.** Without prior written consent of Bank, (i) a material alteration in the kind or type of Borrower's business or that of Borrower's Subsidiaries or Affiliates, if any; (ii) the sale of substantially all of the business or assets of Borrower, any of Borrower's Subsidiaries or Affiliates

or any guarantor, or a material portion (10% or more) of such business or assets if such a sale is outside the ordinary course of business of Borrower, or any of Borrower's Subsidiaries or Affiliates or any guarantor, or more than 50% of the outstanding stock or voting power of or in any such entity in a single transaction or a series of transactions; (iii) the acquisition of substantially all of the business or assets or more than 50% of the outstanding stock or voting power of any other entity; or (iv) should any Borrower or any of Borrower's Subsidiaries or Affiliates or any guarantor enter into any merger or consolidation. **Material Adverse Change.** Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Obligations are impaired or there has occurred a material adverse change in the business or prospects of Borrower, financial or otherwise

REMEDIES UPON DEFAULT. If a Default occurs under this Note or any Loan Documents, Bank may at any time thereafter, take the following actions: **Bank Lien.** Foreclose its security interest or lien against Borrower's deposit accounts and investment property without notice. **Acceleration Upon Default.** Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; whereupon this Note and the accelerated Obligations shall be immediately due and payable; provided, however, if the Default is based upon a bankruptcy or insolvency proceeding commenced by or against Borrower or any guarantor or endorser of this Note, all Obligations (other than Obligations under any swap agreement as referenced above) shall automatically and immediately be due and payable. **Cumulative.** Exercise any rights and remedies as provided under the Note and other Loan Documents, or as provided by law or equity.

ANNUAL FINANCIAL STATEMENTS. Borrower shall deliver to Bank, no later than April 30th of each year, unaudited management-prepared financial statements reflecting its operations during such fiscal year, including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules and in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year. If unaudited statements are required, such statements shall be certified as to their correctness by a principal financial officer of Borrower.

FINANCIAL AND OTHER INFORMATION. Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

WAIVERS AND AMENDMENTS. No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

MISCELLANEOUS PROVISIONS. Assignment. This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Organization; Powers.** Borrower represents that Borrower (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. **Compliance with Laws.** Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's deposit accounts and investment property with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements, except as otherwise expressly provided in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state named in the Bank's address on the first page hereof. **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or other such document. **Payments.** All payments shall be mailed to Bank at Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502, or other such address as provided by Bank in writing. **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered

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to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P. O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the address for payments set forth above shall be deemed received at the opening of the next banking day. **Joint and Several Obligations.** If there is more than one Borrower, each is jointly and severally obligated together with all other parties obligated for the Obligations. **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **Telephone Communication Monitoring.** Borrower agrees that Borrower's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

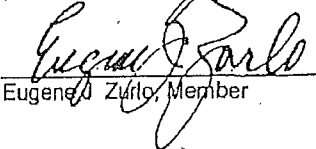
WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

09212P240019

IN WITNESS WHEREOF, Borrower, on the day and year first above written, has caused this Note to be duly executed under seal.

Penny Creek Associates, LLC

By:  (SEAL)
Michel P. LaPlante, Manager

By:  (SEAL)
Eugene J. Zurlo, Member

Work Request / Tracking # 1397639
CAT - Deal # 1133533 Facility # 951303
Obligor #. 41/6909622159 Obligation # 1644814 & 1324987

#0264268029-26

FIRST MODIFICATION TO PROMISSORY NOTE

THIS MODIFICATION TO PROMISSORY NOTE (this "Modification") is executed this August 14, 2012, by and between Penny Creek Associates, LLC ("Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION, successor-by-merger to Wachovia Bank, National Association ("Bank").

RECITALS

WHEREAS, Borrower is currently indebted to Bank pursuant to the terms and conditions of that certain Promissory Note in the maximum principal amount of \$7,592,781.92, executed by Borrower and payable to the order of Bank, dated as of July 28, 2009 (the "Note").

WHEREAS, Bank and Borrower have agreed to certain changes in the terms and conditions set forth in the Note, and have agreed to modify the Note to reflect said changes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be modified as follows:

1. The maximum principal amount available under the Note is hereby modified to be Six Million Five Hundred Twenty-one Thousand Three Hundred Sixty-eight and 61/100 Dollars (\$6,521,368.61).

2. Paragraph titled "LINE OF CREDIT" is hereby deleted in its entirety, without substitution.

3. Paragraph title "SECURITY" is hereby deleted in its entirety, and the following substituted therefore:

SECURITY. (a) Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, real and personal property collateral described in that certain Mortgage and Absolute Assignment of Leases dated August 7, 2000, recorded in Book P352, Page 613 of the of the Register of Deeds Office of the County of Charleston, State of South Carolina. (b) Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, real and personal property collateral described in that certain Mortgage and Assignment of Rents dated April 5, 2006, recorded in Book G579, Page 249 of the of the Register of Deeds Office of the County of Charleston, State of South Carolina, as modified by that certain Modification of Mortgage and Notice of Future Advance dated July 5, 2007, recorded in Book V633, Page 342 of the of the Register of Deeds Office of the County of Charleston, State of South Carolina.

4. Paragraph titled "INTEREST RATE" is hereby deleted in its entirety, and the following substituted therefor:

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5. Paragraph titled "REPAYMENT TERMS" is hereby deleted in its entirety, and the following substituted therefor:

"REPAYMENT TERMS. Interest accrued on this Note shall be payable on the 13th day of each month, commencing September 13, 2012. The outstanding principal balance of this Note shall be due and payable in full on January 18, 2013."

6. Paragraph titled "Scheduled Payment Adjustment" is hereby deleted in its entirety, without substitution.

7. Although the Note matured prior to the execution of this Modification, the parties hereby agree that the effective date of the changes set forth herein shall be June 13, 2012, such that the Note shall be deemed to have not matured.

8. Except as expressly set forth herein, all terms and conditions of the Note remain in full force and effect, without waiver or modification. All terms defined in the Note shall have the same meaning when used in this Modification. This Modification and the Note shall be read together, as one document.

9. Borrower certifies that as of the date of this Modification there exists no Event of Default under the Note, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default. Borrower further certifies that, notwithstanding the modifications set forth herein, all of the real property securing the Note shall remain subject to the lien, charge or encumbrance of the deed of trust, mortgage or other document pursuant to which such lien, charge or encumbrance is created, and nothing contained herein or done pursuant hereto shall affect or be construed to affect the priority of the lien, charge or encumbrance of any such deed of trust, mortgage or other document over any other liens, charges or encumbrances.

10. General Release. In consideration of the benefits provided to Borrower under the terms and provisions hereof, Borrower and each guarantor hereunder hereby agree as follows ("General Release"):

- (a) Borrower and each guarantor hereunder, for itself and on behalf of its respective successors and assigns, do hereby release, acquit and forever discharge Bank, all of Bank's predecessors in interest, and all of Bank's past and present officers, directors, attorneys, affiliates, employees and agents, of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or of any relationship, acts, omissions, misfeasance, malfeasance, causes of action, defenses, offsets, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses

and expenses, of every type, kind, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length (each, a "Released Claim" and collectively, the "Released Claims"), that Borrower or any guarantor hereunder now has or may acquire as of the later of: (i) the date this Modification becomes effective through the satisfaction (or waiver by Bank) of all conditions hereto; or (ii) the date that Borrower and each guarantor hereunder have executed and delivered this Modification to Bank (hereafter, the "Release Date"), including without limitation, those Released Claims in any way arising out of, connected with or related to any and all prior credit accommodations, if any, provided by Bank, or any of Bank's predecessors in interest, to Borrower or any guarantor hereunder, and any agreements, notes or documents of any kind related thereto or the transactions contemplated thereby or hereby, or any other agreement or document referred to herein or therein.

(b) Each person signing below on behalf of Borrower or any guarantor hereunder acknowledges that he or she has read each of the provisions of this General Release. Each such person fully understands that this General Release has important legal consequences, and each such person realizes that they are releasing any and all Released Claims that Borrower or any such guarantor may have as of the Release Date. Borrower and each guarantor hereunder hereby acknowledge that each of them has had an opportunity to obtain a lawyer's advice concerning the legal consequences of each of the provisions of this General Release.

(c) Borrower and each guarantor hereunder hereby specifically acknowledge and agree that: (i) none of the provisions of this General Release shall be construed as or constitute an admission of any liability on the part of Bank; (ii) the provisions of this General Release shall constitute an absolute bar to any Released Claim of any kind, whether any such Released Claim is based on contract, tort, warranty, mistake or any other theory, whether legal, statutory or equitable; and (iii) any attempt to assert a Released Claim barred by the provisions of this General Release shall subject Borrower and each guarantor hereunder to the provisions of applicable law setting forth the remedies for the bringing of groundless, frivolous or baseless claims or causes of action.

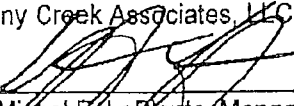
WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the property apply to the court for an order of appraisal. The statutory appraisal value 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 PROPERTY.

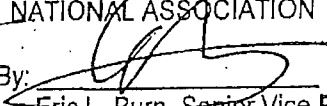
2025 RELEASE UNDER E.O. 14176

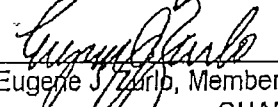
IN WITNESS WHEREOF, the parties hereto have caused this Modification to be executed, with the intention that it constitute an instrument under seal, as of the day and year first written above.

Penny Creek Associates, LLC

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By:  (SEAL)
Michel F. LaPlante, Manager

By: 
Eric L. Burn, Senior Vice President

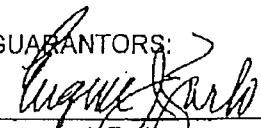
By:  (SEAL)
Eugene J. Zurlo, Member

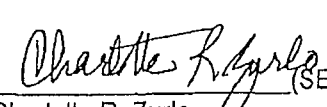
GUARANTORS' CONSENT AND REAFFIRMATION

Each of the undersigned guarantors of all indebtedness of Penny Creek Associates, LLC to WELLS FARGO BANK, NATIONAL ASSOCIATION hereby: (i) consents to the foregoing Modification; (ii) reaffirms its obligations under its respective Unconditional Guaranty; (iii) reaffirms its waivers of each and every one of the defenses to such obligations as set forth in its respective Unconditional Guaranty; and (iv) reaffirms that its obligations under its respective Unconditional Guaranty are separate and distinct from the obligations of any other party under said Modification and the other Loan Documents described therein.

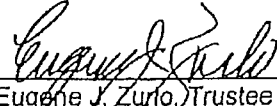
WAIVER OF APPRAISAL RIGHTS. The laws of South Carolina provide that in any real estate foreclosure proceeding a defendant against whom a personal judgment is taken or asked may within thirty days after the sale of the property apply to the court for an order of appraisal. The statutory appraisal value 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 PROPERTY.

GUARANTORS:

 (SEAL)
Eugene J. Zurlo

 (SEAL)
Charlotte R. Zurlo

 (SEAL)
Michel F. LaPlante

 (SEAL)
Eugene J. Zurlo, Trustee of The
Nicklaus Lane Realty Trust No. 1
under Declaration of Trust
dated May 22, 1998

 (SEAL)
Charlotte R. Zurlo, Trustee of The
Nicklaus Lane Realty Trust No. 1
under Declaration of Trust
dated May 22, 1998

 (SEAL)
Eugene J. Zurlo; Co-Trustee of The
Zurlo Investment Trust No. 1
under trust agreement
dated August 10, 1998

Charlotte R. Zurlo (SEAL)
Charlotte R. Zurlo, Co-Trustee of The
Zurlo Investment Trust No. 1
under trust agreement
dated August 10, 1998

H 026 426 8029 -26

SECOND MODIFICATION TO PROMISSORY NOTE

THIS MODIFICATION TO PROMISSORY NOTE (this "Modification") is entered into as of May 23, 2013, by and between PENNY CREEK ASSOCIATES, LLC ("Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank").

RECITALS

WHEREAS, Borrower is currently indebted to Bank pursuant to the terms and conditions of that certain Promissory Note in the maximum principal amount of \$7,592,781.92, executed by Borrower and payable to the order of Bank, dated as of July 28, 2009, as modified on August 14, 2012, and extended on January 28, 2013 (the "Note").

WHEREAS, Bank and Borrower have agreed to certain changes in the terms and conditions set forth in the Note, and have agreed to modify the Note to reflect said changes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be modified as follows:

1. Paragraph titled "REPAYMENT TERMS" is hereby deleted in its entirety, and the following substituted therefor:

"REPAYMENT TERMS. Interest accrued on this Note shall be payable on the 13th day of each month, commencing June 13, 2013. The outstanding principal balance of this Note shall be due and payable in full on January 18, 2014."

2. General Release. In consideration of the benefits provided to Borrower under the terms and provisions hereof, Borrower and each guarantor hereunder hereby agree as follows ("General Release"):

(a) Borrower and each guarantor hereunder, for itself and on behalf of its respective successors and assigns, do hereby release, acquit and forever discharge Bank, all of Bank's predecessors in interest, and all of Bank's past and present officers, directors, attorneys, affiliates, employees and agents, of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or of any relationship, acts, omissions, misfeasance, malfeasance, causes of action, defenses, offsets, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length (each, a "Released Claim" and collectively, the "Released Claims"), that Borrower or any guarantor hereunder now has or may acquire as of the later of: (i) the date this Modification becomes effective through the satisfaction (or waiver by Bank) of all conditions hereto, or (ii) the date that Borrower and each guarantor hereunder have executed and delivered this Modification to Bank (hereafter, the "Release Date"), including without limitation, those Released Claims in any way arising out of, connected with or related to any and all prior credit accommodations, if any, provided by Bank, or any of Bank's predecessors in interest, to Borrower or any guarantor hereunder, and any agreements, notes or documents of any kind related thereto or the transactions contemplated thereby or hereby, or any other agreement or document referred to herein or therein.

(b) Each person signing below on behalf of Borrower or any guarantor hereunder acknowledges that he or she has read each of the provisions of this General Release. Each such person fully understands that this General Release has important legal consequences, and each such person realizes that they are releasing any and all Released Claims that Borrower or any such guarantor may have as of the Release Date. Borrower and each guarantor hereunder hereby acknowledge that each of them has had an opportunity to obtain a lawyer's advice concerning the legal consequences of each of the provisions of this General Release.

(c) Borrower and each guarantor hereunder hereby specifically acknowledge and agree that: (i) none of the provisions of this General Release shall be construed as or constitute an admission of any liability on the part of Bank; (ii) the provisions of this General Release shall constitute an absolute bar to any Released Claim of any kind, whether any such Released Claim is based on contract, tort, warranty, mistake or any other theory, whether legal, statutory or equitable; and (iii) any attempt to assert a Released Claim barred by the provisions of this General Release shall subject Borrower and each guarantor hereunder to the provisions of applicable law setting forth the remedies for the bringing of groundless, frivolous or baseless claims or causes of action.

3. The effective date of the changes set forth herein shall be May 23, 2013. ✓

4. Except as expressly set forth herein, all terms and conditions of the Note remain in full force and effect, without waiver or modification. All terms defined in the Note [or the Loan Agreement] shall have the same meaning when used in this Modification. This Modification and the Note shall be read together, as one document.

5. Borrower certifies that as of the date of this Modification there exists no Event of Default under the Note, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default. Borrower further certifies that, notwithstanding the modifications set forth herein, all of the real property securing the Note shall remain subject to the lien, charge or encumbrance of the deed of trust, mortgage or other document pursuant to which such lien, charge or encumbrance is created, and nothing contained herein or done pursuant hereto shall affect or be construed to affect the priority of the lien, charge or encumbrance of any such deed of trust, mortgage or other document over any other liens, charges or encumbrances.

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 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 PROPERTY.

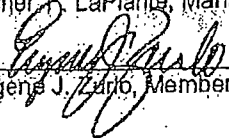
IN WITNESS WHEREOF, the parties hereto have caused this Modification to be executed, with the intention that it constitute an instrument under seal, as of the day and year first written above.

PENNY CREEK ASSOCIATES, LLC

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____ (SEAL)
Michel F. LaPlante, Manager

By: _____
Steven A. Jasinski, Private Banker

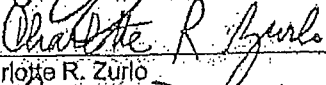
By:  (SEAL)
Eugene J. Zurlo, Member

GUARANTORS:

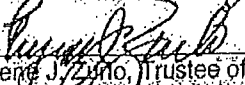
Michel F. LaPlante



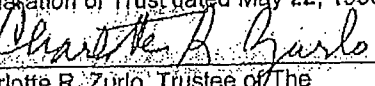
Eugene J. Zurlo



Charlotte R. Zurlo



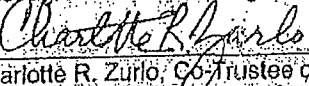
Eugene J. Zurlo, Trustee of The
Nicklaus Lane Realty Trust No. 1 under
Declaration of Trust dated May 22, 1998



Charlotte R. Zurlo, Trustee of The
Nicklaus Lane Realty Trust No. 1 under
Declaration of Trust dated May 22, 1998



Eugene J. Zurlo, Co-Trustee of
The Zurlo Investment Trust No. 1 under
trust agreement dated August 10, 1998



Charlotte R. Zurlo, Co-Trustee of
The Zurlo Investment Trust No. 1 under
trust agreement dated August 10, 1998

五、六、七、八、九、十、十一、十二、十三、十四、十五、十六、十七、十八、十九、二十、二十一、二十二、二十三、二十四、二十五、二十六、二十七、二十八、二十九、三十、三十一、三十二、三十三、三十四、三十五、三十六、三十七、三十八、三十九、四十、四十一、四十二、四十三、四十四、四十五、四十六、四十七、四十八、四十九、五十、五十一、五十二、五十三、五十四、五十五、五十六、五十七、五十八、五十九、六十、六十一、六十二、六十三、六十四、六十五、六十六、六十七、六十八、六十九、七十、七十一、七十二、七十三、七十四、七十五、七十六、七十七、七十八、七十九、八十、八十一、八十二、八十三、八十四、八十五、八十六、八十七、八十八、八十九、九十、九十一、九十二、九十三、九十四、九十五、九十六、九十七、九十八、九十九、一百。

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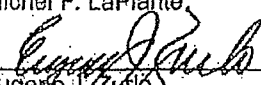
13165 M107025

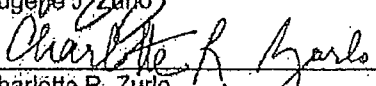
GUARANTORS' CONSENT AND REAFFIRMATION

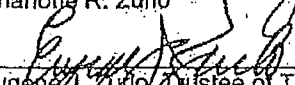
Each of the undersigned guarantors of all indebtedness of PENNY CREEK ASSOCIATES, LLC to WELLS FARGO BANK, NATIONAL ASSOCIATION hereby: (i) consents to the foregoing Amended and Restated Commitment Note; (ii) reaffirms its obligations under its respective Continuing Guaranty; (iii) reaffirms its waivers of each and every one of the defenses to such obligations as set forth in its respective Continuing Guaranty; and (iv) reaffirms that its obligations under its respective Continuing Guaranty are separate and distinct from the obligations of any other party under said Amended and Restated Commitment Note and the other Loan Documents described therein.

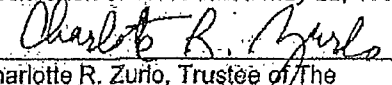
GUARANTORS:

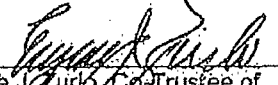
Michel F. LaPlante

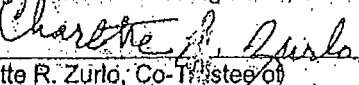

Eugene J. Zurlo


Charlotte R. Zurlo

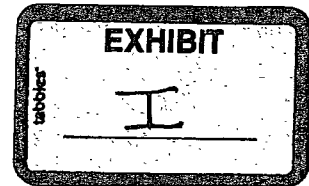

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The Zurlo Investment Trust No. 1 under
trust agreement dated August 10, 1998

13165 M107025



RMC Bk 0284 Pg 614 : pg 1 *



BP0284614

RETURN TO: L. Foster Girard
Haynsworth Sinkler Boyd, P.A.
Post Office Box 11889
Columbia, South Carolina 29211

MODIFICATION OF MORTGAGES

Book P352, Page 613, and Book G579, Page 249

(CHARLESTON)

THIS MODIFICATION, is made effective Octoberst, 2012, by Penny Creek Associates, LLC, whose address is _____, the Mortgagor under the Mortgages described below ("Mortgagor"), and delivered to Wells Fargo Bank, N.A., as successor by merger to Wachovia Bank, National Association, a national banking association, as Mortgagee (referred to herein as "Bank"), whose address is 90 South 7th Street Minneapolis, MN 55402.

RECITALS

Bank is the owner and holder of a certain Mortgage and Absolute Assignment of Leases dated August 7, 2000, recorded in Book P352, Page 613 of the of the Register of Deeds Office of the County of Charleston, State of South Carolina (the "\$5,300,000 Mortgage").

Bank is owner and holder of a certain Mortgage and Assignment of Rents dated April 5, 2006, recorded in Book G579, Page 249 of the aforementioned records, as modified by that certain Modification of Mortgage and Notice of Future Advance dated July 5, 2007, recorded in Book V633, Page 342 of the aforementioned records (as modified, the "\$4,450,000 Mortgage" and, together with the \$5,300,000 Mortgage, the "Mortgages").

The Promissory Note that was originally secured by the \$5,300,000 Mortgage, also dated August 7, 2000 (the "\$5,300,000 Note"), has been amended and extended by the parties a number of times since the \$5,300,000 Mortgage was first given.

The Promissory Note that was originally secured by the \$4,450,000 Mortgage, dated April 5, 2006 (the "\$4,450,000 Note" and together with the \$5,300,000 Note, the "Original Notes"), has been amended and extended by the parties a number of times since the \$4,450,000 Mortgage was first given.

The \$5,300,000 Note and the \$4,450,000 Note were consolidated on July 28, 2009 into a Promissory Note in the amount of Seven Million Five Hundred Ninety-Two Thousand Seven Hundred Eighty-One and 92/100 Dollars (\$7,592,781.92) (the "Consolidated Note").

The Consolidated Note is being amended on equal date herewith; and the parties desire to record this Modification in order to more clearly state that the Consolidated Note is secured by both the \$5,300,000 Mortgage and the \$4,450,000 Mortgage.

Bank and Mortgagor have modified the Note and accordingly have agreed to modify the Mortgage.

WITNESSETH:

In consideration of the foregoing premises Mortgagor and Bank hereby modify the Mortgages and any prior modifications thereof as follows:

Note Modified. Mortgagor has modified the Consolidated Note (as modified, the "Modified Consolidated Note") pursuant to a First Modification of Promissory Note dated of even date herewith, that modifies the terms of the Note by, among other changes, reducing the stated principal of the Note to \$6,521,368.61.

Modified Note Secured. Mortgagor acknowledge(s) and agree(s) (i) that the Modified Consolidated Note is a modification of the Original Notes, (ii) that the payment and performance of the Obligations (as the term "Obligations" is defined in the Modified Consolidated Note) is secured by both Mortgages, (iii) that there are no defenses or impediments to enforcement of the lien of the Mortgages, and (iv) that the Modified Consolidated Note evidences the same indebtedness as the Original Notes and is not a novation.

Mortgages Confirmed. Mortgagor acknowledge(s) and agree(s) that the Mortgages and any prior modifications thereof, except as expressly modified by this Modification shall remain in full force and effect as originally executed and the terms of this Modification shall be part of the Mortgages.

Document Taxes and Other Charges. Mortgagor shall pay the full amount of any documentary stamp tax, intangible tax, interest, filing fees and penalties, if any, charged incident to the loan transaction and modification(s) described in or created by this Modification and the filing thereof. If Mortgagor fails to pay the obligations under this paragraph, Bank may pay such obligations. Any amounts so paid by Bank shall bear interest at the default rate stated in the Modified Consolidated Note and shall be secured by the Mortgage.

IN WITNESS WHEREOF, Mortgagor and Bank have signed and sealed this instrument as of the day and year first above written.

Mortgagor

Penny Creek Associates, LLC

By: _____ (SEAL)

Name: Mitch Laplante

Title: Manager

Signed, sealed and delivered in presence of:

witness

Ramen Laplante
witness

STATE OF SOUTH CAROLINA)

COUNTY OF RICHLAND)

The foregoing instrument was acknowledged before me this 1st day of October, 2012 by Mitch Laplante, the Manager of Penny Creek Associates, LLC, on behalf of said entity.

Ramen Bailey
Notary Public for South Carolina
My Commission Expires: 1/15/19

[SEAL]

Bank

Wells Fargo Bank, N.A., as successor by merger to
Wachovia Bank, National Association

By: [Signature] (SEAL)
Name: Steven A. Jarinski
Title: Vice President

Signed, sealed and delivered in presence of:

[Signature]
witness
[Signature]
witness

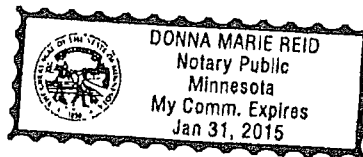
STATE OF ~~SOUTH CAROLINA~~ Minnesota
COUNTY OF ~~RICHLAND~~ Hennepin

The foregoing instrument was acknowledged before me this 9th day of October,
2012 by Steven A. Jarinski, a Vice President of Wells Fargo Bank, N.A., as
successor by merger to Wachovia Bank, National Association, a national association, on behalf of said
entity.

Donna Marie Reid

Notary Public for ~~South Carolina~~ Minnesota
My Commission Expires: 1-31-2015

[SEAL]



RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

HAYNSWORTH SINKLER BOYD, PA

PO BOX 11889
COLUMBIA SC 29211

RECORDED		
Date:	October 15, 2012	
Time:	1:39:30 PM	
Book	Page	DocType
0284	614	Mtg/Mod
Charlie Lybrand, Register Charleston County, SC		

MAKER:

PENNY CREEK ASSOCS LLC

RECIPIENT:

WELLS FARGO BANK

Original Book:

P352

Original Page:

613

of Sats:

of Pages: 5

of References: 2

Note:

Recording Fee	\$ 6.00
Extra Reference Cost	\$ 6.00
Extra Pages	\$ 3.00
Postage	\$ -
Chattel	\$ -
TOTAL	\$ 15.00

DRAWER **Drawer 1**
CLERK **KLH**



0284
Book



614
Page



10/15/2012
Recorded Date



5
Pgs



P352
Original Book



613
Original Page



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Doc Type



13:39:30
Recorded Time

RMC Bk 0284 Pg 614 : pg 5 *

PROMISSORY NOTE

\$3,536,250.00

January 31, 2011

The Grove At Fenwick Plantation, LLC
151 Treeduct Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Wells Fargo Bank, N.A.
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

Borrower promises to pay to the order of Bank, in lawful money of the United States of America by mailing to the address specified hereinafter or wherever else Bank may specify, the sum of Three Million, Five Hundred Thirty-Six Thousand, Two Hundred Fifty and No/100 Dollars (\$3,536,250.00) or such sum as may be advanced and outstanding from time to time, with interest on the unpaid principal balance at the rate and on the terms provided in this Promissory Note (including all renewals, extensions or modifications hereof, this "Note").

USE OF PROCEEDS. Borrower shall use the proceeds of the loan(s) evidenced by this Note for the commercial purposes of Borrower, as follows: to acquire commercial real estate.

SECURITY. Borrower has granted or will grant Bank a security interest in the collateral described in the Loan Documents and such other security instruments as are executed from time to time, including, but not limited to, real and personal property collateral described in that certain security instrument, of even date herewith, as modified, restated or replaced from time to time.

INTEREST RATE. Interest shall accrue on the unpaid principal balance of this Note during each Interest Period from the date hereof at a rate per annum equal to 1-month LIBOR plus 2.75% ("Interest Rate"). Interest for each Interest Period shall accrue each day during such Interest Period, commencing on and including the first day to but excluding the last day. "Interest Period" means each period commencing on the first day of the calendar month and ending on the first day of the next succeeding calendar month; provided (i) the first Interest Period shall commence on the date hereof and (ii) any Interest Period that would otherwise extend past the maturity date of this Note shall end on the maturity date of this Note. "LIBOR" means, with respect to each Interest Period, the rate for U.S. dollar deposits with a maturity equal to the number of months specified above, as reported on Telerate Successor Page 3750 as of 11:00 a.m., London time, on the second London business day before such Interest Period begins, or, in the case of the first Interest Period, the second London business day before the first day of the calendar month during which such Interest Period begins (or if not so reported, then as determined by the Bank from another recognized source or Interbank quotation).

DEFAULT RATE. In addition to all other rights contained in this Note, if a Default (as defined herein) occurs and as long as a Default continues, all outstanding Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank or its affiliates, shall bear interest at the Interest Rate plus 3% ("Default Rate"). The Default Rate shall also apply from acceleration until the Obligations or any judgment thereon is paid in full.

INTEREST AND FEE(S) COMPUTATION (ACTUAL/360). Interest and fees, if any, shall be computed on the basis of a 360-day year for the actual number of days in the applicable period ("Actual/360 Computation"). The Actual/360 Computation determines the annual effective yield by taking the stated (nominal) rate for a year's period and then dividing said rate by 360 to determine the daily periodic rate to

be applied for each day in the applicable period. Application of the Actual/360 Computation produces an annualized effective interest rate exceeding the nominal rate.

REPAYMENT TERMS. This Note shall be due and payable as follows: beginning February 15, 2011, monthly principal payments of \$14,734.37 plus interest, based on a commercial style 20-year amortization, then beginning January 15, 2012, interest only monthly with principal reductions of \$175,500 by March 15, 2012, by June 15, 2012, and by September 15, 2012. In any event, all principal and accrued interest shall be due and payable on December 15, 2012.

APPLICATION OF PAYMENTS. Monies received by Bank from any source for application toward payment of the Obligations shall be applied to accrued interest and then to principal. If a Default occurs, monies may be applied to the Obligations in any manner or order deemed appropriate by Bank.

If any payment received by Bank under this Note or other Loan Documents is rescinded, avoided or for any reason returned by Bank because of any adverse claim or threatened action, the returned payment shall remain payable as an obligation of all persons liable under this Note or other Loan Documents as though such payment had not been made.

DEFINITIONS. **Loan Documents.** The term "Loan Documents", as used in this Note and the other Loan Documents, refers to all documents executed in connection with or related to the loan evidenced by this Note and any prior notes which evidence all or any portion of the loan evidenced by this Note, and any letters of credit issued pursuant to any loan agreement to which this Note is subject, any applications for such letters of credit and any other documents executed in connection therewith or related thereto, and may include, without limitation, a commitment letter that survives closing, a loan agreement, this Note, guaranty agreements, security agreements, security instruments, financing statements, mortgage instruments, any renewals or modifications, whenever any of the foregoing are executed, but does not include swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time). **Obligations.** The term "Obligations", as used in this Note and the other Loan Documents, refers to any and all indebtedness and other obligations under this Note, all other obligations under any other Loan Document(s), and all obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, whenever executed. **Certain Other Terms.** All terms that are used but not otherwise defined in any of the Loan Documents shall have the definitions provided in the Uniform Commercial Code.

LATE CHARGE. If any payments are not timely made, Borrower shall also pay to Bank a late charge equal to 5% of each payment past due for 15 or more days. This late charge shall not apply to payments due at maturity or by acceleration hereof.

Acceptance by Bank of any late payment without an accompanying late charge shall not be deemed a waiver of Bank's right to collect such late charge or to collect a late charge for any subsequent late payment received.

If this Note is secured by owner-occupied residential real property located outside the state in which the office of Bank first shown above is located, the late charge laws of the state where the real property is located shall apply to this Note and the late charge shall be the highest amount allowable under such laws. If no amount is stated thereunder, the late charge shall be 5% of each payment past due for 10 or more days.

ATTORNEYS' FEES AND OTHER COLLECTION COSTS. Borrower shall pay all of Bank's reasonable expenses actually incurred to enforce or collect any of the Obligations including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any trial, arbitration, or administrative proceeding, or in any appellate or bankruptcy proceeding.

USURY. If at any time the effective interest rate under this Note would, but for this paragraph, exceed the maximum lawful rate, the effective interest rate under this Note shall be the maximum lawful rate, and any

amount received by Bank in excess of such rate shall be applied to principal and then to fees and expenses, or, if no such amounts are owing, returned to Borrower.

DEFAULT. If any of the following occurs, a default ("Default") under this Note shall exist: **Nonpayment; Nonperformance.** The failure of timely payment or performance of the Obligations or Default under this Note or any other Loan Documents. **False Warranty.** A warranty or representation made or deemed made in the Loan Documents or furnished Bank in connection with the loan evidenced by this Note proves materially false, or if of a continuing nature, becomes materially false. **Cross Default.** At Bank's option, any default in payment or performance of any obligation under any other loans, contracts or agreements of Borrower, any Subsidiary or Affiliate of Borrower, any general partner of or the holder(s) of the majority ownership interests of Borrower with Bank or its affiliates ("Affiliate" shall have the meaning as defined in 11 U.S.C. § 101, as in effect from time to time, except that the term "Borrower" shall be substituted for the term "Debtor" therein; "Subsidiary" shall mean any business in which Borrower holds, directly or indirectly, a controlling interest). **Cessation; Bankruptcy.** The death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or commencement of any bankruptcy or insolvency proceeding by or against Borrower, its Subsidiaries or Affiliates, if any, or any general partner of or the holder(s) of the majority ownership interests of Borrower, or any party to the Loan Documents. **Material Capital Structure or Business Alteration.** Without prior written consent of Bank, (i) a material alteration in the kind or type of Borrower's business or that of Borrower's Subsidiaries or Affiliates, if any; (ii) the sale of substantially all of the business or assets of Borrower, any of Borrower's Subsidiaries or Affiliates or any guarantor, or a material portion (10% or more) of such business or assets if such a sale is outside the ordinary course of business of Borrower, or any of Borrower's Subsidiaries or Affiliates or any guarantor, or more than 50% of the outstanding stock or voting power of or in any such entity in a single transaction or a series of transactions; (iii) the acquisition of substantially all of the business or assets or more than 50% of the outstanding stock or voting power of any other entity; or (iv) should any Borrower or any of Borrower's Subsidiaries or Affiliates or any guarantor enter into any merger or consolidation. **Material Adverse Change.** Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Obligations are impaired or there has occurred a material adverse change in the business or prospects of Borrower, financial or otherwise.

REMEDIES UPON DEFAULT. If a Default occurs under this Note or any Loan Documents, Bank may at any time thereafter, take the following actions: **Bank Lien.** Foreclose its security interest or lien against Borrower's deposit accounts and investment property without notice. **Acceleration Upon Default.** Accelerate the maturity of this Note and, at Bank's option, any or all other Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Borrower and Bank, or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements; whereupon this Note and the accelerated Obligations shall be immediately due and payable; provided, however, if the Default is based upon a bankruptcy or insolvency proceeding commenced by or against Borrower or any guarantor or endorser of this Note, all Obligations (other than Obligations under any swap agreement as referenced above) shall automatically and immediately be due and payable. **Cumulative.** Exercise any rights and remedies as provided under the Note and other Loan Documents, or as provided by law or equity.

PROPERTY REPORTS. Borrower shall deliver to Bank, within 45 days after the close of each fiscal quarter, rent roll financial statements relating to the operation of the Property or Properties as set forth on the Real Estate Owned Schedule, including, without limitation, a balance sheet, income and expense statement and statement of cash flows, with supporting schedules; and summary of leases, as applicable; all in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year. Release price for the units will be 100% of the Bank approved net sale proceeds, but in no case will the release price be less than \$58,500 per unit. Net sales proceeds from unit sales can be applied towards the quarterly principal payments due in year 2.

FINANCIAL AND OTHER INFORMATION. Borrower shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Borrower's financial condition. Such information shall be true, complete, and accurate.

WAIVERS AND AMENDMENTS. No waivers, amendments or modifications of this Note and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank in exercising any right, power, or remedy under this Note and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise thereof or the exercise of any other right, power or remedy.

Except to the extent otherwise provided by the Loan Documents or prohibited by law, each Borrower and each other person liable under this Note waives presentment, protest, notice of dishonor, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale and all other notices of any kind. Further, each agrees that Bank may (i) extend, modify or renew this Note or make a novation of the loan evidenced by this Note, and/or (ii) grant releases, compromises or indulgences with respect to any collateral securing this Note, or with respect to any Borrower or other person liable under this Note or any other Loan Documents, all without notice to or consent of each Borrower and other such person, and without affecting the liability of each Borrower and other such person; provided, Bank may not extend, modify or renew this Note or make a novation of the loan evidenced by this Note without the consent of the Borrower, or if there is more than one Borrower, without the consent of at least one Borrower; and further provided, if there is more than one Borrower, Bank may not enter into a modification of this Note which increases the burdens of a Borrower without the consent of that Borrower.

MISCELLANEOUS PROVISIONS. Assignment. This Note and the other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Note and the other Loan Documents are freely assignable, in whole or in part, by Bank. In addition, nothing in this Note or any of the other Loan Documents shall prohibit Bank from pledging or assigning this Note or any of the other Loan Documents or any interest therein to any Federal Reserve Bank. Borrower shall not assign its rights and interest hereunder without the prior written consent of Bank, and any attempt by Borrower to assign without Bank's prior written consent is null and void. Any assignment shall not release Borrower from the Obligations. **Organization; Powers.** Borrower represents that Borrower (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Note and any other Loan Document to which it is a party. **Compliance with Laws.** Borrower represents that Borrower and any subsidiary and affiliate of Borrower and any guarantor are in compliance in all respects with all federal, state and local laws, rules and regulations applicable to its properties, operations, business, and finances, including, without limitation, all applicable federal, state and local laws and regulations intended to protect the environment; and the Employee Retirement Income Security Act of 1974, as amended ("ERISA"), if applicable. None of Borrower, or any subsidiary or affiliate of Borrower or any guarantor is a Sanctioned Person or has any of its assets in a Sanctioned Country or does business in or with, or derives any of its operating income from investments in or transactions with, Sanctioned Persons or Sanctioned Countries in violation of economic sanctions administered by OFAC. The proceeds from the Loan will not be used to fund any operations in, finance any investments or activities in, or make any payments to, a Sanctioned Person or a Sanctioned Country. "OFAC" means the U.S. Department of the Treasury's Office of Foreign Assets Control. "Sanctioned Country" means a country subject to a sanctions program identified on the list maintained by OFAC and available at <http://www.treas.gov/offices/enforcement/ofac/programs/index.shtml>, or as otherwise published from time to time. "Sanctioned Person" means (i) a person named on the list of Specially Designated Nationals or

Blocked Persons maintained by OFAC available at <http://www.treas.gov/offices/enforcement/ofac/sdn/index.shtml>, or as otherwise published from time to time, or (ii) (A) an agency of the government of a Sanctioned Country, (B) an organization controlled by a Sanctioned Country, or (C) a person resident in a Sanctioned Country, to the extent subject to a sanctions program administered by OFAC. **Applicable Law; Conflict Between Documents.** This Note and, unless otherwise provided in any other Loan Document, the other Loan Documents shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Note should conflict with the terms of any loan agreement or any commitment letter that survives closing, the terms of this Note shall control. **Borrower's Accounts.** Except as prohibited by law, Borrower grants Bank a security interest in all of Borrower's deposit accounts and investment property with Bank and any of its affiliates. **Swap Agreements.** All swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time), if any, between Borrower and Bank or its affiliates are independent agreements governed by the written provisions of said swap agreements, which will remain in full force and effect, unaffected by any repayment, prepayment, acceleration, reduction, increase or change in the terms of this Note, except as otherwise expressly provided in said written swap agreements, and any payoff statement from Bank relating to this Note shall not apply to said swap agreements except as otherwise expressly provided in such payoff statement. **Jurisdiction.** Borrower irrevocably agrees to non-exclusive personal jurisdiction in the state named in the Bank's address on the first page hereof. **Severability.** If any provision of this Note or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Note or other such document. **Payments.** All payments shall be mailed to Bank at Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or other such address as provided by Bank in writing. **Notices.** Any notices to Borrower shall be sufficiently given, if in writing and mailed or delivered to the Borrower's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, P. O. Box 13327, Roanoke, VA 24040 or Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Borrower changes Borrower's address at any time prior to the date the Obligations are paid in full, Borrower agrees to promptly give written notice of said change of address by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to Borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual, person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Advances.** Bank may, in its sole discretion, make other advances which shall be deemed to be advances under this Note, even though the stated principal amount of this Note may be exceeded as a result thereof. **Posting of Payments.** All payments received during normal banking hours after 2:00 p.m. local time at the address for payments set forth above shall be deemed received at the opening of the next banking day. **Joint and Several Obligations.** If there is more than one Borrower, each is jointly and severally obligated together with all other parties obligated for the Obligations. **Fees and Taxes.** Borrower shall promptly pay all documentary, intangible recordation and/or similar taxes on this transaction whether assessed at closing or arising from time to time. **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Patriot Act Notice.** To help fight the funding of terrorism and money laundering

activities, Federal law requires all financial institutions to obtain, verify, and record information that identifies each person who opens an account. For purposes of this section, account shall be understood to include loan accounts. **Telephone Communication Monitoring.** Borrower agrees that Borrower's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Note and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF BORROWER BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS NOTE, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS NOTE, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS NOTE. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS NOTE.

IN WITNESS WHEREOF, Borrower, on the day and year first above written, has caused this Note to be duly executed under seal.

The Grove At Fenwick Plantation, LLC

By: _____

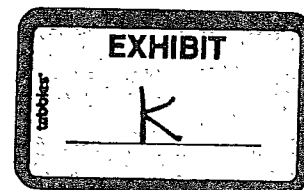
Michel F. LaPlante, Manager

(SEAL)

Work Request / Tracking #: 2178599
CAT - Deal # 1491535 Facility #: 1230705



BP0169391



RMC BK 0169 Pg 391 : pg 1 *

PREPARED BY: Corine Brown
RETURN TO:
Wells Fargo Bank, N.A.
Commercial Loan Services; NC6373 / D4003-010
Commercial New Loan/Renewal Documents
100 N. Main Street
P.O. Box 2705
Winston Salem, NC 27102-2705

MORTGAGE AND ASSIGNMENT OF RENTS

MA This MORTGAGE AND ASSIGNMENT OF RENTS (hereafter referred to as "Mortgage") made January 31, 2011, by and between The Grove At Fenwick Plantation, LLC, whose mailing address is 151 Treeduct Court, Kiawah Island, South Carolina 29455 ("Mortgagor"), and Wells Fargo Bank, N.A., a national banking association, whose address is 7711 Plantation Road, Roanoke, Virginia 24019 ("Bank"). Bank is the mortgagee hereunder for indexing purposes by the clerk of court.

WITNESSETH:

UK To secure payment and performance of obligations under a Promissory Note (the "Note") dated January 31, 2011, in the amount of \$3,536,250.00, made by Mortgagor payable to Bank, any present or future Letters of Credit issued by Bank or its affiliates for the account of Mortgagor, other loan documents as defined in the Note (the "Loan Documents"), and swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) between Mortgagor and Bank or any of its affiliates as defined in 11 U.S.C §101, as in effect from time to time, all other indebtedness of Mortgagor to Bank whenever borrowed or incurred, whether or not reasonably contemplated by the parties hereto as of the date hereof, and any renewals, extensions, novations, or modifications of the foregoing (collectively the "Obligations"), and in consideration of these premises and for other consideration, Mortgagor does mortgage, grant and convey unto Bank (for itself and its affiliates), its successors and assigns all of Mortgagor's right, title and interest now owned or hereafter acquired in and to each of the following (collectively, the "Property"): (i) all those certain tracts of land in the City of Johns Island, County of Charleston, State of South Carolina described in EXHIBIT A attached hereto and made part hereof (the "Land"); (ii) all buildings and improvements now or hereafter erected on the Land; (iii) all fixtures attached to the Land or any buildings or improvements situated thereon; and (iv) all estates, rights, tenements, hereditaments, privileges, rents, issues, profits easements, and appurtenances of any kind benefiting the Land; all means of access to and from the Land, whether public or private; and all water and mineral rights.

In the event that Mortgagor is the owner of a leasehold estate with respect to any portion of the Property and Mortgagor obtains a fee estate in such portions of the Property, then, such fee estate shall automatically, and without further action of any kind on the part of the Mortgagor, be and become subject to the security title and lien of this Agreement.

TO HAVE AND TO HOLD the Property and all the estate, right, title and interest, in law and in equity, of Mortgagor's in and to the Property unto Bank, its successors and assigns, forever.

Mortgagor WARRANTS AND REPRESENTS that Mortgagor is lawfully seized of the Property, in fee simple, absolute, that Mortgagor has the legal right to convey and encumber the same, and that the Property is free and clear of all liens and encumbrances. Mortgagor further warrants and will forever

defend all and singular the Property and title thereto to Bank and Bank's successors and assigns, against the lawful claims of all persons whomsoever.

PROVIDED ALWAYS that if (i) all the Obligations (including without limitation, all termination payments and any other amounts due under or in connection with any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder) are paid in full, (ii) each and every representation, warranty, agreement, covenant and condition of this Mortgage, and the other Loan Documents, are complied with and abided by, and (iii) any and all swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) secured hereunder have matured or been terminated, then this Mortgage and the estate hereby created shall cease and be null, void, and canceled of record.

To protect the security of this Mortgage, Mortgagor further represents and agrees with Bank as follows:

Payment of Obligations. That the Obligations shall be timely paid and performed.

Future Advances. This Mortgage is given to secure not only existing Obligations, but also future advances, including obligations under swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) to the same extent as if such future advances and obligations under swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) are made on the date of the execution of this Mortgage. The principal amount (including any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) and future advances) that may be so secured may decrease or increase from time to time, but the total amount so secured at any one time shall not exceed \$7,072,500.00, plus all interest, costs, reimbursements, fees and expenses due under this Mortgage and secured hereby. Mortgagor shall not execute any document that impairs or otherwise impacts the priority of any existing or future Obligations secured by this Mortgage.

Leases, Subleases and Easements. The Bank (as defined in the Mortgage) hereby waives its right to consent to the Mortgagor (as defined in the Mortgage) entering into new leases, or modifying and/or terminating existing leases as it deems appropriate with respect to individual condominium units located at the Property (as defined in the Mortgage).

Required Insurance. Mortgagor shall maintain with respect to the Property: (i) during construction of any improvements on the Property, "all-risk" builders risk insurance which must include windstorm, hail damage, fire and vandalism (non-reporting Completed Value with Special Cause of Loss form), in an amount not less than the completed replacement value of the improvements under construction, naming Bank as mortgagee and loss payee; (ii) upon completion of construction, upon occupancy of any improvements, and at all other times, insurance against loss or damage by fire and other casualties and hazards by insurance written on an "all risks" basis, including malicious mischief coverage, in an amount not less than the replacement cost thereof, including coverage for loss of rents or business interruption if applicable, naming Bank as loss payee and mortgagee; (iii) if the Property is required to be insured pursuant to the National Flood Reform Act of 1994, and the regulations promulgated thereunder, flood insurance is required in the amount equal to the lesser of the loan amount or maximum available under the National Flood Insurance Program, but in no event should the amount of coverage be less than the value of the improved structure, naming Bank as mortgagee and loss payee. If, after closing, the Property (or any part thereof) is remapped and if the vertical improvements are determined to be located in a special flood hazard area, Mortgagor must obtain and maintain a flood insurance policy. If, within forty-five (45) days of receipt of notification from Bank that the Property has been reclassified by FEMA as being located in a special flood hazard area, Mortgagor has not provided sufficient evidence of flood insurance, Bank is mandated under federal law to purchase flood insurance on behalf of Mortgagor, and Bank will add the associated costs to the principal balance of the Note. If the land or any portion thereof is located in a special flood hazard area, this Agreement may be terminated by Bank at its sole option; (iv) as applicable, insurance which complies with the workers' compensation and employers' liability laws of all states in which Mortgagor shall be required to maintain such insurance; and (v) liability insurance providing coverage in such amount as Bank may require but in no event less than

\$1,000,000.00 combined single limit, naming Bank as an additional insured; and (vi) such other insurance as Bank may require from time to time.

All property insurance policies shall contain an endorsement or agreement by the insurer in form satisfactory to Bank that any loss shall be payable in accordance with the terms of such policy notwithstanding any act or negligence of Mortgagor and the further agreement (within both the property and liability policies) of the insurer waiving rights of subrogation against Bank, and rights of set-off, counterclaim or deductions against Mortgagor.

All insurance policies shall be in form, provide coverages, be issued by companies and be in amounts satisfactory to Bank. At least 30 days prior to the expiration of each such policy, Mortgagor shall furnish Bank with evidence satisfactory to Bank that such policy has been renewed or replaced or is no longer required hereunder. All such policies shall provide that the policy will not be canceled or materially amended without at least 30 days prior written notice to Bank. In the event Mortgagor fails to provide, maintain, keep in force, and furnish to Bank the policies of insurance required by this paragraph, Bank may procure such insurance or single-interest insurance in such amounts, at such premium, for such risks and by such means as Bank chooses, at Mortgagor's expense; provided however, Bank shall have no responsibility to obtain any insurance, but if Bank does obtain insurance, Bank shall have no responsibility to assure that the insurance obtained shall be adequate or provide any protection to Mortgagor.

Insurance Proceeds. After occurrence of any loss to any of the Property, Mortgagor shall give prompt written notice thereof to Bank.

In the event of such loss all insurance proceeds, including unearned premiums, shall be payable to Bank, and Mortgagor hereby authorizes and directs any affected insurance company to make payment of such proceeds directly to Bank and not to Bank and Mortgagor jointly. Bank is hereby authorized by Mortgagor to make proof of loss if not promptly made by Mortgagor, settle, adjust or compromise any claims for loss or damage under any policy or policies of insurance and Mortgagor appoints Bank as its attorney-in-fact to receive and endorse any insurance proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied. Mortgagor shall pay the costs of collection, including attorneys' fees, of insurance proceeds payable on account of such damage or destruction. Mortgagor shall have no claim against the insurance proceeds, or be entitled to any portion thereof, and all rights to the insurance proceeds are hereby assigned to Bank as security for payment of the Obligations.

In the event of any damage to or destruction of the Property, Bank shall have the option of applying or paying all or part of the insurance proceeds to (i) the Obligations in such order as Bank may determine, (ii) restoration, replacement or repair of the Property in accordance with Bank's standard construction loan disbursement conditions and requirements, or (iii) Mortgagor. Nothing herein shall be deemed to excuse Mortgagor from restoring, repairing and maintaining the Property as required herein.

Impositions; Escrow Deposit. Mortgagor will pay all taxes, levies, assessments and other fees and charges imposed upon or which may become a lien upon the Property under any law or ordinance (all of the foregoing collectively "Impositions") before they become delinquent and in any event in the same calendar year in which they first become due. Upon request of Bank, Mortgagor shall add to each periodic payment required under the Note the amount estimated by Bank to be sufficient to enable Bank to pay, as they come due, all Impositions and insurance premiums which Mortgagor is required to pay hereunder. Payments requested under this provision shall be supplemented or adjusted as required by Bank from time to time. Such funds may be commingled with the general funds of Bank and shall not earn interest. Upon the occurrence of a Default, Bank may apply such funds to pay any of the Obligations.

Use of Property. Mortgagor shall use and operate, and require its lessees or licensees to use and operate, the Property in compliance with all applicable laws (including, for example, the Americans with Disabilities Act and the Fair Housing Act) and ordinances, covenants, and restrictions, and with all

applicable requirements of any lease or sublease now or hereafter affecting the Property. Mortgagor shall not permit any unlawful use of the Property or any use that may give rise to a claim of forfeiture of any of the Property. Mortgagor shall not allow changes in the stated use of Property from that disclosed to Bank at the time of execution hereof. Mortgagor shall not initiate or acquiesce to a zoning change of the Property without prior notice to, and written consent of, Bank.

Maintenance, Repairs and Alterations. Mortgagor shall keep and maintain the Property in good condition and repair and fully protected from the elements to the satisfaction of Bank. Mortgagor will not remove, demolish or structurally alter any of the buildings or other improvements on the Property (except such alterations as may be required by laws, ordinances or regulations) without the prior written consent of Bank. Mortgagor shall promptly notify Bank in writing of any material loss, damage or adverse condition affecting the Property.

Eminent Domain. Should the Property or any interest therein be taken or damaged by reason of any public use or improvement or condemnation proceeding ("Condemnation"), or should Mortgagor receive any notice or other information regarding such Condemnation, Mortgagor shall give prompt written notice thereof to Bank. Bank shall be entitled to all compensation, awards and other payments or relief granted in connection with such Condemnation and, at its option, may commence, appear in and prosecute in its own name any action or proceedings relating thereto. Bank shall be entitled to make any compromise or settlement in connection with such taking or damage. All compensation, awards, and damages awarded to Mortgagor related to any Condemnation (the "Proceeds") are hereby assigned to Bank and Mortgagor agrees to execute such further assignments of the Proceeds as Bank may require. Bank shall have the option of applying or paying the Proceeds in the same manner as insurance proceeds as provided herein. Mortgagor appoints Bank as its attorney-in-fact to receive and endorse the Proceeds to Bank, which appointment is coupled with an interest and shall be irrevocable as long as any Obligations remain unsatisfied.

Environmental Condition of Property and Indemnity. Mortgagor warrants and represents to Bank, except as reported by Mortgagor to Bank in writing, that: (i) Mortgagor has inspected and is familiar with the environmental condition of the Property; (ii) the Property and Mortgagor, and any occupants of the Property, are in compliance with and shall continue to be in compliance with all applicable federal, state and local laws and regulations intended to protect the environment and public health and safety as the same may be amended from time to time ("Environmental Laws"); (iii) the Property is not and has never been used to generate, handle, treat, store or dispose of, in any quantity, oil, petroleum products, hazardous or toxic substances, hazardous waste, regulated substances or hazardous air pollutants ("Hazardous Materials") in violation of any Environmental Laws; (iv) no Hazardous Materials (including asbestos, mold or lead paint in any form) are located on or under the Property or emanate from the Property; (v) there are no unregistered underground storage tanks on the Property that are subject to any underground storage tank registration laws or regulations; (vi) no notice has been received with regard to any Hazardous Material on the Property; (vii) no action, investigation or proceeding is pending or to Mortgagor's knowledge threatened which seeks to enforce any right or remedy against Mortgagor or the Property under any Environmental Law; and (viii) all licenses, permits and other governmental or regulatory actions necessary for the Property to comply with Environmental Laws shall be obtained and maintained and Mortgagor shall assure compliance therewith.

Further, Mortgagor represents to Bank that no portion of the Property is a protected wetland. Mortgagor agrees to notify Bank immediately upon receipt of any citations, warnings, orders, notices, consent agreements, process or claims alleging or relating to violations of any Environmental Laws or to the environmental condition of the Property and shall conduct and complete all investigations and all cleanup actions necessary to comply with the Environmental Laws and to remove, in accordance with Environmental Laws, any Hazardous Material from the Property.

Mortgagor shall indemnify, hold harmless, and defend Bank from and against any and all damages, penalties, fines, claims, suits, liabilities, costs, judgments and expenses, including attorneys', consultants' or experts' fees of every kind and nature incurred, suffered by or asserted against Bank as a direct or indirect result of: (i) representations made by Mortgagor in this Section being or becoming

untrue in any material respect; (ii) Mortgagor's violation of or failure to meet the requirements of any Environmental Laws; or (iii) Hazardous Materials which, while the Property is subject to this Mortgage, exist on the Property. Bank shall have the right to arrange for or conduct environmental inspections of the Property from time to time (including the taking of soil, water, air or material samples). The cost of such inspections made after Default (as hereinafter defined) or which are required by laws or regulations applicable to Bank shall be borne by Mortgagor. However, Mortgagor's indemnity shall not apply to any negligent or intentional act of Bank which takes place after foreclosure or satisfaction of this Mortgage. These indemnification obligations are in addition to General Indemnification provisions set forth hereafter. Mortgagor's Obligations under this section shall continue, survive and remain in full force and effect notwithstanding the repayment of the Obligations, a foreclosure of or exercise of power of sale under this instrument, a delivery of a deed in lieu of foreclosure, a cancellation or termination of record of this instrument and the transfer of the Property.

Appraisals. Mortgagor agrees that Bank may obtain an appraisal of the Property when required by the regulations of the Federal Reserve Board or the Office of the Comptroller of the Currency, or any other regulatory agency or at such other times as Bank may reasonably require. Such appraisals shall be performed by an independent third party appraiser selected by Bank. The cost of such appraisals shall be borne by Mortgagor. If requested by Bank, Mortgagor shall execute an engagement letter addressed to the appraiser selected by Bank. Mortgagor's failure or refusal to sign such an engagement letter, however, shall not impair Bank's right to obtain such an appraisal. Mortgagor agrees to pay the cost of such appraisal within 10 days after receiving an invoice for such appraisal.

Inspections. Bank, or its representatives or agents, are authorized to enter at any reasonable time upon any part of the Property for the purpose of inspecting the Property and for the purpose of performing any of the acts it is authorized to perform under the terms of this Mortgage.

Liens and Subrogation. Mortgagor shall pay and promptly discharge all liens, claims and encumbrances upon the Property. Mortgagor shall have the right to contest in good faith the validity of any such lien, claim or encumbrance, provided: (i) such contest suspends the collection thereof or there is no danger of the Property being sold or forfeited while such contest is pending; (ii) Mortgagor first deposits with Bank a bond or other security satisfactory to Bank in such amounts as Bank shall reasonably require; and (iii) Mortgagor thereafter diligently proceeds to cause such lien, claim or encumbrance to be removed and discharged.

Bank shall be subrogated to any liens, claims and encumbrances against Mortgagor or the Property that are paid or discharged through payment by Bank or with loan proceeds, notwithstanding the record cancellation or satisfaction thereof.

Waiver of Mortgagor's Rights. To the fullest extent permitted by law, Mortgagor waives the benefit of all laws now existing or that hereafter may be enacted providing for (i) any appraisement before sale of any portion of the Property, (ii) in any way extending the time for the enforcement of the collection of the Note or the debt evidenced thereby or any of the other Obligations, and any rights to hearing prior to the exercise by Bank of any right, power, or remedy herein provided to Bank.

To the full extent Mortgagor may do so, Mortgagor agrees that Mortgagor will not at any time insist upon, plead, claim or seek to take the benefit or advantage of any law now or hereafter in force providing for any exemption (including homestead exemption), appraisement, valuation, stay, extension or redemption, and Mortgagor for themselves and their respective heirs, devisees, representatives, successors and assigns, and for any and all persons claiming any interest in the Property, to the extent permitted by law, hereby waive and release all rights of valuation, appraisement, redemption, stay of execution, the benefit of all exemption laws, notice of election to mature or declare due the whole of the secured indebtedness and marshalling in the event of foreclosure of the liens hereby created. Mortgagor further waives any and all notices including, without limitation, notice of intention to accelerate and of acceleration of the Obligations.

Payments by Bank. In the event of Default (as hereinafter defined) in the timely payment or performance of any of the Obligations, Bank, at its option and without any duty on its part to determine the validity or necessity thereof, may pay the sums for which Mortgagor is obligated. Further, Bank may pay such sums as Bank deems appropriate for the protection and maintenance of the Property including, without limitation, sums to pay Impositions and other levies, assessments or liens, maintain insurance, make repairs, secure the Property, maintain utility service, intervene in any condemnation and pay attorneys' fees and other fees and costs to enforce this Mortgage or protect the lien hereof (including foreclosure) or collect the Obligations, without limitation, including those incurred in any proceeding including bankruptcy or arbitration. Any amounts so paid shall bear interest at the default rate stated in the Note and shall be secured by this Mortgage.

Indemnification. Mortgagor shall protect, indemnify and save harmless Bank from and against all losses, liabilities, obligations, claims, damages, penalties, fines, causes of action, costs and expenses (including, without limitation, reasonable attorneys' fees and expenses) (collectively, "Damages") imposed upon, incurred by or asserted or assessed against Bank on account of or in connection with (i) the Loan Documents or any failure or alleged failure of Mortgagor to comply with any of the terms of, or the inaccuracy or breach of any representation in, the Loan Documents; (ii) the Collateral or any claim of loss or damage to the Property or any injury or claim of injury to, or death of, any person or property that may be occasioned by any cause whatsoever pertaining to the Property or the use, occupancy or operation thereof, (iii) any failure or alleged failure of Mortgagor to comply with any law, rule or regulation applicable to it or to the Property or the use, occupancy or operation of the Property (including, without limitation, the failure to pay any taxes, fees or other charges), (iv) any Damages whatsoever by reason of any alleged action, obligation or undertaking of Bank relating in any way to or any matter contemplated by the Loan Documents, (v) any claim for brokerage fees or such other commissions relating to the Property or any other Obligations, or (vi) any and all liability arising from any leases related to the Property. Nothing contained herein shall require Mortgagor to indemnify Bank for any Damages resulting from Bank's gross negligence or its willful and wrongful acts, and such indemnity shall be effective only to the extent of any Damages that may be sustained by Bank in excess of any net proceeds received by it from any insurance of Mortgagor (other than self-insurance) with respect to such Damages. The indemnity provided for herein shall survive payment of the Obligations and shall extend to the officers, directors, employees and duly authorized agents of Bank. In the event the Bank incurs any Damages arising out of or in any way relating to the transaction contemplated by the Loan Documents (including any of the matters referred to in this section), the amounts of such Damages shall be added to the Obligations, shall bear interest, to the extent permitted by law, at the interest rate borne by the Obligations from the date incurred until paid and shall be payable on demand.

Assignment of Rents. Mortgagor hereby absolutely assigns and transfers to Bank all the leases, rents, issues and profits of the Property (collectively "Rents"). Although this assignment is effective immediately, so long as no Default exists, Bank gives to and confers upon Mortgagor the privilege under a revocable license to collect as they become due, but not prior to accrual, the Rents and to demand, receive and enforce payment, give receipts, releases and satisfactions, and sue in the name of Mortgagor for all such Rents. Mortgagor represents there has been no prior assignment of leases or Rents, and agrees not to further assign such leases or Rents. Upon any occurrence of Default, the license granted to Mortgagor herein shall be automatically revoked without further notice to or demand upon Mortgagor, and Bank shall have the right, in its discretion, without notice, by agent or by a receiver appointed by a court, and without regard to the adequacy of any security for the Obligations, (i) to enter upon and take possession of the Property, (ii) notify tenants, subtenants and any property manager to pay Rents to Bank or its designee, and upon receipt of such notice such persons are authorized and directed to make payment as specified in the notice and disregard any contrary direction or instruction by Mortgagor, and (iii) in its own name, sue for or otherwise collect Rents, including those past due, and apply Rents, less costs and expenses of operation and collection, including attorneys' fees, to the Obligations in such order and manner as Bank may determine or as otherwise provided for herein. Bank's exercise of any one or more of the foregoing rights shall not cure or waive any Default or notice of Default hereunder.

Due on Sale or Further Encumbrance or Transfer of an Interest in Mortgagor. Without the prior written consent of Bank in each instance, Mortgagor shall not (i) sell, convey, transfer or encumber the Property, or any part thereof or interest therein, whether legal or equitable, (ii) cause or permit any transfer of the Property or any part thereof, whether voluntarily, involuntarily or by operation of law, or (iii) enter into any agreement or transaction to transfer, or accomplish in form or substance a transfer, of the Property. A "transfer" of the Property includes: (a) the direct or indirect sale, transfer or conveyance of the Property or any portion thereof or interest therein; (b) the execution of an installment sale contract or similar instrument affecting all or any portion of the Property; (c) if Mortgagor or any general partner or member of Mortgagor, is a corporation, partnership, limited liability company, trust or other business entity, the transfer, pledge, assignment or encumbrance (whether in one transaction or a series of transactions) of any stock, partnership, limited liability company or other ownership interests in such corporation, partnership, limited liability company or entity including, without limitation, changes in stockholders, partners, members, managers, trustees, beneficiaries, or their respective interests; whether directly or indirectly; (d) if Mortgagor, or any general partner or member of Mortgagor, is a corporation, the creation or issuance of new stock by which an aggregate of more than 10% of such corporation's stock shall be vested in a party or parties who are not now stockholders; and (e) an agreement by Mortgagor leasing all or a substantial part of the Property for other than actual occupancy by a space tenant thereunder or a sale, assignment or other transfer of or the grant of a security interest in and to any Leases.

Bank's consent to any conveyance or encumbrance may be conditioned upon an increase in the interest rate specified in the Note (or other Obligations), an extension or curtailment of the maturity of the Obligations, or other modification of the Note or this instrument.

Remedies of Bank on Default. Failure of Mortgagor or any other person liable to timely pay or perform any of the Obligations or a violation of the preceding section is a default ("Default") under this Mortgage. Upon the occurrence of Default the following remedies are available, without limitation, to Bank: (i) Bank may exercise any or all of Bank's remedies under this Mortgage or other Loan Documents including, without limitation, acceleration of the maturity of all payments and Obligations, other than Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or any of its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time); (ii) Bank may take immediate possession of the Property or any part thereof (which Mortgagor agrees to surrender to Bank) and manage, control or lease the same to such persons and at such rental as it may deem proper and collect and apply Rents to the payment of: (a) the Obligations, together with all costs and attorneys' fees; (b) all impositions and any other levies, assessments or liens which may be prior in lien or payment to the Obligations, and premiums for insurance, with interest on all such items; and (c) the cost of all alterations, repairs, replacements and expenses incident to taking and retaining possession of the Property and the management and operation thereof; all in such order or priority as Bank in its sole discretion may determine. The taking of possession shall not prevent concurrent or later proceedings for the foreclosure sale of the Property; (iii) Bank may apply to any court of competent jurisdiction for the appointment of a receiver for all purposes including, without limitation, to manage and operate the Property or any part thereof, and to apply the Rents therefrom as hereinabove provided. In the event of such application, Mortgagor consents to the appointment of a receiver, and agrees that a receiver may be appointed without notice to Mortgagor, without regard to whether Mortgagor has committed waste or permitted deterioration of the Property, without regard to the adequacy of any security for the Obligations, and without regard to the solvency of Mortgagor or any other person, firm or corporation who or which may be liable for the payment of the Obligations; (iv) Bank may exercise all the remedies of a mortgagee as provided by law and in equity including, without limitation, foreclosure upon this Mortgage and sale of the Property, or any part of the Property, at public sale conducted according to applicable law (referred to as "Sale") and conduct additional Sales as may be required until all of the Property is sold or the Obligations are satisfied; (v) With respect to any portion of the Property governed by the UCC, Bank shall have all of the rights and remedies of a secured party thereunder. Bank may elect to foreclose upon any Property that is fixtures under law applicable to foreclosure of interests in real estate or law applicable to personal property; (vi) Bank may bid at Sale and may accept, as successful bidder, credit of the bid amount against the Obligations as payment of any portion of the purchase price; and (vii) Bank shall apply the proceeds of Sale, first to any fees or attorney fees permitted Bank by law in connection with Sale, second

to expenses of foreclosure, publication, and sale permitted Bank by law in connection with Sale, third to the Obligations, and any remaining proceeds as required by law.

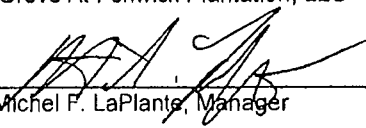
Miscellaneous Provisions. Mortgagor agrees to the following: (i) All remedies available to Bank with respect to this Mortgage or available at law or in equity shall be cumulative and may be pursued concurrently or successively. No delay by Bank in exercising any remedy shall operate as a waiver of that remedy or of any Default. Any payment by Bank or acceptance by Bank of any partial payment shall not constitute a waiver by Bank of any Default; (ii) Mortgagor represents that Mortgagor (a) is (1) an adult individual and is sui juris, or (2) a corporation, general partnership, limited partnership, limited liability company or other legal entity, duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization (b) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (c) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Mortgage and any other Loan Document to which it is a party. (iii) The provisions hereof shall be binding upon and inure to the benefit of Mortgagor, its heirs, personal representatives, successors and assigns including, without limitation, subsequent owners of the Property or any part thereof, and shall be binding upon and inure to the benefit of Bank, its successors and assigns and any future holder of the Note or other Obligations; (iv) Any notices, demands or requests shall be sufficiently given Mortgagor if in writing and mailed or delivered to the address of Mortgagor shown above or to another address as provided herein and to Bank if in writing and mailed or delivered to Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, P. O. Box 13327, Roanoke, VA 24040 or Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, 7711 Plantation Road, Roanoke, VA 24019, or such other address as Bank may specify from time to time and in the event that Mortgagor changes Mortgagor's address at any time prior to the date the Obligations are paid in full; that party shall promptly give written notice of such change of address by registered or certified mail, return receipt requested, all charges prepaid. Notices to Bank must include the mail code. (v) All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502; or such other address as provided by Bank in writing. (vi) This Mortgage may not be changed, terminated or modified orally or in any manner other than by an instrument in writing signed by the parties hereto; (vii) All references to "Bank" shall mean to "Bank (for itself and its affiliate)"; (viii) The captions or headings at the beginning of each paragraph hereof are for the convenience of the parties and are not a part of this Mortgage; (ix) If the lien of this Mortgage is invalid or unenforceable as to any part of the Obligations, the unsecured portion of the Obligations shall be completely paid (and all payments made shall be deemed to have first been applied to payment of the unsecured portion of the Obligations) prior to payment of the secured portion of the Obligations and if any clause, provision or obligation hereunder is determined invalid or unenforceable the remainder of this Mortgage shall be construed and enforced as if such clause, provision or obligation had not been contained herein; (x) This Mortgage shall be governed by and construed under the laws of the jurisdiction where this Mortgage is recorded; (xi) Mortgagor by execution and Bank by acceptance of this Mortgage agree to be bound by the terms and provisions hereof. (xii) **Telephone Communication Monitoring.** Mortgagor agrees that Mortgagor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. (xiii) **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

Minimum Standards. In addition to the requirements set forth in the Loan Documents, all surveys, insurance, title policies, construction documents, environmental reports, payment and performance bonds, and any other due diligence or additional documents required in connection with this Loan, shall comply with Bank's minimum standards in place from time to time for such documents, which shall be provided in writing by Bank to Borrower upon request.

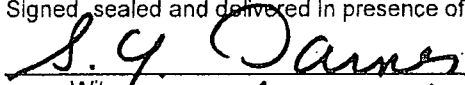
IN WITNESS WHEREOF, Mortgagor has duly signed and sealed this instrument as of the day and year first above written.

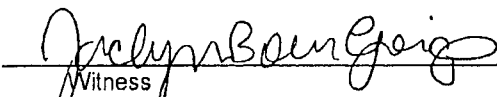
Mortgagor

The Grove At Fenwick Plantation, LLC

By:  (SEAL)
Michel F. LaPlante, Manager

Signed, sealed and delivered in presence of:


Witness
Charles SC 28401
Address


Witness
Charleston SC
Address

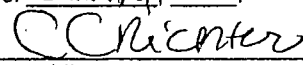
State of South Carolina
County of Charleston

PARTNERSHIP, LIMITED PARTNERSHIP or L.L.C. PROBATE

I, C.S. Richter, Notary Public, do hereby certify that Michel F. LaPlante, a Manager of The Grove At Fenwick Plantation, LLC, a limited liability company, personally appeared before me this day and acknowledged due execution of the foregoing instrument on behalf of the limited liability company.

Witness my hand and official seal, this the 31 day of January, 2011

My commission expires:


Notary Public

CHRISTINE C. RICHTER
Notary Public, State of South Carolina
Qualified in Charleston County
Commission Expires October 13, 2015

Work Request / Tracking #: 2178599
CAT - Deal # 1491535 Facility #: 1230705

EXHIBIT A

Units 4-A, 4-B, 4-D, 4-E, 4-F, 2-F, 10-A, 10-B, 10-E, 10-F, 1-A, 1-B, 1-C, 1-D, 3-A, 3-B, 3-C, 3-D, 3-E, 3-F, 5-A, 5-B, 5-C, 5-D, 5-E, 5-F, 5-G, 5-H, 6-A, 6-B, 6-C, 6-D, 7-A, 7-B, 7-C, 7-D, 8-A, 8-B, 8-C, 8-D, 8-E, 8-F, 9-A, 9-B, 9-C, 9-D, 11-A, 11-B, 11-C, 11-D, 11-E, 11-F, 12-A, 12-B, 12-C, 12-D, 12-E, 12-F, 13-A, 13-B, 13-C, 13-D, 13-E, 13-F, 13-G, 13-H, 14-A, 14-B, 14-C, 14-D, 14-E, and 14-F in THE GROVE AT FENWICK PLANTATION HORIZONTAL PROPERTY REGIME located on Johns Island in the City of Charleston, Charleston County, South Carolina, a horizontal property regime established pursuant to the South Carolina Horizontal Property Act (Section 27-31-10, et seq., S.C. Code Ann. (1976) as amended) by Master Deed dated January 11, 2008, with appended By-laws and other Exhibits, and recorded in the Charleston County RMC Office on January 25, 2008 in Book P-649, at Page 739, et seq., as amended by that certain First Amendment To Master Deed of The Grove at Fenwick Plantation Horizontal Property Regime dated May 7, 2008, and recorded in the Charleston County RMC Office in Book B-659 at Page 666, as amended and restated by that certain Amended and Restated Master Deed of The Grove At Fenwick Plantation Horizontal Property Regime dated June 26, 2009, and recorded in the Charleston County RMC Office on July 7, 2009, in Book 0066 at Page 394 with appended By-laws and other Exhibits, as amended by that certain First Amendment To Amended and Restated Master Deed of The Grove at Fenwick Plantation Horizontal Property Regime dated January 31, 2011 and recorded in the Charleston County RMC Office in Book 0169 at Page 380 (the "Restated Master Deed"), which Units are shown on the Plans attached as Exhibit "C" to the Restated Master Deed and described in the Restated Master Deed; together with the undivided interest in the Common Elements declared by the Restated Master Deed to be an appurtenance to the Units being conveyed. The Restated Master Deed and all Exhibits thereto are incorporated herein and by this reference are made a part hereof.

Being a portion of the same property conveyed to the mortgagor herein by deed of The Grove at Fenwick Plantation, LLC dated 31 January 2011 and recorded simultaneously herewith.

TMS Nos:

4-A: 312-00-00-415	5-E: 312-00-00-425	11-C: 312-00-00-455
4-B: 312-00-00-416	5-F: 312-00-00-426	11-D: 312-00-00-456
4-D: 312-00-00-418	5-G: 312-00-00-427	11-E: 312-00-00-457
4-E: 312-00-00-419	5-H: 312-00-00-428	11-F: 312-00-00-458
4-F: 312-00-00-420	6-A: 312-00-00-429	12-A: 312-00-00-459
2-F: 312-00-00-408	6-B: 312-00-00-430	12-B: 312-00-00-460
10-A: 312-00-00-447	6-C: 312-00-00-431	12-C: 312-00-00-461
10-B: 312-00-00-448	6-D: 312-00-00-432	12-D: 312-00-00-462
10-E: 312-00-00-451	7-A: 312-00-00-433	12-E: 312-00-00-463
10-F: 312-00-00-452	7-B: 312-00-00-434	12-F: 312-00-00-464
1-A: 312-00-00-399	7-C: 312-00-00-435	13-A: 312-00-00-465
1-B: 312-00-00-400	7-D: 312-00-00-436	13-B: 312-00-00-466
1-C: 312-00-00-401	8-A: 312-00-00-437	13-C: 312-00-00-467
1-D: 312-00-00-402	8-B: 312-00-00-438	13-D: 312-00-00-468
3-A: 312-00-00-409	8-C: 312-00-00-439	13-E: 312-00-00-469
3-B: 312-00-00-410	8-D: 312-00-00-440	13-F: 312-00-00-470
3-C: 312-00-00-411	8-E: 312-00-00-441	13-G: 312-00-00-471
3-D: 312-00-00-412	8-F: 312-00-00-442	13-H: 312-00-00-472
3-E: 312-00-00-413	9-A: 312-00-00-443	14-A: 312-00-00-473
3-F: 312-00-00-414	9-B: 312-00-00-444	14-B: 312-00-00-474
5-A: 312-00-00-421	9-C: 312-00-00-445	14-C: 312-00-00-475
5-B: 312-00-00-422	9-D: 312-00-00-446	14-D: 312-00-00-476
5-C: 312-00-00-423	11-A: 312-00-00-453	14-E: 312-00-00-477
5-D: 312-00-00-424	11-B: 312-00-00-454	14-F: 312-00-00-478

CONDOMINIUM ADDENDUM

THIS CONDOMINIUM ADDENDUM constitutes an addendum to this Mortgage Agreement, is attached thereto, incorporated therein by reference and made a part thereof.

The Property includes 72 unit(s) in, together with an undivided interest in the common elements of, a condominium project known as: The Grove at Fenwick Plantation (the "Condominium Project"). If the owners association or other entity which acts for the Condominium Project (the "Owners Association") holds title to property for the benefit or use of its members or shareholders, the Premises also includes Mortgagor's interest in the Owners Association and the uses, proceeds and benefits of Mortgagor's interest.

Condominium Covenants. In addition to the other covenants and agreements contained in the Agreement, Mortgagor further covenant and agrees as follows:

A. Condominium Obligations. Mortgagor shall perform all of Mortgagor's obligations under the Condominium Project's Constituent Documents. The "Constituent Documents" are the: (i) Declaration or any other document which creates the Condominium Project; (ii) by-laws; (iii) code of regulations; and (iv) other equivalent documents. Mortgagor shall promptly pay when due, all dues and assessments imposed pursuant to the Constituent Documents.

B. Hazard Insurance. So long as the Owners Association maintains, with a generally accepted insurance carrier, a "master" or "blanket" policy on the Condominium Project which is satisfactory to Bank and which provides insurance coverage in the amounts, for the periods, and against the hazards Bank requires, including fire and hazards included within the term "extended coverage", Mortgagor's obligation under the Agreement to maintain hazard insurance coverage on the Property is deemed satisfied to the extent that the required coverage is provided by the Owners Association policy. Mortgagor shall give Bank prompt notice of any lapse in required hazard insurance coverage provided by the master or blanket policy.

In the event of a distribution of hazard insurance proceeds in lieu of restoration or repair following a loss to the Property, whether to the unit(s) or to common elements, any proceeds payable to Mortgagor are hereby assigned and shall be paid to Bank for application to the sums secured by the Agreement, with any excess paid to Mortgagor or other person lawfully entitled thereto.

C. Public Liability Insurance. Mortgagor shall take such actions as may be reasonable to insure that the Owners Association maintains a public liability insurance policy acceptable in form, amount and extent of coverage to Bank.

D. Condemnation. The proceeds of any award or claim for damages, direct or consequential, payable to Mortgagor in connection with any condemnation or other taking of all or any part of the Property, whether of the unit(s) or of common elements, or for any conveyance in lieu of condemnation, are hereby assigned and shall be paid to Mortgagor. Such proceeds shall be applied by Bank to the sums secured by the Agreement.

E. Bank's Prior Consent. Mortgagor shall not, except after notice to Bank and with Bank's prior written consent, either partition or subdivide the Property or consent to:

(i) the abandonment or termination of the Condominium Project, except for abandonment or termination required by law in the case of substantial destruction by fire or other casualty or in the case of a taking by condemnation or eminent domain;

(ii) any amendment to any provision of the Constituent Documents if the provision is for the express benefit of Bank;

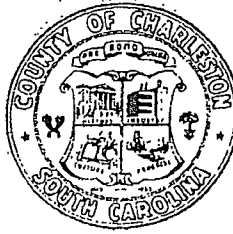
(iii) termination of professional management and assumption of self-management of the Owners Association; or

(iv) any action which would have the effect of rendering the public liability insurance coverage maintained by the Owners Association unacceptable to Bank.

F. Remedies. If Mortgagor does not pay condominium dues and assessments when due, then Bank may pay them. Any amounts disbursed by Bank under this paragraph shall become additional debt of Mortgagor secured by the Agreement. Unless Mortgagor and Bank agree to other terms of payment, these amounts shall bear interest from the date of disbursement at the Note rate and shall be payable, with interest, upon notice from Bank to Mortgagor requesting payment.

RECORDER'S PAGE

NOTE: This page MUST remain
with the original document



Filed By:

WARREN & SINKLER, LLP

P.O. BOX 1254

CHARLESTON SC 29402

RECORDED

Date: February 1, 2011

Time: 9:31:27 AM

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Charleston County, SC

MAKER:

GROVE AT FENWICK PLTN

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of Pages: 13

of References:

RECIPIENT:

WELLS FARGO

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FIRST MODIFICATION TO PROMISSORY NOTE

THIS MODIFICATION TO PROMISSORY NOTE (this "Modification") is entered into as of June 15, 2012, by and between THE GROVE AT FENWICK PLANTATION, LLC ("Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank").

RECITALS

WHEREAS, Borrower is currently indebted to Bank pursuant to the terms and conditions of that certain promissory note in the maximum principal amount of \$3,536,250.00, executed by Borrower and payable to the order of Bank, dated as of January 31, 2011 (the "Note").

WHEREAS, Bank and Borrower have agreed to certain changes in the terms and conditions set forth in the Note, and have agreed to modify the Note to reflect said changes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be modified as follows:

1. Paragraph under the heading "INTEREST RATE" and "DEFAULT RATE" are hereby deleted in its entirety, and the following substituted therefor

"INTEREST:

(a) Interest. The outstanding principal balance of this Note shall bear interest (computed on the basis of a 360-day year, actual days elapsed) at a rate per annum one percent (1%) above the Prime Rate in effect from time to time. The term "Prime Rate" means at any time the rate of interest most recently announced within Bank at its principal office as its Prime Rate, with the understanding that the Prime Rate is one of Bank's base rates and serves as the basis upon which effective rates of interest are calculated for those loans making reference thereto, and is evidenced by the recording thereof after its announcement in such internal publication or publications as Bank may designate. Each change in the rate of interest hereunder shall become effective on the date each Prime Rate change is announced within Bank.

(b) Payment of Interest. Interest accrued on this Note shall be payable on the 15th day of each month, commencing July 15, 2012.

(c) Default Interest. From and after the maturity date of this Note, or such earlier date as all principal owing hereunder becomes due and payable by acceleration or otherwise, or at Bank's option upon the occurrence, and during the continuance of an Event of Default, the outstanding principal balance of this Note shall bear interest at an increased rate per annum (computed on the basis of a 360-day year, actual days elapsed) equal to four percent (4%) above the rate of interest from time to time applicable to this Note."

2. Paragraph under the heading "REPAYMENT TERMS" and "APPLICATION OF PAYMENTS" are hereby deleted in its entirety, and the following substituted therefor

11/15/11 10:00 AM

(a) Repayment. The outstanding principal balance of this Note shall be due and payable in full on January 18, 2013.

(b) Application of Payments. Each payment made on this Note shall be credited first, to any interest then due and second, to the outstanding principal balance hereof.

(c) Prepayment. Borrower may prepay principal on this Note at any time, in any amount and without penalty."

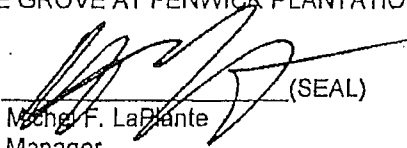
3. The effective date of the changes set forth herein shall be June 15, 2012.

4. Except as expressly set forth herein, all terms and conditions of the Note remain in full force and effect, without waiver or modification. All terms defined in the Note [or the Loan Agreement] shall have the same meaning when used in this Modification. This Modification and the Note shall be read together, as one document.

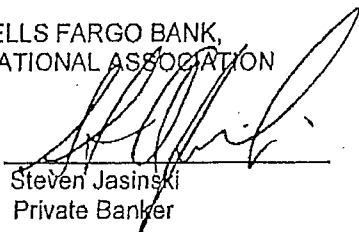
5. Borrower certifies that as of the date of this Modification there exists no Event of Default under the Note, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default. Borrower further certifies that, notwithstanding the modifications set forth herein, all of the real property securing the Note shall remain subject to the lien, charge or encumbrance of the deed of trust, mortgage or other document pursuant to which such lien, charge or encumbrance is created, and nothing contained herein or done pursuant hereto shall affect or be construed to affect the priority of the lien, charge or encumbrance of any such deed of trust, mortgage or other document over any other liens, charges or encumbrances.

IN WITNESS WHEREOF, the parties hereto have caused this Modification to be executed, with the intention that it constitute an instrument under seal, as of the day and year first written above.

THE GROVE AT FENWICK PLANTATION, LLC

By:  (SEAL)
Michel F. LaPlante
Manager

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: 
Steven Jasinski
Private Banker

026 426 2444-18

SECOND MODIFICATION TO PROMISSORY NOTE

THIS MODIFICATION TO PROMISSORY NOTE (this "Modification") is entered into as of May 28, 2013, by and between THE GROVE AT FENWICK PLANTATION, LLC ("Borrower"), and WELLS FARGO BANK, NATIONAL ASSOCIATION ("Bank").

RECITALS

WHEREAS, Borrower is currently indebted to Bank pursuant to the terms and conditions of that certain Promissory Note in the maximum principal amount of \$3,536,250.00, executed by Borrower and payable to the order of Bank, dated as of January 31, 2011 (the "Note");

WHEREAS, Bank and Borrower have agreed to certain changes in the terms and conditions set forth in the Note, and have agreed to modify the Note to reflect said changes.

NOW, THEREFORE, for valuable consideration, the receipt and sufficiency of which are hereby acknowledged, the parties hereto agree that the Note shall be modified as follows:

1. The maturity date of the Note is hereby modified to be January 18, 2014.

2. General Release. In consideration of the benefits provided to Borrower under the terms and provisions hereof, Borrower and each guarantor hereunder hereby agree as follows ("General Release").

(a) Borrower and each guarantor hereunder, for itself and on behalf of its respective successors and assigns, do hereby release, acquit and forever discharge Bank, all of Bank's predecessors in interest, and all of Bank's past and present officers, directors, attorneys, affiliates, employees and agents, of and from any and all claims, demands, obligations, liabilities, indebtedness, breaches of contract, breaches of duty or of any relationship, acts, omissions, misfeasance, malfeasance, causes of action, defenses, offsets, debts, sums of money, accounts, compensation, contracts, controversies, promises, damages, costs, losses and expenses, of every type, kind, nature, description or character, whether known or unknown, suspected or unsuspected, liquidated or unliquidated, each as though fully set forth herein at length (each, a "Released Claim" and collectively, the "Released Claims"), that Borrower or any guarantor hereunder now has or may acquire as of the later of: (i) the date this Modification becomes effective through the satisfaction (or waiver by Bank) of all conditions hereto; or (ii) the date that Borrower and each guarantor hereunder have executed and delivered this Modification to Bank (hereafter, the "Release Date"), including without limitation, those Released Claims in any way arising out of, connected with or related to any and all prior credit accommodations, if any, provided by Bank, or any of Bank's predecessors in interest, to Borrower or any guarantor hereunder, and any agreements, notes or documents of any kind related thereto or the transactions contemplated thereby or hereby, or any other agreement or document referred to herein or therein.

(b) Each person signing below on behalf of Borrower or any guarantor hereunder acknowledges that he or she has read each of the provisions of this General Release. Each such person fully understands that this General Release has important legal consequences, and each such person realizes that they are releasing any and all Released Claims that Borrower or any such guarantor may have as of the Release Date. Borrower and each guarantor hereunder hereby acknowledge that each of them has had an opportunity to obtain

a lawyer's advice concerning the legal consequences of each of the provisions of this General Release.

(c) Borrower and each guarantor hereunder hereby specifically acknowledge and agree that: (i) none of the provisions of this General Release shall be construed as or constitute an admission of any liability on the part of Bank; (ii) the provisions of this General Release shall constitute an absolute bar to any Released Claim of any kind, whether any such Released Claim is based on contract, tort, warranty, mistake or any other theory, whether legal, statutory or equitable; and (iii) any attempt to assert a Released Claim barred by the provisions of this General Release shall subject Borrower and each guarantor hereunder to the provisions of applicable law setting forth the remedies for the bringing of groundless, frivolous or baseless claims or causes of action.

3. The effective date of the changes set forth herein shall be May 28, 2013.

4. Except as expressly set forth herein, all terms and conditions of the Note remain in full force and effect, without waiver or modification. All terms defined in the Note shall have the same meaning when used in this Modification. This Modification and the Note shall be read together, as one document.

5. Borrower certifies that as of the date of this Modification there exists no Event of Default under the Note, nor any condition, act or event which with the giving of notice or the passage of time or both would constitute any such Event of Default. Borrower further certifies that, notwithstanding the modifications set forth herein, all of the real property securing the Note shall remain subject to the lien, charge or encumbrance of the deed of trust, mortgage or other document pursuant to which such lien, charge or encumbrance is created, and nothing contained herein or done pursuant hereto shall affect or be construed to affect the priority of the lien, charge or encumbrance of any such deed of trust, mortgage or other document over any other liens, charges or encumbrances.

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 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 PROPERTY.

IN WITNESS WHEREOF, the parties hereto have caused this Modification to be executed, with the intention that it constitute an Instrument under seal, as of the day and year first written above.

THE GROVE AT FENWICK
PLANTATION, LLC

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By: _____ (SEAL)
Michel F. LaPlante
Manager

By: _____
Steven Jasinski
Private Banker

GUARANTORS:

Michel F. LaPlante

Eugene J. Zurlo

Charlotte R. Zurlo

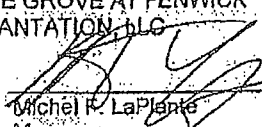
Eugene J. Zurlo, Trustee for
Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte
R. Zurlo as Grantors

Charlotte R. Zurlo, Trustee for
Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte
R. Zurlo as Grantors

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THE GROVE AT FENWICK
PLANTATION, LLC

WELLS FARGO BANK,
NATIONAL ASSOCIATION

By:  (SEAL)
Michel F. LaPlante
Manager

By: _____
Steven Jasinski
Private Banker

GUARANTORS:

Michel F. LaPlante

Eugène J. Zurlo

Charlotte R. Zurlo

Eugene J. Zurlo, Trustee for
Zurlo Investment Trust No.1
by Eugene J. Zurlo and Charlotte
R. Zurlo as Grantors

Charlotte R. Zurlo, Trustee for
Zurlo Investment Trust No.1
by Eugene J. Zurlo and Charlotte
R. Zurlo as Grantors

GUARANTORS' CONSENT AND REAFFIRMATION

Each of the undersigned guarantors of all indebtedness of THE GROVE AT FENWICK PLANTATION, LLC to WELLS FARGO BANK, NATIONAL ASSOCIATION hereby: (i) consents to the foregoing Modification; (ii) reaffirms its obligations under its respective Continuing Guaranty; (iii) reaffirms its waivers of each and every one of the defenses to such obligations as set forth in its respective Continuing Guaranty; and (iv) reaffirms that its obligations under its respective Continuing Guaranty are separate and distinct from the obligations of any other party under said Modification and the other Loan Documents described therein.

GUARANTORS:

Michel F. LaPlante

Eugene J. Zurlo

Charlotte R. Zurlo

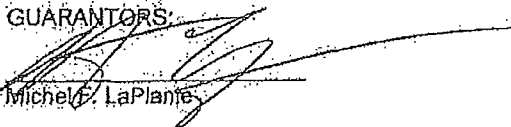
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GUARANTORS:


Michel LaPlante

Eugene J. Zurlo

Charlotte R. Zurlo

Eugene J. Zurlo, Trustee for
Zurlo Investment Trust No.1
by Eugene J. Zurlo and Charlotte
R. Zurlo as Grantors

Charlotte R. Zurlo, Trustee for
Zurlo Investment Trust No.1
by Eugene J. Zurlo and Charlotte
R. Zurlo as Grantors

UNCONDITIONAL GUARANTY

July 28, 2009

Penny Creek Associates, LLC
C/O Mitch Laplante
151 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Michel F. LaPlante
155 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any

defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower; (m) any defense based upon any defect in the formation of Borrower or any principal of Borrower; (n) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (o) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (p) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for,

dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor, and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations.

Organization; Powers. Guarantor (i) is (a) an adult individual and is *sui juris*, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party.

Applicable Law; Conflict Between Documents. This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control.

Guarantor's Accounts. Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates.

Jurisdiction. Guarantor

irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

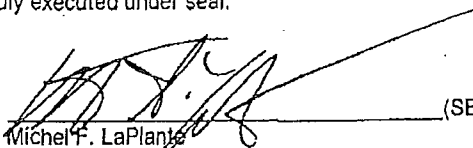
NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

PERSONAL FINANCIAL STATEMENTS. Each Guarantor who is an individual shall deliver to Bank annually, no later than April 30th of each fiscal year, Guarantor's financial statement. Said financial statement shall disclose all of Guarantor's assets, liabilities, net worth, income and contingent liabilities, all in reasonable detail and acceptable to Bank and submitted on a form to be provided by Bank or on such other form acceptable to Bank, signed by Guarantor and certified by Guarantor to Bank to be true, correct and complete.

TAX RETURNS. Guarantor shall deliver to Bank, no later than August 28th of each year, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, including, without limitation, K-1 statements for all Partnerships and Sub Chapter S Corporations, each of which shall be signed and certified by Guarantor to be true and complete copies of such returns. In the event an extension is filed, Guarantor shall deliver a copy of the extension within 30 days of filing.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.


Michel F. LaPlante (SEAL)

Work Request / Tracking # 1397639
CAT - Deal # 1133533 Facility #, 951303
Obligor # 41/6909622159 Obligation #. 1644814 & 1324987

UNCONDITIONAL GUARANTY

July 28, 2009

Penny Creek Associates, LLC
C/O Mitch Laplante
151 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower").

Charlotte R. Zurlo
4 Nicklaus Lane
Kiawah Island, South Carolina 29455

Eugene J. Zurlo
4 Nicklaus Lane
Kiawah Island, South Carolina 29455
(Individually and collectively, "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition

to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15' day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations. (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon; and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, *et seq.*, N.C.G.S. §§ 26-7, *et seq.*, Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f)

presentment, protest; notice of dishonor, notice of default; demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank, (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral. Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan

Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt"), to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment

letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final

agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

PERSONAL FINANCIAL STATEMENTS. Each Guarantor who is an individual shall deliver to Bank annually, no later than March 18th of each year, Guarantor's financial statement. Said financial statement shall disclose all of Guarantor's assets, liabilities, net worth, income and contingent liabilities, all in reasonable detail and acceptable to Bank and submitted on a form to be provided by Bank or on such other form acceptable to Bank, signed by Guarantor and certified by Guarantor to Bank to be true, correct and complete.

TAX RETURNS. Guarantor shall deliver to Bank, no later than October 31st of each year, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Guarantor to be true and complete copies of such returns. In the event an extension is filed, Guarantor shall deliver a copy of the extension within 30 days of filing.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.

Charlotte R. Zurlo (SEAL)
Charlotte R. Zurlo

Eugene J. Zurlo (SEAL)
Eugene J. Zurlo

Work Request / Tracking #: 1397639
CAT - Deal # 1133533 Facility # 951303
Obligor #: 41/6909622159 Obligation #: 1644814 & 1324987

UNCONDITIONAL GUARANTY

July 28, 2009

Penny Creek Associates, LLC
C/O Mitch Laplante
151 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

The Nicklaus Lane Realty Trust No. 1
4 Nicklaus Lane
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, *et seq.*, N.C.G.S. §§ 26-7, *et seq.*, Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor, (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled, (g) the right to assert against Bank or its affiliates any

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defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest; and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for,

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dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is *sui juris*, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor

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irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

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FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

ANNUAL FINANCIAL STATEMENTS. Guarantor shall deliver to Bank, no later than April 30th of each fiscal year, unaudited management-prepared financial statements reflecting its operations during such fiscal year, including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules and in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year. If unaudited statements are required, such statements shall be certified as to their correctness by a principal financial officer of Guarantor.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

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IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.

The Nicklaus Lane Realty Trust No. 1

By: Eugene J. Zurlo (SEAL)
Eugene J. Zurlo,
as Trustee under Declaration of Trust dated May 22, 1998

By: Charlotte R. Zurlo (SEAL)
Charlotte R. Zurlo,
as Trustee under Declaration of Trust dated May 22, 1998

Work Request / Tracking #: 1397639
CAT - Deal # 1133533 Facility # 951303
Obligor # 41/5909622159 Obligation # 1644814 & 1324987

UNCONDITIONAL GUARANTY

July 28, 2009

Penny Creek Associates, LLC
C/O Mitch Laplante
151 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

The Zurlo Investment Trust No. 1
4 Nicklaus Lane
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Guarantor")

Wachovia Bank, National Association
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

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TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any

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defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral, Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for,

dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor

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irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wachovia Bank, National Association, Mail Code VA7628, P.O. Box 13327, Roanoke, VA 24040 or Wachovia Bank, National Association, Mail Code VA7628, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

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FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

ANNUAL FINANCIAL STATEMENTS. Guarantor shall deliver to Bank, no later than April 30th of each fiscal year, unaudited management-prepared financial statements reflecting its operations during such fiscal year, including, without limitation, a balance sheet, profit and loss statement and statement of cash flows, with supporting schedules and in reasonable detail, prepared in conformity with generally accepted accounting principles, applied on a basis consistent with that of the preceding year. If unaudited statements are required, such statements shall be certified as to their correctness by a principal financial officer of Guarantor.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

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IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.

The Zurlo Investment Trust No. 1

By: Eugene J. Zurlo (SEAL)
Eugene J. Zurlo, as Co-Trustee pursuant to trust agreement
Dated August 10, 1998

By: Charlotte R. Zurlo (SEAL)
Charlotte R. Zurlo, as Co-Trustee pursuant to trust agreement
Dated August 10, 1998

Work Request / Tracking #: 1397639
CAT - Deal # 1133533 Facility # 951303
Obligor # 41/6909522159 Obligation # 1644814 & 1324987

UNCONDITIONAL GUARANTY

January 31, 2011

The Grove At Fenwick Plantation, LLC
151 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Michel F. LaPlante
155 Treeduck Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Guarantor")

Wells Fargo Bank, N.A.
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to

Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, *as in effect from time to time*), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, *et seq.*, N.C.G.S. §§ 26-7, *et seq.*, Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any

collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership

Interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such

prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, P.O. Box 13327, Roanoke, VA 24040 or Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due Guarantor. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

PERSONAL FINANCIAL STATEMENTS. Each Guarantor who is an individual shall deliver to Bank annually, within thirteen months of the previous statement date on file with Bank, Guarantor's financial statement. Said financial statement shall disclose all of Guarantor's assets, liabilities, net worth, income and contingent liabilities, all in reasonable detail and acceptable to Bank and submitted on a form to be provided by Bank or on such other form acceptable to Bank, signed by Guarantor and certified by Guarantor to Bank to be true, correct and complete.

TAX RETURNS. Guarantor shall deliver to Bank, within 30 days of filing, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Guarantor to be true and complete copies of such returns. In the event an extension is filed, Guarantor shall deliver a copy of the extension within 30 days of filing.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

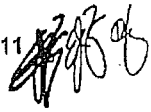
IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.


Michel F. LaPlante (SEAL)

Work Request / Tracking #: 2178599
CAT - Deal # 1491635 Facility #: 1230705

UNCONDITIONAL GUARANTY

January 31, 2011



The Grove At Fenwick Plantation, LLC
151 Treeduct Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Eugene J. Zurlo
4 Nicklaus Lane
Kiawah Island, South Carolina 29455

Charlotte R. Zurlo
4 Nicklaus Lane
Kiawah Island, South Carolina 29455
(Individually and collectively, "Guarantor")

Wells Fargo Bank, N.A.
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower; which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind

whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or

its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates, have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations. **Organization; Powers.** Guarantor (i) is (a) an adult individual and is sol juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party. **Applicable Law; Conflict Between Documents.** This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit

accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, P.O. Box 13327, Roanoke, VA 24040 or Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

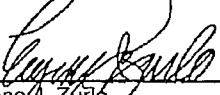
NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the **Guaranteed Obligations**, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due Guarantor. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

PERSONAL FINANCIAL STATEMENTS. Each Guarantor who is an individual shall deliver to Bank annually, within thirteen months of the previous statement date on file with Bank, Guarantor's financial statement. Said financial statement shall disclose all of Guarantor's assets, liabilities, net worth, income and contingent liabilities, all in reasonable detail and acceptable to Bank and submitted on a form to be provided by Bank or on such other form acceptable to Bank, signed by Guarantor and certified by Guarantor to Bank to be true, correct and complete.

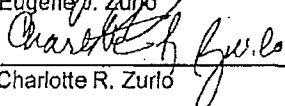
TAX RETURNS. Guarantor shall deliver to Bank, within 30 days of filing, complete copies of federal and state tax returns, as applicable, together with all schedules thereto, each of which shall be signed and certified by Guarantor to be true and complete copies of such returns. In the event an extension is filed, Guarantor shall deliver a copy of the extension within 30 days of filing.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.



Eugene J. Zurló (SEAL)



Charlotte R. Zurló (SEAL)

UNCONDITIONAL GUARANTY

January 31, 2011



The Grove At Fenwick Plantation, LLC
151 Treeduct Court
Kiawah Island, South Carolina 29455
(Hereinafter referred to as "Borrower")

Eugene J. Zurlo, Trustee
for Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte R. Zurlo as Grantors
4 Nicklaus Lane
Kiawah Island, South Carolina 29455-0000

Charlotte R. Zurlo, Trustee
for Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte R. Zurlo as Grantors
4 Nicklaus Lane
Kiawah Island, South Carolina 29455-0000
(Individually and collectively, "Guarantor")

Wells Fargo Bank, N.A.
Greenville, South Carolina 29601
(Hereinafter referred to as "Bank")

To induce Bank to make, extend or renew loans, advances, credit, or other financial accommodations to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, and in consideration of loans, advances, credit, or other financial accommodations made, extended or renewed to or for the benefit of Borrower, which are and will be to the direct interest and advantage of the Guarantor, Guarantor hereby absolutely, irrevocably and unconditionally guarantees to Bank and its successors, assigns and affiliates the timely payment and performance of all liabilities and obligations of Borrower to Bank and its affiliates, including, but not limited to, all obligations under any notes, loan agreements, security agreements, letters of credit, instruments, accounts receivable, contracts, drafts, leases, chattel paper, indemnities, acceptances, repurchase agreements, overdrafts, and the Loan Documents, as defined below, and all obligations of Borrower to Bank or any of its affiliates under any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), however and whenever incurred or evidenced, whether primary, secondary, direct, indirect, absolute, contingent, due or to become due, now existing or hereafter contracted or acquired, and all modifications, extensions and renewals thereof, (collectively, the "Guaranteed Obligations").

Guarantor further covenants and agrees:

GUARANTOR'S LIABILITY. This Guaranty is a continuing and unconditional guaranty of payment and performance and not of collection. The parties to this Guaranty are jointly and severally obligated together with all other parties obligated for the Guaranteed Obligations. This Guaranty does not impose any obligation on Bank to extend or continue to extend credit or otherwise deal with Borrower at any subsequent time. This Guaranty shall continue to be effective or be reinstated, as the case may be, if at any time any payment of the Guaranteed Obligations is rescinded, avoided or for any other reason must be returned by Bank, and the returned payment shall remain payable as part of the Guaranteed Obligations, all as though such payment had not been made. Except to the extent the provisions of this

Guaranty give Bank additional rights, this Guaranty shall not be deemed to supersede or replace any other guaranties given to Bank by Guarantor; and the obligations guaranteed hereby shall be in addition to any other obligations guaranteed by Guarantor pursuant to any other agreement of guaranty given to Bank and other guaranties of the Guaranteed Obligations.

TERMINATION OF GUARANTY. Guarantor may terminate this Guaranty only by written notice, delivered personally to or received by certified or registered United States Mail by an authorized officer of Bank at the address for notices provided herein. Such termination shall be effective only with respect to Guaranteed Obligations arising more than 15 days after the date such written notice is received by said Bank officer. Such termination shall not be effective with respect to Guaranteed Obligations (including any subsequent extensions, modifications or compromises of the Guaranteed Obligations) then existing, or Guaranteed Obligations arising subsequent to receipt by Bank of said notice if such Guaranteed Obligations are a result of Bank's obligation to make advances pursuant to a commitment, or are based on Borrower's obligations to make payments pursuant to any swap agreement (as defined in 11 U.S.C. § 101, as in effect from time to time), entered into prior to expiration of the 15 day notice period, or are a result of advances which are necessary for Bank to protect its collateral or otherwise preserve its interests. Termination of this Guaranty by any single Guarantor will not affect the existing and continuing obligations of any other Guarantor hereunder.

CONSENT TO MODIFICATIONS. Guarantor consents and agrees that Bank (and, with respect to swap obligations, its affiliates) may from time to time, in its sole discretion, without affecting, impairing, lessening or releasing the obligations of Guarantor hereunder: (a) extend or modify the time, manner, place or terms of payment or performance and/or otherwise change or modify the credit terms of the Guaranteed Obligations; (b) increase, renew, or enter into a novation of the Guaranteed Obligations; (c) waive or consent to the departure from terms of the Guaranteed Obligations; (d) permit any change in the business or other dealings and relations of Borrower or any other guarantor with Bank; (e) proceed against, exchange, release, realize upon, or otherwise deal with in any manner any collateral that is or may be held by Bank in connection with the Guaranteed Obligations or any liabilities or obligations of Guarantor; and (f) proceed against, settle, release, or compromise with Borrower, any insurance carrier, or any other person or entity liable as to any part of the Guaranteed Obligations, and/or subordinate the payment of any part of the Guaranteed Obligations to the payment of any other obligations, which may at any time be due or owing to Bank; all in such manner and upon such terms as Bank may deem appropriate, and without notice to or further consent from Guarantor. No invalidity, irregularity, discharge or unenforceability of, or action or omission by Bank relating to any part of the Guaranteed Obligations or any security therefor shall affect or impair this Guaranty.

WAIVERS AND ACKNOWLEDGMENTS. Guarantor waives and releases the following rights, demands, and defenses Guarantor may have with respect to Bank (and, with respect to swap obligations, its affiliates) and collection of the Guaranteed Obligations: (a) promptness and diligence in collection of any of the Guaranteed Obligations from Borrower or any other person liable thereon, and in foreclosure of any security interest and sale of any property serving as collateral for the Guaranteed Obligations; (b) any law or statute that requires that Bank (and, with respect to swap obligations, its affiliates) make demand upon, assert claims against, or collect from Borrower or other persons or entities, foreclose any security interest, sell collateral, exhaust any remedies, or take any other action against Borrower or other persons or entities prior to making demand upon, collecting from or taking action against Guarantor with respect to the Guaranteed Obligations, including any such rights Guarantor might otherwise have had under Va. Code §§ 49-25 and 49-26, et seq., N.C.G.S. §§ 26-7, et seq., Tenn. Code Ann. § 47-12-101, O.C.G.A. § 10-7-24, Mississippi Code Ann. Section 87-5-1, California Civil Code Section §§ 2787 to 2855 inclusive, and any successor statute and any other applicable law; (c) any law or statute that requires that Borrower or any other person be joined in, notified of or made part of any action against Guarantor; (d) that Bank or its affiliates preserve, insure or perfect any security interest in collateral or sell or dispose of collateral in a particular manner or at a particular time, provided that Bank's obligation to dispose of Collateral in a commercially reasonable manner is not waived hereby; (e) notice of extensions, modifications, renewals, or novations of the Guaranteed Obligations, of any new

transactions or other relationships between Bank, Borrower and/or any guarantor, and of changes in the financial condition of, ownership of, or business structure of Borrower or any other guarantor; (f) presentment, protest, notice of dishonor, notice of default, demand for payment, notice of intention to accelerate maturity, notice of acceleration of maturity, notice of sale, and all other notices of any kind whatsoever to which Guarantor may be entitled; (g) the right to assert against Bank or its affiliates any defense (legal or equitable), set-off, counterclaim, or claim that Guarantor may have at any time against Borrower or any other party liable to Bank or its affiliates; (h) all defenses relating to invalidity, insufficiency, unenforceability, enforcement, release or impairment of Bank or its affiliates' lien on any collateral, of the Loan Documents, or of any other guaranties held by Bank; (i) any right to which Guarantor is or may become entitled to be subrogated to Bank or its affiliates' rights against Borrower or to seek contribution, reimbursement, indemnification, payment or the like, or participation in any claim, right or remedy of Bank or its affiliates against Borrower or any security which Bank or its affiliates now has or hereafter acquires, until such time as the Guaranteed Obligations have been fully satisfied beyond the expiration of any applicable preference period; (j) any claim or defense that acceleration of maturity of the Guaranteed Obligations is stayed against Guarantor because of the stay of assertion or of acceleration of claims against any other person or entity for any reason including the bankruptcy or insolvency of that person or entity; (k) the right to marshalling of Borrower's assets or the benefit of any exemption claimed by Guarantor; (l) any defense based upon any lack of authority of the officers, directors, partners or agents acting or purporting to act on behalf of Borrower or any principal of Borrower or any defect in the formation of Borrower or any principal of Borrower; (m) any defense based upon Bank's election, in any proceeding instituted under the Federal Bankruptcy Code, of the application of Section 1111(b)(2) of the Federal Bankruptcy Code or any successor statute; (n) any defense based upon any borrowing or any grant of a security interest under Section 364 of the Federal Bankruptcy Code; and (o) the benefit of any statute of limitations affecting the liability of Guarantor hereunder or the enforcement hereof. Guarantor acknowledges and represents that Guarantor has relied upon Guarantor's own due diligence in making an independent appraisal of Borrower, Borrower's business affairs and financial condition, and any collateral; Guarantor will continue to be responsible for making an independent appraisal of such matters; and Guarantor has not relied upon Bank or its affiliates for information regarding Borrower or any collateral. Guarantor agrees that the payment of all sums payable under the Guaranteed Obligations or any part thereof or other act which tolls any statute of limitations applicable to the Guaranteed Obligations shall similarly operate to toll the statute of limitations applicable to Guarantor's liability hereunder.

FINANCIAL CONDITION. Guarantor warrants, represents and covenants to Bank and its affiliates that on and after the date hereof: (a) the fair saleable value of Guarantor's assets exceeds its liabilities, Guarantor is meeting its current liabilities as they mature, and Guarantor is and shall remain solvent; (b) all financial statements of Guarantor furnished to Bank are correct and accurately reflect the financial condition of Guarantor as of the respective dates thereof; (c) since the date of such financial statements, there has not occurred a material adverse change in the financial condition of Guarantor; (d) there are not now pending any court or administrative proceedings or undischarged judgments against Guarantor, no federal or state tax liens have been filed or threatened against Guarantor, and Guarantor is not in default or claimed default under any agreement; and (e) at such reasonable times as Bank requests, Guarantor will furnish Bank and its affiliates with such other financial information as Bank and its affiliates may reasonably request.

INTEREST AND APPLICATION OF PAYMENTS. Regardless of any other provision of this Guaranty or other Loan Documents, if for any reason the effective interest on any of the Guaranteed Obligations should exceed the maximum lawful interest, the effective interest shall be deemed reduced to and shall be such maximum lawful interest, and any sums of interest which have been collected in excess of such maximum lawful interest shall be applied as a credit against the unpaid principal balance of the Guaranteed Obligations. Monies received from any source by Bank or its affiliates for application toward payment of the Guaranteed Obligations may be applied to such Guaranteed Obligations in any manner or order deemed appropriate by Bank and its affiliates.

DEFAULT. If any of the following events occur, a default ("Default") under this Guaranty shall exist: (a) failure of timely payment or performance of the Guaranteed Obligations or a default under any Loan Document; (b) a breach of any agreement or representation contained or referred to in the Guaranty, or any of the Loan Documents, or contained in any other contract or agreement of Guarantor with Bank or its affiliates, whether now existing or hereafter arising; (c) the death of, appointment of a guardian for, dissolution of, termination of existence of, loss of good standing status by, appointment of a receiver for, assignment for the benefit of creditors of, or the commencement of any insolvency or bankruptcy proceeding by or against Guarantor or any general partner of or the holder(s) of the majority ownership interests of Guarantor; and/or (d) Bank determines in good faith, in its sole discretion, that the prospects for payment or performance of the Guaranteed Obligations are impaired or a material adverse change has occurred in the business or prospects of Borrower or Guarantor, financial or otherwise.

If a Default occurs, the Guaranteed Obligations shall be due immediately and payable without notice, other than Guaranteed Obligations under any swap agreements (as defined in 11 U.S.C. § 101, as in effect from time to time) with Bank or its affiliates, which shall be due in accordance with and governed by the provisions of said swap agreements, and, Bank and its affiliates may exercise any rights and remedies as provided in this Guaranty and other Loan Documents, or as provided at law or equity. Guarantor shall pay interest on the Guaranteed Obligations from such Default at the highest rate of interest charged on any of the Guaranteed Obligations.

ATTORNEYS' FEES AND OTHER COSTS OF COLLECTION. Guarantor shall pay all of Bank's and its affiliates' reasonable expenses incurred to enforce or collect any of the Guaranteed Obligations, including, without limitation, reasonable arbitration, paralegals', attorneys' and experts' fees and expenses, whether incurred without the commencement of a suit, in any suit, arbitration, or administrative proceeding, or in any appellate, or bankruptcy proceeding.

SUBORDINATION OF OTHER DEBTS. Guarantor agrees: (a) to subordinate the obligations now or hereafter owed by Borrower to Guarantor ("Subordinated Debt") to any and all obligations of Borrower to Bank or its affiliates now or hereafter existing while this Guaranty is in effect, provided however that Guarantor may receive regularly scheduled principal and interest payments on the Subordinated Debt so long as (i) all sums due and payable by Borrower to Bank and its affiliates have been paid in full on or prior to such date, and (ii) no event or condition which constitutes, or which with notice or the lapse of time would constitute an event of default with respect to the Guaranteed Obligations shall be continuing on or as of the payment date; (b) Guarantor will either place a legend indicating such subordination on every note, ledger page or other document evidencing any part of the Subordinated Debt or deliver such documents to Bank; and (c) except as permitted by this paragraph, Guarantor will not request or accept payment of or any security for any part of the Subordinated Debt, and any proceeds of the Subordinated Debt paid to Guarantor, through error or otherwise, shall immediately be forwarded to Bank by Guarantor, properly endorsed to the order of Bank, to apply to the Guaranteed Obligations.

MISCELLANEOUS. Assignment. This Guaranty and other Loan Documents shall inure to the benefit of and be binding upon the parties and their respective heirs, legal representatives, successors and assigns. Bank's interests in and rights under this Guaranty and other Loan Documents are freely assignable, in whole or in part, by Bank. Any assignment shall not release Guarantor from the Guaranteed Obligations.

Organization; Powers. Guarantor (i) is (a) an adult individual and is sui juris, or (b) a corporation, general partnership, limited partnership, limited liability company or other legal entity (as indicated below), duly organized, validly existing and in good standing under the laws of its state of organization, and is authorized to do business in each other jurisdiction wherein its ownership of property or conduct of business legally requires such organization, (ii) has the power and authority to own its properties and assets and to carry on its business as now being conducted and as now contemplated; and (iii) has the power and authority to execute, deliver and perform, and by all necessary action has authorized the execution, delivery and performance of, all of its obligations under this Guaranty and any other Loan Document to which it is a party.

Applicable Law; Conflict Between Documents. This Guaranty shall be governed by and interpreted in accordance with federal law and, except as preempted by federal law,

the laws of the state named in Bank's address on the first page hereof without regard to that state's conflict of laws principles. If the terms of this Guaranty should conflict with the terms of any commitment letter that survives closing, the terms of this Guaranty shall control. **Guarantor's Accounts.** Except as prohibited by law, Guarantor grants Bank and its affiliates a security interest in all of Guarantor's deposit accounts and investment properties maintained with Bank and its affiliates. **Jurisdiction.** Guarantor irrevocably agrees to non-exclusive personal jurisdiction in the state named in Bank's address on the first page hereof. **Severability.** If any provision of this Guaranty or of the other Loan Documents shall be prohibited or invalid under applicable law, such provision shall be ineffective but only to the extent of such prohibition or invalidity, without invalidating the remainder of such provision or the remaining provisions of this Guaranty or other Loan Documents. **Payments.** All payments shall be mailed to Commercial Loan Services, P. O. Box 740502, Atlanta, GA* 30374-0502. **Notices.** Any notices to Guarantor shall be sufficiently given if in writing and mailed or delivered to Guarantor's address shown above or such other address as provided hereunder, and to Bank, if in writing and mailed or delivered to Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, P.O. Box 13327, Roanoke, VA 24040 or Wells Fargo Bank, N.A., Mail Code VA7628 / R4057-01Z, 7711 Plantation Road, Roanoke, VA 24019 or such other address as Bank may specify in writing from time to time. Notices to Bank must include the mail code. In the event that Guarantor changes Guarantor's address at any time prior to the date the Guaranteed Obligations are paid in full, Guarantor agrees to promptly give written notice of said change of address to Bank by registered or certified mail, return receipt requested, all charges prepaid. **Plural; Captions.** All references in the Loan Documents to borrower, guarantor, person, document or other nouns of reference mean both the singular and plural form, as the case may be, and the term "person" shall mean any individual person or entity. The captions contained in the Loan Documents are inserted for convenience only and shall not affect the meaning or interpretation of the Loan Documents. **Binding Contract.** Guarantor by execution of and Bank by acceptance of this Guaranty agree that each party is bound to all terms and provisions of this Guaranty. **Amendments, Waivers and Remedies.** No waivers, amendments or modifications of this Guaranty and other Loan Documents shall be valid unless in writing and signed by an officer of Bank. No waiver by Bank or its affiliates of any Default shall operate as a waiver of any other Default or the same Default on a future occasion. Neither the failure nor any delay on the part of Bank or its affiliates in exercising any right, power, or privilege granted pursuant to this Guaranty and other Loan Documents shall operate as a waiver thereof, nor shall a single or partial exercise thereof preclude any other or further exercise or the exercise of any other right, power or privilege. All remedies available to Bank or its affiliates with respect to this Guaranty and other Loan Documents and remedies available at law or in equity shall be cumulative and may be pursued concurrently or successively. **Partnerships.** If Guarantor is a partnership, the obligations, liabilities and agreements on the part of Guarantor shall remain in full force and effect and fully applicable notwithstanding any changes in the individuals comprising the partnership. The term "Guarantor" includes any altered or successive partnerships, and predecessor partnership(s) and the partners shall not be released from any obligations or liabilities hereunder. **Loan Documents.** The term "Loan Documents" refers to all documents executed in connection with or related to the Guaranteed Obligations and may include, without limitation, commitment letters that survive closing, loan agreements, other guaranty agreements, security agreements, instruments, financing statements, mortgages, deeds of trust, deeds to secure debt, letters of credit and any amendments or supplements (excluding swap agreements as defined in 11 U.S.C. § 101, as in effect from time to time). **LIMITATION ON LIABILITY; WAIVER OF PUNITIVE DAMAGES.** EACH OF THE PARTIES HERETO, INCLUDING BANK BY ACCEPTANCE HEREOF, AGREES THAT IN ANY JUDICIAL, MEDIATION OR ARBITRATION PROCEEDING OR ANY CLAIM OR CONTROVERSY BETWEEN OR AMONG THEM THAT MAY ARISE OUT OF OR BE IN ANY WAY CONNECTED WITH THIS AGREEMENT, THE LOAN DOCUMENTS OR ANY OTHER AGREEMENT OR DOCUMENT BETWEEN OR AMONG THEM OR THE OBLIGATIONS EVIDENCED HEREBY OR RELATED HERETO, IN NO EVENT SHALL ANY PARTY HAVE A REMEDY OF, OR BE LIABLE TO THE OTHER FOR, (1) INDIRECT, SPECIAL OR CONSEQUENTIAL DAMAGES OR (2) PUNITIVE OR EXEMPLARY DAMAGES. EACH OF THE PARTIES HEREBY EXPRESSLY WAIVES ANY RIGHT OR CLAIM TO PUNITIVE OR EXEMPLARY DAMAGES THEY MAY HAVE OR WHICH MAY ARISE IN THE FUTURE IN CONNECTION WITH ANY SUCH PROCEEDING, CLAIM OR CONTROVERSY, WHETHER THE SAME IS RESOLVED BY ARBITRATION, MEDIATION, JUDICIALLY OR OTHERWISE. **Telephone Communication Monitoring.** Guarantor agrees that Guarantor's telephone communications with Bank may be monitored and/or recorded to improve customer service.

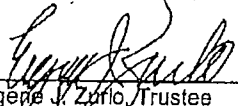
and security. **Final Agreement.** This Agreement and the other Loan Documents represent the final agreement between the parties and may not be contradicted by evidence of prior, contemporaneous or subsequent agreements of the parties. There are no unwritten agreements between the parties.

FINANCIAL AND OTHER INFORMATION. Guarantor shall deliver to Bank such information as Bank may reasonably request from time to time, including without limitation, financial statements and information pertaining to Guarantor's financial condition. Such information shall be true, complete, and accurate.

NEGATIVE COVENANTS. Guarantor agrees that from the date hereof and until final payment in full of the Guaranteed Obligations, unless Bank shall otherwise consent in writing, Guarantor will not: **Default on Other Contracts or Obligations.** Default on any material contract with or obligation when due to a third party or default in the performance of any obligation to a third party incurred for money borrowed. **Government Intervention.** Permit the assertion or making of any seizure, vesting or intervention by or under authority of any governmental entity, as a result of which the management of Guarantor or any guarantor is displaced of its authority in the conduct of its respective business or such business is curtailed or materially impaired. **Judgment Entered.** Permit the entry of any monetary judgment or the assessment against, the filing of any tax lien against, or the issuance of any writ of garnishment or attachment against any property of or debts due Guarantor. **Retire or Repurchase Capital Stock.** Retire or otherwise acquire any of its capital stock.

WAIVER OF JURY TRIAL. TO THE EXTENT PERMITTED BY APPLICABLE LAW, EACH OF GUARANTOR BY EXECUTION HEREOF AND BANK BY ACCEPTANCE HEREOF, KNOWINGLY, VOLUNTARILY AND INTENTIONALLY WAIVES ANY RIGHT EACH MAY HAVE TO A TRIAL BY JURY IN RESPECT OF ANY LITIGATION BASED ON, OR ARISING OUT OF, UNDER OR IN CONNECTION WITH THIS GUARANTY, THE LOAN DOCUMENTS OR ANY AGREEMENT CONTEMPLATED TO BE EXECUTED IN CONNECTION WITH THIS GUARANTY, OR ANY COURSE OF CONDUCT, COURSE OF DEALING, STATEMENTS (WHETHER VERBAL OR WRITTEN) OR ACTIONS OF ANY PARTY WITH RESPECT HERETO. THIS PROVISION IS A MATERIAL INDUCEMENT TO BANK TO ACCEPT THIS GUARANTY. EACH OF THE PARTIES AGREES THAT THE TERMS HEREOF SHALL SUPERSEDE AND REPLACE ANY PRIOR AGREEMENT RELATED TO ARBITRATION OF DISPUTES BETWEEN THE PARTIES CONTAINED IN ANY LOAN DOCUMENT OR ANY OTHER DOCUMENT OR AGREEMENT HERETOFORE EXECUTED IN CONNECTION WITH, RELATED TO OR BEING REPLACED, SUPPLEMENTED, EXTENDED OR MODIFIED BY, THIS GUARANTY.

IN WITNESS WHEREOF, Guarantor, on the day and year first written above, has caused this Unconditional Guaranty to be duly executed under seal.


_____(SEAL)
Eugene J. Zurlo, Trustee
for Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte R. Zurlo as Grantors

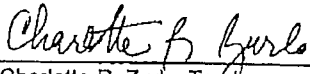

_____(SEAL)
Charlotte R. Zurlo, Trustee
for Zurlo Investment Trust No. 1
by Eugene J. Zurlo and Charlotte R. Zurlo as Grantors

EXHIBIT E

STATE OF SOUTH CAROLINA) IN THE COURT OF COMMON PLEAS
)
COUNTY OF CHARLESTON) NINTH JUDICIAL CIRCUIT

Wells Fargo Bank, N.A., as Successor by)
Merger to Wachovia Bank, National) CASE NO.: 2014-CP-10-4946
Association as Successor by Merger to)
First Union National Bank,)

Plaintiff,

vs.

Defendant Michel Laplante's Motion to Alter
or Amend

Penny Creek Associates, L.L.C. a/k/a)
Penny Creek Associates, LLC; The Grove)
at Fenwick Plantation, LLC; Michel F.)
LaPlante a/k/a Michel Laplante a/k/a)
Mitch Laplante; Charlotte R. Zurlo;)
Eugene J. Zurlo; Charlotte R. Zurlo and)
Eugene J. Zurlo, as Co-Trustees of The)
Nicklaus Lane Realty Trust No. 1 under)
Declaration of Trust dated May 22, 1998;)
Fenwick Hall Plantation Property Owners)
Assn., Inc. a/k/a Fenwick Hall Plantation)
Property Owners' Association, Inc.;)
Preserve at Fenwick Hall Property)
Owners' Association, Inc.; and The Grove)
at Fenwick Plantation Condominium)
Association, Inc.,)

Defendant.

Michel Laplante,

Third-Party Plaintiff,

vs.

The Eugene J. Zurlo Living Trust, Dated)
December 11, 1997 and Paul Zurlo,)

Third-Party Defendants.

FILED
2015 MAR 23 PM 3:52
JULIE J. ARMSTRONG
CLERK OF COURT
BY _____

Defendant Michel F. LaPlante a/k/a Michel Laplante a/k/a Mitch Laplante ("Laplante" or
"Defendant") hereby moves, pursuant to Rule 59(e), SCRPC, that this Court reconsider its

arguments and amend (or replace) its March 5, 2015, order referring this action to the Charleston County Master-in-Equity. Laplante would show the following in support of his motion:

1. Laplante received written notice of the entry of the order in question on March 12, 2015, so this motion is timely (taking into account that March 22nd fell on a Sunday).
2. The Court's order does not set forth with particularity the grounds for striking Laplante's jury demand and referring this action to the Master-in-Equity. Because the counterclaims and third-party claims (which request a jury) have common questions of fact with, and are logically related to, the foreclosure action, this case demands a jury trial. Plantation Fed. Bank v. Gray, 401 S.C. 507, 737 S.E.2d 515 (Ct. App. 2013); Wells Fargo Bank, N.A. v. Smith, 398 S.C. 487, 495, 730 S.E.2d 328, 332-33 (Ct. App. 2012). Argument I of Laplante's January 15, 2015, Memorandum in Opposition to the Motion to Strike and Refer is incorporated herein by reference.
3. The Court's order unconstitutionally curtails Laplante's right to a trial by jury. Argument II of Laplante's January 15, 2015, Memorandum in Opposition to the Motion to Strike and Refer is incorporated herein by reference.

Wherefore, Laplante would ask that this Court alter or amend its order to deny the Plaintiff's Motion to Strike and Refer and grant any such other or further relief it deems just and proper.

Dated: 3/23/15



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Certificate of Service
Case No.: 2014-CP-10-4946

I, Erin Magera, of the Seibels Law Firm, P.A., do hereby certify that a true and correct copy of ***Defendant Michel Laplante's Motion to Alter of Amend*** was properly addressed, postage pre-paid, and sent US Mail to counsel of record as follows:

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**Attorney for Eugene J. Zurlo; Charlotte R. Zurlo
and Eugene J. Zurlo, as Co-Trustees of The
Nicklaus Realty Trust No. 1 under Declaration of
Trust dated May 22, 1998**

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Owners Association, Inc. a/k/a The Preserve at
Fenwick Hall Property Owners' Association, Inc.
and The Grove at Fenwick Plantation
Condominium Association, Inc.**

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FILED
2015 MAR 23 PM 3:53
JULIE J. ARMSTRONG
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BY _____

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Attorney for Penny Creek Associates, LLC a/k/a
Penny Creek Associates, LLC and The Grove at
Fenwick Plantation, LLC

March 23 2015


Erin Magera