

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

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SC Court of Appeals

APPEAL FROM GREENVILLE COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Special Circuit Court Judge

Case No. 10-CP-23-10047

TD Bank National Association,
Successor by Merger to Carolina
First Bank Respondent

v.

Copper Lakes, LLC f/k/a Tall Pines
Investments, LLC; Grande Dunes
Development Company, and Silver
Real Estate Fund I, L.P., Defendants,

of whom

Silver Real Estate Fund I, L.P. is Appellant.

RECORD ON APPEAL

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Ariail E. King
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ATTORNEYS FOR RESPONDENT

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STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TD BANK NATIONAL ASSOCIATION,
SUCCESSOR BY MERGER TO CAROLINA
FIRST BANK,

PLAINTIFF,

v.

COPPER LAKES, LLC F/K/A TALL PINES
INVESTMENTS, LLC, GRANDE DUNES
DEVELOPMENT COMPANY, LLC AND
SILVER REAL ESTATE FUND I, L.P.

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-10047

2011 OCT 17 P 2:37

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
10/17/2011

**Proposed Order for
Reference to Master-in-Equity**

This action seeks foreclosure of Plaintiff TD Bank National Association's ("TD Bank" or "Plaintiff") mortgage lien against certain property of Defendant Copper Lakes, LLC f/k/a Tall Pines Investments, LLC ("Copper Lakes"). On October 13, 2011, TD Bank, pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, filed a Motion to Refer this action to the Greenville County Master-in-Equity and alleged that: (1) this is a foreclosure action, and (2) it has settled its claims against Defendant Grande Dunes Development Company, LLC ("Grande Dunes"), and neither Copper Lakes nor Silver Real Estate Fund I, L.P. ("Silver") have asserted any counterclaims against TD Bank.

IT IS HEREBY ORDERED that, pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, the above-captioned foreclosure lawsuit and all of its causes of action are referred to the Honorable Charles B. Simmons, Jr., Master in Equity for Greenville County, for the purpose of taking testimony and evidence and entering a final judgment or decree, with any appeal being directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

This 17 day of October 2011

Paul D. Wickens

Presiding Judge or Clerk of the Court of Common Pleas

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TD BANK NATIONAL ASSOCIATION,
SUCCESSOR BY MERGER TO CAROLINA
FIRST BANK,

PLAINTIFF,

v.

COPPER LAKES, LLC F/K/A TALL PINES
INVESTMENTS, LLC, GRANDE DUNES
DEVELOPMENT COMPANY, LLC AND
SILVER REAL ESTATE FUND I, L.P.

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-10047

2011 OCT 25 P 1:30

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
WIKKENS

ORDER DISMISSING DEFENDANT
GRANDE DUNES DEVELOPMENT, LLC
WITHOUT PREJUDICE

On or about October 18, 2011, Plaintiff TD Bank National Association Successor by Merger to Carolina First Bank ("Plaintiff" or "TD Bank"), pursuant to Rule 41(a)(2) of the South Carolina Rules of Civil Procedure, moved the Court to dismiss without prejudice its claims against Defendant Grande Dunes Development Company, LLC ("Grande Dunes") and to dismiss Grande Dunes as a party to the above-captioned lawsuit. TD Bank moved the Court to dismiss its claims against Grande Dunes without prejudice because it has entered into a settlement agreement with Grande Dunes. Furthermore, as a result of TD Bank's settlement agreement with Grande Dunes, there are no pending claims against Grande Dunes in this action as none of Grande Dunes' co-defendants, Copper Lakes, LLC f/k/a Tall Pines Investments, LLC ("Copper Lakes") and Silver Real Estate Fund I, L.P. ("Silver"), have asserted cross-claims against it. Grande Dunes and Copper Lakes consented to TD Bank's motion. Although Silver has not asserted any claims against Grande Dunes, see Silver's Amended Answer, it did not consent to dismissal of Grande Dunes pursuant to a stipulation of dismissal.

WCSR 7002384v1

CBS

WHEREFORE, because TD Bank settled its claims with Grande Dunes and, following this settlement, no parties have any pending claims against Grande Dunes, IT IS HEREBY ORDERED that TD Bank's claims against Grande Dunes are dismissed without prejudice and Grande Dunes is dismissed as a party to this lawsuit.

This ____ day of _____ 2011
Greenville, South Carolina

10/21/11

s/Charles B. Simmons, Jr.
The Honorable Charles B. Simmons, Jr., Master-In-Equity

CERTIFICATE OF SERVICE

I hereby certify that on the 20th day of October, 2011, I served the **Order Dismissing of Defendant Grande Dunes Development, LLC Without Prejudice** by depositing same in United States Mail, first-class, proper postage affixed, addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which are the last known address(es):

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Tina Cundari, Esq.
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211

*Attorneys for Copper Lakes, LLC f/k/a Tall
Pines Investments, LLC*

Andrew C. English, III, Esq.
Callison Tighe & Robinson, LLC
1812 Lincoln Street
Columbia, South Carolina 29201

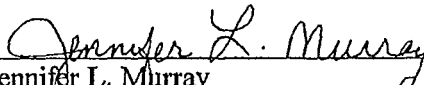
*Attorney for Defendant Silver Real Estate
Fund, I, L.P.*

October 20th, 2011
Greenville, South Carolina

Frank H. Gibbs, III, Esq.
Gibbes Burton, LLC
308 East Saint John Street
Spartanburg, South Carolina 29302

*Attorney for Grand Dunes Development
Company, LLC*

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
OCT 25 2011
P 1:30



Jennifer L. Murray
Legal Assistant to Catherine F. Wrenn

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-10047

COUNTY OF GREENVILLE

TD Bank National Association, Successor by
Merger to Carolina First Bank,

Plaintiff,

v.

Copper Lakes, LLC f/k/a Tall Pines
Investments, LLC; and Silver Real Estate Fund
I, L.P.,

Defendants.

2012 FEB 10 P 4:03

**ORDER DENYING SILVER'S MOTION
TO VACATE OR ALTER OR AMEND
THE ORDER OF REFERENCE AND
DENYING SILVER'S MOTION TO
RECONSIDER, ALTER OR AMEND THE
ORDER DISMISSING GRANDE DUNES**

FILED-CLERK OF COURT
GREENVILLE, SC
WICKER STREET

This case involves a loan from Plaintiff TD Bank National Association, Successor by Merger to Carolina First Bank ("TD Bank") to Defendant Copper Lakes, LLC f/k/a Tall Pines Investments, LLC ("Copper Lakes"). The Complaint seeks foreclosure as to Copper Lakes and a deficiency judgment against the two guarantors of the loan, Defendants Grande Dunes Development Company, LLC ("Grande Dunes") and Silver Real Estate Fund I, L.P. ("Silver"). On or about October 13, 2011, TD Bank filed a Motion to Refer the action to the Master-in-Equity, which was signed and filed by the Clerk of Court on or about October 17, 2011. On October 18, 2011, TD Bank moved the Court for an Order dismissing Grande Dunes following a settlement between the parties, which Order was entered by the Court on or about October 25, 2011.

Before the Court is Silver's Motion to Vacate or Alter or Amend the Order of Reference ("Motion to Vacate") and Silver's Motion to Reconsider, Alter or Amend the Order dismissing Grande Dunes ("Motion to Reconsider"). The Court heard oral argument on January 11, 2012 from counsel for Silver, Keith M. Babcock, and counsel for TD Bank, Michael J. Bogle. Counsel for Grande Dunes, Frank H. Gibbes, was also present. The Court also reviewed

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FEB 10 2012

memoranda in support of both Motions, filed by Silver, as well as memoranda in opposition to the same, filed by TD Bank. Having read Silver's Motions, reviewed the relevant pleadings in the case and heard the arguments of counsel, the Court hereby DENIES Silver's Motion to Vacate and DENIES Silver's Motion to Reconsider as follows:

The primary issue before this Court is whether the case was improperly referred by the Clerk of Court in light of the fact that TD Bank seeks, in part, recovery against Silver, a third-party guarantor. As previously ruled upon by the Court, Rule 53 allows a Clerk of Court to refer a case, without consent of a mortgagor, to a master-in-equity or special referee. Typically, that reference includes any right of a mortgagee to seek a deficiency judgment against the mortgagor.

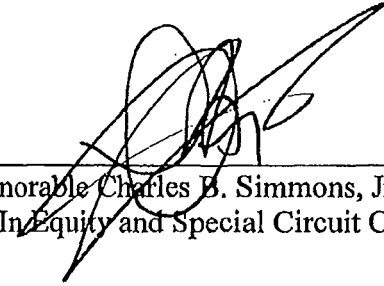
The facts presented to the Court herein establish, as noted above, that TD Bank seeks to recover against a third-party guarantor, Silver. The Court can clearly envision a situation where a third-party guarantor may have legitimate jury defenses or may bring other claims entitling it to a right to a trial by jury that should not be referred under Rule 53. In this regard, the Court agrees with the premise suggested by Silver that Rule 53 should not typically allow an *ex parte* referral of a claim against a third party guarantor. Notwithstanding this, the Court has carefully reviewed the Answer and Amended Answer of Silver and finds that Silver has not pled any legal claims against TD Bank or any other party that would allow or necessitate a trial by jury.

In light of the posture of the pleadings of Silver, the Court finds that even had the case not been referred by the Clerk of Court, reference would otherwise have been appropriate. Thus, the Court does not find a basis to alter or amend the Order of Reference signed by the Clerk of Court and filed on or about October 17, 2011.

2 

Furthermore, as there are no pending claims against Grande Dunes in this action as neither Copper Lakes nor Silver have asserted any cross-claims against it, this Court finds no basis to disturb the October 25, 2011 Order dismissing Grande Dunes from the case.

IT IS HEREBY ORDERED.



The Honorable Charles B. Simmons, Jr.
Master In Equity and Special Circuit Court Judge

February 7, 2012

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS
DOCKET NO: 2010-CP-23-10047

TD Bank National Association, Successor)
by Merger to Carolina First Bank,)

Plaintiff,)

ORDER

v.)

Copper Lakes, LLC f/k/a Tall Pines)
Investments, LLC, ~~Grande Dunes~~)
~~Development Company, LLC~~ and Silver)
Real Estate Fund I, L.P.,)

Defendants,)

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
CIVIL DIVISION

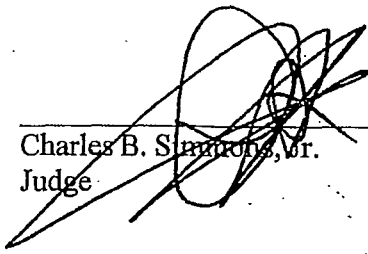
2012 MAR - 2 P 3:10

This matter is before the Court pursuant to Defendant Silver Real Estate Fund I, L.P.'s Motion to Alter or Amend pursuant to Rule 59(e), SCRCP. The Motion is denied.

In that Defendant's Motion succinctly sets out the basis for the Motion, a hearing is not required. See, Pollard v. County of Florence, 444 S.E.2d 534 (S.C. App. 1994).

The Order dated February 10, 2012, that was heard both in my capacity as Master in Equity and as Special Circuit Court Judge, adequately addresses the issues raised in Defendant's current Motion. Accordingly, the Court finds no basis to alter or amend the Order dated February 10, 2012.

AND IT IS SO ORDERED.



Charles B. Simmons, Jr.
Judge

February 28 2012
Greenville, South Carolina

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STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
)
)
)
 TD BANK, NATIONAL ASSOCIATION,)
 SUCCESSOR BY MERGER TO)
 CAROLINA FIRST BANK,)
)
 PLAINTIFF,)
)
 VS.)
)
)
 COPPER LAKES, LLC F/K/A TALL)
 PINES INVESTMENTS, LLC, GRANDE)
 DUNES DEVELOPMENT COMPANY,)
 LLC, AND SILVER REAL ESTATE)
 FUND I, L.P.)
)
)
 DEFENDANTS.)

IN THE COURT OF COMMON PLEAS

CASE NO: 2010 - CP - 23 - 10647

CLERK OF COURT
 GREENVILLE COUNTY, S.C.
 1000 MARKET STREET
 GREENVILLE, S.C. 29601

2010 DEC 10 PM 4:28

COMPLAINT

(Foreclosure, Non-Jury, Deficiency Demanded)

Plaintiff, complaining of the defendants herein, alleges as follows:

HMP

1. The property which is the subject of this action is commercial property, and the Home Affordable Modification Program is inapplicable.

Jurisdiction

2. TD Bank, National Association ("Plaintiff") is a national banking association organized under the laws of the United States of America with its primary office in the State of Delaware, and is the successor by merger to Carolina First Bank, a South Carolina banking corporation.

3. Upon information and belief, defendant Copper Lakes, LLC ("**Copper Lakes**") is a limited liability company organized under the laws of the State of South Carolina, formerly known as Tall Pines Investments, LLC, a limited liability company organized under the laws of the State of South Carolina, and as such is subject to the jurisdiction of this Court.

4. Upon information and belief, defendant Grande Dunes Development Company, LLC ("**Grande Dunes**") is a limited liability company organized under the laws of the State of South Carolina and as such is subject to the jurisdiction of this Court.

5. Upon information and belief, defendant Silver Real Estate Fund I, L.P. ("**Silver**") is a limited partnership organized under the laws of the State of Delaware, is duly registered and authorized to transact business in the State of South Carolina, and as such is subject to the jurisdiction of this Court.

6. The real property which is the subject of this action is located in Greenville County, South Carolina.

The Loan

7. On July 24, 2007, Copper Lakes gave to Plaintiff its promissory note in the original principal amount of \$12,024,124.00 (the "**Note**"), a copy of which Note is attached hereto and incorporated herein as **Exhibit "A"**.

8. On July 24, 2007, Copper Lakes, Grande Dunes, Silver and Plaintiff entered into that certain Loan Agreement in connection with the Note (the "**Loan Agreement**"), a copy of which Loan Agreement is attached hereto and incorporated herein as **Exhibit "B"**.

9. On July 24, 2007, Grande Dunes gave to Plaintiff its Guaranty Agreement, in which it unconditionally guaranteed to Plaintiff the punctual payment and performance of the

obligations of Copper Lakes evidenced by the Note (the "Grande Dunes Guaranty"). A copy of the Grande Dunes Guaranty is attached hereto and incorporated herein as **Exhibit "C"**.

10. On July 24, 2007, Silver gave to Plaintiff its Guaranty Agreement, in which it unconditionally guaranteed to Plaintiff the punctual payment and performance of the obligations of Copper Lakes evidenced by the Note (the "Silver Guaranty"). A copy of the Silver Guaranty is attached hereto and incorporated herein as **Exhibit "D"**.

11. In order to secure all obligations of Copper Lakes, Grande Dunes and Silver evidenced by the Note, the Loan Agreement, the Grande Dunes Guaranty, the Silver Guaranty and all other loan documents, Copper Lakes (i) gave to Plaintiff its Mortgage, Security Agreement and Fixture Financing Statement dated July 24, 2007 (the "Mortgage"), (ii) entered into that certain Loan Modification and Spreader Agreement dated February 6, 2008 (the "Spreader Agreement"), and (iii) entered into that certain Amendment to Mortgage dated July 31, 2008 (the "Mortgage Amendment"). The Mortgage, Spreader Agreement, and the Mortgage Amendment encumber (i) certain real property located in Greenville County, South Carolina (the "Real Property"), (ii) all personal property located on the Real Property (the "Personal Property"), (iii) all fixtures located upon the Real Property (the "Fixtures"), and (iv) certain other rights with respect to the Real Property, all as more fully set forth therein (collectively, the "Property"). The Mortgage was recorded in Mortgage Book 4820 at Page 1117 in the Office of the Register of Deeds for Greenville County, South Carolina, a copy of which is attached hereto and incorporated herein as **Exhibit "E"**. The Spreader Agreement was recorded in Mortgage Book 4914 at Page 1186 in the Office of the Register of Deeds for Greenville County, South Carolina, a copy of which is attached hereto and incorporated herein as **Exhibit "F"**. The Mortgage Amendment was recorded in Mortgage Book 5095 at Page 2963 in

the Office of the Register of Deeds for Greenville County, South Carolina, a copy of which is attached hereto and incorporated herein as **Exhibit "G"**. The Real Property is described on **Schedule "1"** attached hereto and incorporated herein.

12. Upon information and belief, the description of the Real Property set forth in the Mortgage contains the following typographical errors:

A. the phrase "thence N 81-50-05 E for 173.65 feet" should read "thence N 81-50-05 E for 179.71 feet"; and

B. the phrase "N 20-09-09 W for 2218.15 feet" should read "thence N 20-09-09 W for 2218.51 feet".

13. In order to secure all obligations of Copper Lakes, Grande Dunes and Silver in connection with the Note, the Loan Agreement, the Grande Dunes Guaranty, the Silver Guaranty and all other loan documents, Copper Lakes gave to Plaintiff its Assignment of Contracts, Contract Rights, Deposits, Leases, Rents and Revenues dated July 24, 2007 (the "**Contract Assignment**") encumbering the Real Property. The Contract Assignment was recorded in Deed Book 2280 at Page 658 in the Office of the Register of Deeds for Greenville County, South Carolina, a copy of which is attached hereto and incorporated herein as **Exhibit "H"**.

Maturity and Default

14. The Note matured as of July 31, 2010, and all obligations of defendant Copper Lakes evidenced thereby were due and payable in full as of such date.

15. As of August 27, 2010, the obligations evidenced by the Note had not been paid in full, and a demand for such payment and notice of default was mailed to Copper Lakes as of such date (the "**Demand Letter**"). A copy of the Demand Letter is attached hereto and incorporated herein as **Exhibit "I"**.

16. The failure to pay when due the obligations evidenced by the Note constitutes an event of default under the Note, the Loan Agreement, the Mortgage, the Grande Dunes Guaranty, the Silver Guaranty, the Contract Assignment and any other documents evidencing, securing and/or guarantying the obligations evidenced by the Note.

17. As of December 8, 2010, the following amounts remain outstanding and unpaid:

| | |
|------------|------------------|
| Principal | \$11,992,500.00 |
| Interest: | 176,942.31 |
| Late Fees: | <u>11,432.75</u> |
| Total: | \$12,180,875.06 |

Wherefore, Plaintiff prays:

A. That the amounts due pursuant to the Note and other loan documents, including without limitation all interest, principal, fees and costs advanced, be ascertained and determined under the direction of the Court, together with attorneys' fees and costs of this action.

B. That the Mortgage, the Spreader Agreement and the Mortgage Amendment be declared a first lien upon the Real Property, Personal Property and Fixtures.

C. That the legal description of the Real Property set forth in the Mortgage be reformed to correct the typographical errors set forth in paragraph 12 hereof.

D. That Plaintiff have judgment of foreclosure for the amounts to be found to be due and owing pursuant to the Note and the other loan documents, together with any taxes or insurance premiums which may be due or which may have been paid by Plaintiff.

E. (i) That the Real Property, Personal Property and Fixtures be sold according to law and the practice of the Court, free and clear of any liens and claims of others, but subject to any unpaid Greenville County taxes; (ii) that the equity of redemption be barred; and (iii) that the proceeds of sale be applied as follows:

(a) First, to the costs and expenses of this action and such sale;

- (b) Second, to the payment and discharge of all amounts due Plaintiff pursuant to the Note and the other loan documents, together with any taxes or insurance premiums which may be due or which may be or have been paid by Plaintiff and with Plaintiff's costs and attorneys' fees; and
- (c) Third, the surplus, if any, be distributed according to law.

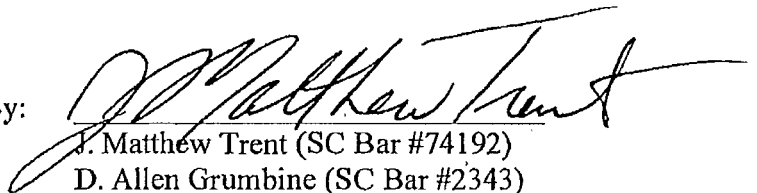
F. That Plaintiff be granted judgment, jointly and severally, against defendants Grande Dunes and Silver in the amount of any deficiency remaining after such sale of the Real Property, Personal Property and Fixtures, such deficiency to be based upon the high bid at the judicial foreclosure sale (regardless of any appraised value of the Real Property, Personal Property and Fixtures).

G. For such other relief as may be just and proper.

December 10, 2010

Womble Carlyle Sandridge & Rice, PLLC

By:



J. Matthew Trent (SC Bar #74192)

D. Allen Grumbine (SC Bar #2343)

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Greenville, South Carolina 29601

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agrumbine@wcsr.com

Attorneys for Plaintiff

LIST OF EXHIBITS

- Exhibit A - Note
- Exhibit B - Loan Agreement
- Exhibit C - Grande Dunes Guaranty
- Exhibit D - Silver Guaranty
- Exhibit E - Mortgage
- Exhibit F - Spreader Agreement
- Exhibit G - Mortgage Amendment
- Exhibit H - Contract Assignment
- Exhibit I - Demand Letter
- Schedule 1 - Description of the Real Property

EXHIBIT "A"

Note

PROMISSORY NOTE

\$12,024,124.00

July 24, 2007

1. **BORROWER'S PROMISE TO PAY.** FOR VALUE RECEIVED, the undersigned **TALL PINES INVESTMENTS, LLC**, a limited liability company organized and existing under the laws of the State of South Carolina (the "Borrower"), whose address is c/o Burroughs & Chapin Company, Inc., 2411 North Oak Street, Suite 402, Myrtle Beach, South Carolina, unconditionally promises to pay to the order of **CAROLINA FIRST BANK** (the "Lender") at its office at 104 South Main Street, Greenville, South Carolina 29601, or at such other place as the Lender may designate in writing, in lawful money of the United States, the maximum principal sum of **TWELVE MILLION TWENTY-FOUR THOUSAND ONE HUNDRED TWENTY-FOUR AND NO/100 (\$12,024,124.00) DOLLARS**, together with interest on such principal sum as of and from the dates of disbursement thereof computed at the rate set forth hereinafter, which principal and interest shall be payable in accordance with the terms set forth hereinafter.

2. **TERM OF NOTE.** This Note shall commence on the date hereof and shall extend until July 31, 2008 (the "Maturity Date"), upon which date all outstanding unpaid principal and interest shall, if not sooner paid, become due and payable in full.

3. **INTEREST RATE.** Interest on the outstanding principal balance of this Note shall accrue and be computed from and including the date of this Note at the applicable Adjusted LIBOR Rate plus the LIBOR Rate Margin, which shall be one hundred seventy-five basis points (1.75%) in excess of the Adjusted LIBOR Rate. When used herein, the following terms shall have the following meanings (terms defined in the singular to have the same meaning when used in the plural and vice versa):

"Adjusted LIBOR Rate" means a rate per annum equal to the quotient obtained (rounded upwards, if necessary, to the next higher 1/10,000 of one percent) by dividing (i) the LIBOR Rate for the calendar month by (ii) 1.00 minus the Eurodollar Reserve Percentage. Notwithstanding any provisions herein to the contrary, if the Lender should at any time determine that it is not possible to determine the Adjusted LIBOR Rate or that the Adjusted LIBOR Rate is no longer available, then the Obligations bearing interest at the Adjusted LIBOR Rate shall continue to bear interest at the rate in effect during the last calendar month in which the Adjusted LIBOR Rate was available or determinable until the beginning of the next calendar month in which the Adjusted LIBOR Rate is available or determinable.

"Eurodollar Reserve Percentage" means any day that percentage (expressed as a decimal) which is in effect on such day, as prescribed by the Board of Governors of the Federal Reserve System (or any successor) for determining the maximum reserve requirement for a member bank of the Federal Reserve System in respect

of "Eurocurrency liabilities" (adjusted automatically on and as of the effective date of any change in the Eurodollar Reserve Percentage).

"LIBOR" means the thirty (30) day LIBOR as reported by the British Banker's Association (for the purpose of displaying London Interbank Offered Rates for United States Dollar deposits) determined as of 11:00 a.m. (London time) (rounded upward to the next higher of 1/10,000 of 1%), two (2) Business Days prior to the first Business Day of each calendar month.

The interest rate payable hereunder shall adjust on the first day of each calendar month during the term of this Note and shall end on the final day of such calendar month (an "Interest Period"), and shall be calculated on the actual number of days outstanding over a 360-day year consisting of thirty (30) day months. Interest shall be fixed during each Interest Period on the basis of the Adjusted LIBOR Rate plus the LIBOR Rate Margin applicable to such Interest Period, and shall be subject to variance from Interest Period to Interest Period due to fluctuations, if any, in the Adjusted LIBOR Rate. Each determination of the Adjusted LIBOR Rate applicable to a particular Interest Period shall be made by the Lender and shall be conclusive and binding upon the Borrower absent manifest error. The Lender shall issue to the Borrower a monthly statement promptly following each Interest Period, which shall set forth the applicable Adjusted LIBOR Rate plus the LIBOR Rate Margin that shall be in effect for the forthcoming Interest Period, together with the amount of interest which shall then be due for the immediately prior Interest Period.

4. PAYMENTS. The Borrower shall pay to the Lender monthly installments of accrued interest only, in arrears, calculated on the daily outstanding principal balance disbursed hereunder during the preceding month, except that the initial monthly installment of interest only shall consist of interest only on the daily outstanding principal balance disbursed hereunder from and including the date hereof and prior to the due date thereof. Thereafter, the Lender shall immediately calculate and bill the Borrower each month for all interest accrued and due for the preceding month. Payments shall commence on the 1st day of September, 2007, and shall continue on the first day of each month thereafter until and including the Maturity Date. Final payment of all outstanding unpaid principal and interest shall be due and payable in full, if not sooner paid, on the Maturity Date.

5. PREPAYMENT. This Note may be prepaid in full or in part at any time without penalty.

6. LATE CHARGES. The Borrower further agrees to pay to the Lender immediately and without demand, a late charge of four (4%) percent of the amount of any monthly installment hereunder which is not received by the Lender on or before the fifteenth (15th) day of the month in which such installment is due; provided, however, that if the fifteenth (15th) day of any month shall fall upon a Saturday, Sunday, or national or South Carolina state holiday, such payment shall not be deemed late if received by the Lender on its next regular business day. Any late charge hereunder shall be accrued and paid only once on any past-due or late monthly payment and shall not be applicable to the principal balance due at maturity.

7. OTHER CHARGES. As and when required in writing by the Lender, the Borrower agrees to pay to the Lender, with and in addition to each monthly installment of principal and/or interest payable hereunder, such amounts as may be reasonably required to maintain escrow accounts (if any) for taxes, assessments and/or insurance premiums, and for any other sums (collectively, the "Other Charges") required to be paid by the Borrower to the Lender pursuant to the Loan Documents (hereinafter defined).

8. APPLICATION OF PAYMENTS. Any payments hereunder shall be applied by the Lender to such Late Charges, Other Charges, accrued interest and principal as shall then be due in such order of priority as the Lender shall determine. All interest not paid when due shall bear interest at the same rate as is then payable on the principal amount hereof.

9. SECURITY. This Note is executed pursuant and subject to the terms and conditions of the Loan Agreement of even date entered into by and among the Borrower, the Lender and the Guarantors identified therein, and is secured by a certain Mortgage, Security Agreement, and Fixture Financing Statement from the Borrower to the Lender; an Assignment of Contracts, Contract Rights, Deposits, Leases, Rents and Revenues from the Borrower to the Lender; and certain UCC-1 Financing Statements, each pertaining to certain real property identified therein, with improvements now existing and/or to be constructed thereon; and is guaranteed by one or more Guaranty Agreements from the Guarantors identified therein to the Lender; with all of the foregoing documents and any other collateral documents being granted and/or delivered therewith being collectively referred to herein, from time to time, as the "Loan Documents."

10. EVENTS OF DEFAULT. The Borrower hereby agrees that this Note shall be in default if at any time: (a) any monthly installment of interest only, principal, or principal-and-interest due hereunder, or any portion thereof, or any Late Charges or Other Charges due hereunder, or any monies of any nature which are due to the Lender under the terms of any of the Loan Documents shall not be fully paid upon or by the due date thereof, and the Lender shall not receive payment in full within five (5) calendar days following written notice of non-payment thereof; provided, however, that in the event the Lender shall give one (1) or more notices of non-payment within any twelve-month (12) period during the term of this Note, no further notices of non-payment shall be required hereunder and the Borrower's failure thereafter to pay any such payment within five (5) days following the due date thereof shall constitute an Event of Default; or (b) the Borrower or any party to any of the Loan Documents breaches or is in default under any other covenant, condition, warranty, representation, obligation or agreement contained in this Note or any of the Loan Documents or any other instrument given in connection with or to secure payment or performance of this Note, which is not cured within any grace period set forth therein, and the Borrower or such other party shall fail to fully cure such breach or default within thirty (30) calendar days following the Effective Date of Notice thereof from the Lender; provided, however, that if such default cannot reasonably be cured within the thirty (30) day period, then Borrower shall have an additional reasonable time to cure, provided both that the Borrower has begun and is diligently pursuing efforts to cure within the thirty (30) day period

and that such default is reasonably susceptible of being cured, or (c) any of the following actions shall occur by, against or involving the Borrower or any Guarantor of this Note, or any other party to any of the Loan Documents:

- a. filing of a voluntary petition in bankruptcy;
- b. adjudication as a bankrupt or insolvent;
- c. the filing of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors;
- d. any petition for, consent to or acquiescence in the appointment of any trustee, receiver or liquidator for the Borrower, any Guarantor, all or any part of the collateral for this Note, or of the rents, issues, royalties, income or profits therefrom;
- e. the making of any general assignment for the benefit of creditors;
- f. the admission in writing of its inability to pay its debts when due;
- g. the entry by a court of competent jurisdiction of any order, judgment or decree approving a petition filed against the Borrower, any Guarantor, or any other party to the Loan Documents seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days from the date of entry thereof; or
- h. the appointment of any trustee, receiver or liquidator of the Borrower, any Guarantor, or any other party to the Loan Documents or of all or any substantial part of the collateral for this Note or of any or all of the rents, revenues, issues, earnings, profits or income thereof, without the prior written consent of the Lender, which appointment shall remain unvacated or unstayed for an aggregate of sixty (60) days from the date of appointment.

11. **REMEDIES.** Upon occurrence of any Event of Default or at any time thereafter, subject to the provisions of Section 7.3 of the Loan Agreement, so long as such Event of Default shall continue, at the option of the Lender, the entire principal sum then remaining unpaid hereunder, together with all interest accrued thereon, shall immediately become due and payable in full, without further notice, and the Lender shall have the right to institute any proceedings on this Note, the Loan Documents, or any other collateral or guarantees given to secure the same, without limitation, for the purpose of collecting the indebtedness due hereunder, and the

Borrower agrees to pay all reasonable costs and expenses incurred thereby, including, but not limited to, reasonable attorney's fees.

12. DEFAULT INTEREST RATE. Any unpaid balance due hereunder shall continue to bear interest after default, after this Note matures, and/or after the unpaid balance has been reduced to judgment, at a rate equivalent to five (5%) percent in excess of the rate then payable hereunder or at the then applicable legal rate of interest on judgments in the State of South Carolina, whichever shall be greater; provided, however, that if such increased rate of interest may not be collected from the Borrower under applicable law, then the unpaid balance then due hereunder shall bear interest at the maximum increased rate of interest, if any, which may be collected from the Borrower under applicable law.

13. REMEDIES CUMULATIVE. The remedies provided herein and in any instrument given to secure the payment or performance of this Note shall be cumulative and none is exclusive of any other remedy, right or power. Each right, power and remedy may be exercised separately, concurrently or consecutively at the sole option of the Lender and shall be in addition to any other right, power or remedy provided in this Note or in any Loan Document now or hereafter existing at law, in equity, or by statute; and may be pursued successively or concurrently against the Borrower, any Guarantors, and/or any collateral securing this Note or any Loan Documents. Any delay or failure by the Lender to exercise any right, power or remedy conferred hereunder upon occurrence of any event of default shall not constitute a waiver of such right, power or remedy or preclude its future exercise or that of any other right, power or remedy in the event of any subsequent default, whether of the same or different nature.

14. WAIVERS. Notwithstanding anything to the contrary contained herein or in the Loan Documents, the Borrower, for itself, its legal representatives, successors and assigns, respectively, expressly waives presentment, demand, protest, notice of dishonor, notice of protest, notice of non-payment, and notice of maturity.

15. GOVERNING LAW. This Note and the Loan Documents shall be governed and construed under and in accordance with the laws of the State of South Carolina.

16. CONSENT TO JURISDICTION. The Borrower, by its execution hereof, agrees that any action or proceeding which the Lender may initiate with respect to this Note and/or any Loan Document shall, at the Lender's sole option, be brought in and subject to the jurisdiction of any state or federal court of competent jurisdiction of the State of South Carolina, to which jurisdiction the Borrower, by its execution hereof, hereby irrevocably consents. The Borrower irrevocably waives any objection, including without limitation any objection to the laying of venue based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction. Nothing herein shall affect the right of the Lender to serve process in any manner permitted by law nor shall limit the right of the Lender to bring proceedings against another party to any of the Loan Documents in the courts of any other jurisdiction.

17. EXCESSIVE INTEREST. If for any reason the Lender shall ever receive interest or any other charges constituting or adjudicated as constituting interest, which would exceed the maximum rate of interest permitted by applicable law, the amount if any, which exceeds the maximum allowable rate shall be applied to the reduction of the principal amount owing on this Note and not to the payment of interest; or, if such excessive interest exceeds the unpaid principal balance hereof, the amount of such excessive interest that exceeds the unpaid principal balance shall be refunded to the Borrower.

18. NOTICE. All notices made or required hereunder shall be in writing. The Effective Date of Notice shall be the date upon which such notice shall have been personally delivered (including personal delivery by Federal Express or other nationally-recognized overnight private courier service), or the date of postmark of any notice deposited in the United States Mail, registered or certified, postage prepaid, return receipt requested, addressed in any such event to the Lender or the Borrower at the address set forth herein, or at such other addresses as may hereafter be designated in writing.

19. WAIVER OF APPRAISAL. 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 (30) days after the sale of the mortgaged property apply to the court for an order of appraisal. The statutory appraisal value as approved by the Court would be substituted for the high bid and may decrease the amount of any deficiency owing in connection with the transaction. THE UNDERSIGNED HEREBY WAIVES AND RELINQUISHES THE STATUTORY APPRAISAL RIGHTS WHICH MEANS THE HIGH BID AT THE JUDICIAL FORECLOSURE SALE WILL BE APPLIED TO THE DEBT REGARDLESS OF ANY APPRAISED VALUED OF THE MORTGAGED PROPERTY.

BORROWER:

Signed, Sealed and Delivered
in the Presence of:

Tommy S. Sauer
Mark

TALL PINES INVESTMENTS, LLC,
a South Carolina limited liability company

By: *Terry Honk* (SEAL)
Name: *Terry Honk*
Title: *Manager*

EXHIBIT "B"

Loan Agreement

LOAN AGREEMENT

THIS LOAN AGREEMENT (the "Agreement") is made and entered into as of this 24th day of July, 2007, by and among **TALL PINES INVESTMENTS, LLC**, a South Carolina limited liability company (the "Borrower"), **GRANDE DUNES DEVELOPMENT COMPANY, LLC**, a South Carolina limited liability company, and **SILVER REAL ESTATE FUND I, L.P.**, a Delaware limited partnership (each, a "Guarantor," and collectively, the "Guarantors") and **CAROLINA FIRST BANK** (the "Lender").

WITNESSETH:

The Borrower has applied to the Lender for certain financing more particularly described hereinafter and the Lender is willing to extend such financing to the Borrower upon compliance by the Borrower with the terms and provisions hereof. Therefore, in consideration of the mutual covenants, terms, provisions and conditions set forth hereinafter and of the financing identified hereinafter to be provided by the Lender to the Borrower and for other good and valuable consideration, the receipt and sufficiency of all of which are hereby acknowledged, the Borrower, the Guarantors, and the Lender hereby agree as follows:

ARTICLE ONE DEFINITIONS

As used in this Agreement, the following terms shall have the following meanings:

- 1.1 **ADVANCES**. All advances of Loan proceeds hereunder, except for the Initial Advance made pursuant to Section 4.1 hereof, to or for the benefit of the Borrower, to fund approved design, planning, engineering, sales and marketing expenses incurred by the Borrower in connection with the Project, and further including all advances of Loan proceeds hereunder made for the benefit of the Borrower in order to pay the monthly debt service under the Note.
- 1.2 **ASSIGNMENT**. The Assignment of Contracts, Contract Rights, Deposits, Leases, Rents and Revenues executed by the Borrower to the Lender herewith as security for the Obligations.
- 1.3 **BUDGET**. The Development Cost Analysis attached hereto and incorporated herein as Exhibit "C".
- 1.4 **CLOSING**. The date of the execution and delivery hereof by the Obligors and the Lender.
- 1.5 **ENGINEER**. The engineer(s), whether one or more, that shall be engaged by the Borrower to design all or portions of the sitework and infrastructure for the Property and all or pertinent portions of the Project, and to render other engineering services related thereto.

by the Note, inclusive of all of the Obligations, collateral and Loan Documents respecting the same.

1.13 MORTGAGE. The Mortgage, Security Agreement, and Fixture Financing Statement of even date executed by the Borrower to the Lender, as security for the Obligations and covering the Property, including any improvements located thereon (if any).

1.14 NOTE. The Promissory Note of even date from the Borrower to the Lender evidencing the Borrower's obligation to repay the Loan to the Lender, with interest, in accordance with the terms set forth therein.

1.15 OBLIGATIONS. All indebtedness, liabilities and obligations to be paid, performed and/or observed by the Obligors in connection with the Loan which are secured by the Mortgage and the Loan Documents and which are defined more fully therein.

1.16 OBLIGORS. Collectively, the Borrower and the Guarantors.

1.17 PROJECT. The design, planning, engineering, sales and marketing of a primarily residential development upon the Property.

1.18 PROPERTY. That certain approximately 1671.99-acre parcel of land, located at or along South Carolina Highway 11 in the County of Greenville, State of South Carolina, being more fully described on Exhibit "A" attached hereto and incorporated herein.

1.19 TITLE INSURER. Chicago Title Insurance Company.

1.20 TITLE COMMITMENT. The lender's title insurance commitment number 102820A issued by the Title Insurer, effective May 28, 2007, in the amount of Twelve Million Twenty-Four Thousand One Hundred Twenty-Four and No/100 (\$12,024,124.00) Dollars.

ARTICLE TWO THE LOAN TRANSACTION

2.1 FINANCING. This Agreement is executed by and among the parties hereto for the purpose of setting forth all terms and conditions with respect to the Loan and is intended to include all covenants, conditions, representations and warranties made in connection with the Loan. This Agreement shall be deemed to incorporate by reference all of the terms of the Loan Commitment, together with all of the terms set forth in all of the Loan Documents. Should any conflict arise between any terms of this Agreement and any terms of the Loan Commitment or any Loan Document, the terms of this Agreement shall prevail; except that the terms of the Note respecting the repayment obligations of the Borrower shall prevail over any inconsistent provision of this Agreement, the Loan Commitment, or any Loan Document.

3.2 TITLE INSURANCE AND DOCUMENTS. The Borrower has heretofore delivered to the Lender the Title Commitment from the Title Insurer, whereby the Title Insurer shall insure the Mortgage as of the date and time of its recordation as a good and valid first priority mortgage upon the Property without exception other than as set forth in the Title Commitment, subject only to the review and approval by the Lender of all exceptions set forth therein and subject to fulfillment of the requirements precedent to the issuance of the final mortgagee title insurance policy and endorsements as are set forth in the Title Commitment. The Borrower covenants and agrees to provide to the Lender prior to Closing, for review and approval, copies of all exceptions to title listed in Schedule B-2 of the Title Commitment, and appropriate owner's and contractor's affidavit and lien waiver forms. Immediately upon recordation of the Mortgage, the Borrower shall cause the Title Insurer to issue and deliver to the Lender the final mortgagee title insurance policy insuring the Mortgage as a good and valid first mortgage upon the Property as of the date and time of recording thereof, in conformity with the Title Commitment and without exception other than previously set forth in the Title Commitment and thereafter approved by the Lender.

3.3 SURVEY. The Borrower shall submit to the Lender an ALTA/ACSM survey of the Property prepared by a registered South Carolina land surveyor acceptable to the Lender, certified to the Lender and the Title Insurer, completed no more than sixty (60) days prior to the date hereof. The survey shall set forth, at a minimum, unless otherwise waived by the Lender, the following items pertaining to the Property: (1) the courses and measured distances of all exterior property lines, building set-back lines and easements; (2) the total area within the exterior boundaries expressed in square footage and/or acreage; (3) all curb cuts and means of ingress and egress; (4) the location and dimensions of all encroachments by or onto the Property; (5) the location and the dimensions of all existing improvements upon the Property; (6) a certification or other evidence satisfactory to the Lender that all abutting streets and other means of ingress and egress abutting the Property have been completed, dedicated and accepted for public maintenance and public use and that all sanitary sewer lines, water lines, and other utility lines servicing the Property enter the Property from such abutting public streets; (7) a certification that no improvements located upon the Property are situated within a flood hazard area, as defined in the Flood Disaster Protection Act of 1973, as amended from time to time; (8) a certification that there are no other easements, rights-of-way, party walls, encroachments, or improvements located on, crossing or affecting the Property that are visible, recorded or known to the surveyor which are not shown on the survey; (9) the current zoning classification and tax map reference number(s) of the Property; (10) the location, by reference to the Title Commitment, of all easements and encumbrances upon, crossing or affecting the Property; and (11) such other information as the Lender may require.

3.4 ORGANIZATIONAL DOCUMENTS. The Borrower shall submit to the Lender its written and executed Certificate, to which shall be attached true copies of its Articles of Organization, its Operating Agreement, and all amendments thereto, a current Certificate of Existence issued by the Secretary of State of South Carolina, and appropriate resolutions authorizing the transactions contemplated herein and designating its authorized signatories who shall have the power and authority to execute and deliver all Loan Documents on its behalf. The

C. Governmental Requirements. Evidence of compliance with all applicable Governmental Requirements, including without limitation zoning certificates, building permits, storm drainage system approvals, erosion control and environmental protection permits, curb cuts and encroachment permits, and occupancy permits.

D. Project Documents. All project development documents relating to the planned development of the Property, including without limitation site plans, surveys, renderings, layouts, engineering contracts, geotechnical studies, landscaping contracts, grading contracts, marketing and sales materials, development agreements and similar documents.

3.7 OTHER DOCUMENTS.

A. Purchase Contracts. The Borrower shall submit to the Lender fully executed copies of all contracts, agreements, and amendments thereto, including all exhibits and schedules, entered into by the Borrower with the owners of the Property that entitle the Borrower to purchase the Property and all portions thereof in accordance with the terms and provisions thereof.

B. Appraisal. The written current MAI appraisal of the value of the Property, to be prepared by a qualified Member, Appraisal Institute acceptable to the Lender, conforming in form and content to all requirements established by the Lender and setting forth a current loan-to-value ratio of the Property of not less than Sixty-Five and seventeen hundredths (65.17%) percent.

C. Borrower's Equity. The Borrower shall submit to the Lender evidence that it has contributed at least Ten Million and No/100 (\$10,000,000.00) Dollars to the purchase of the Property at or prior to Closing.

D. Closing Disbursement. A closing statement which shall evidence the payment by the Borrower at Closing of all expenses of or connected with the acquisition of the Property and the closing of the Loan, including without limitation a Loan Commitment Fee of Sixty Thousand and No/100 (\$60,000.00) Dollars, all recording fees, documentary stamps, title insurance premiums, title examination fees, bond and insurance premiums, surveyors' charges, appraisal fees, inspection fees, environmental assessments and analyses, soils reports, due diligence expenses, and attorneys' fees for the Lender's and the Borrower's attorneys, any other applicable reasonable costs and expenses associated or connected with the closing of the Loan.

ARTICLE FOUR DISBURSEMENT PROVISIONS

D. Consultants. The Lender shall have the right to select and retain outside professional consultants, at the sole reasonable cost and expense of the Borrower, if in the reasonable judgment of the Lender, the employment of such consultants is necessary or reasonably justifiable to investigate any actual or potential concerns relating to the Project.

E. Copies of Contracts. The Borrower shall deliver to the Lender, promptly upon request, copies of all contracts, subcontracts, engineering contracts, construction contracts, design contracts, plans, specifications, purchase orders and invoices pertaining to the Project, and copies of any contracts, bills of sale, statements, receipted vouchers or agreements under which the Borrower holds or claims title to any plans, designs, materials, fixtures or other articles incorporated or to be incorporated into the Project.

4.3 CONDITIONS PRECEDENT TO ADVANCES. The obligation of the Lender to make any Advances hereunder is subject to the compliance by the Borrower with the following requirements at the time of each Advance:

A. Representations and Warranties. All representations and warranties of the Obligors contained in this Agreement and all Loan Documents shall remain true and correct in all material respects.

B. Other Conditions. All Conditions Precedent set forth in Article Three hereinabove shall have been and shall remain fulfilled in all material respects.

C. Performance. The Borrower shall have fully performed all duties and obligations required to be performed hereunder as of or prior to the date of such requested Advance, free of any material changes to the Project and free of liens, encumbrances and other security interests except and unless presented to and approved in writing by the Lender.

D. No Defaults. The Borrower shall not be in breach or default in the performance or observance of any other terms and provisions of this Agreement or of any other Loan Document, and there shall have been no material adverse change in the financial condition of the Borrower or any Guarantor subsequent to the day of execution of this Agreement, except as shall have been reported in writing to the Lender and approved or waived in writing by the Lender.

E. Damage. The Project shall not have been materially damaged or injured by fire or other casualty or, in the Lender's sole discretion, a material portion of the Property shall not have been condemned or threatened by condemnation; or if so damaged or condemned, provisions satisfactory to the Lender shall have been agreed upon in writing and duly executed by the Borrower and the Lender for repair or restoration thereof.

any applicable Governmental Requirements; or that there are insufficient undisbursed funds remaining under the Loan to complete the Project in accordance with the Budget; or that any payments due under the Note shall not be paid fully current. No waiver by the Lender of any Condition Precedent, Advance Requirement, Advance Procedure, Representation, Warranty or Covenant herein in connection with any Advance hereunder shall be construed as a waiver of the Lender's right to require strict compliance with the same or any other Condition Precedent, Advance Requirement, Advance Procedure, Representation, Warranty or Covenant in connection with any subsequent Advance hereunder.

ARTICLE FIVE REPRESENTATIONS AND WARRANTIES

In order to induce the Lender to enter into and execute this Agreement and to make the Loan to the Borrower, the Borrower and the Guarantors make the following representations and warranties to the Lender, each of which shall survive the execution of this Agreement and remain in full force and effect until complete payment and discharge of the Obligations:

5.1 EXISTENCE. The Borrower is a limited liability company duly organized, validly existing and in good standing under the laws of the State of South Carolina, with full power and authority to enter into the Loan, to execute and deliver the Loan Documents and to perform in accordance with the terms thereof. Silver Real Estate Fund I, L.P. is a limited partnership duly organized and in good standing under the laws of the State of Delaware, with full power and authority to guaranty the Loan, to execute and deliver the Loan Documents to which it is a party and to perform in accordance with the terms thereof. Grande Dunes Development Company, LLC, is a limited liability company duly organized and in good standing under the laws of the State of South Carolina, with full power and authority to guaranty the Loan, to execute and deliver the Loan Documents to which it is a party and to perform in accordance with the terms thereof.

5.2 AUTHORITY. The Obligors (as applicable) have full power and authority to purchase and own the Property and to execute, deliver and perform their respective Obligations under the Loan Documents. The Obligors have taken all appropriate action to authorize the execution and delivery of this Agreement and the Loan Documents to which each is a party. The execution, delivery and performance by the Obligors of the Loan Documents does not and will not require the consent of any other parties or any Governmental Authorities not previously obtained and delivered to the Lender (except as to such future performance, if any, contemplated hereunder as may require subsequent approvals or consents of applicable Governmental Authorities), nor will the same contravene the governing documents of the Obligors, or any applicable Governmental Requirements presently in effect, nor will the same result in any breach of or constitute a default under any agreement or instrument to which any Obligor is a party or by which the Property is affected.

default under any other mortgage, bank loan, credit agreement or other instrument to which any Obligor is a party or by which any Obligor may be bound or affected.

5.9 DISCLOSURE. To the best of the Obligors' knowledge, no representation or warranty of the Obligors contained in this Agreement, any other Loan Documents, and no statement contained in any certificate, schedule, list, financial statement or instrument now or hereafter to be furnished to the Lender by or on behalf of the Obligors contains or will contain any untrue statement or omission of any material fact.

5.10 SOLVENCY. There is not pending or, to the best of the Obligors' knowledge, threatened by or against any of the Obligors, nor is there contemplated any petition in bankruptcy, order for relief (whether voluntary, involuntary or by operation of law), any assignment for the benefit of creditors, any petition seeking reorganization or arrangement under the bankruptcy laws of the United States of America or any state thereof, any liquidation of all or the greater portion of the property of any of the Obligors or any other action brought under the aforesaid bankruptcy laws or other similar laws involving any of the Obligors.

5.11 COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS. To the best of its knowledge, the Borrower is in full material compliance with all applicable Governmental Requirements pertaining to the Borrower and the Property.

5.12 UTILITIES. All public utility service, including without limitation water, power, sanitary sewer, storm sewer and drainage, gas, telephone, and cable television which may be necessary for the development of the Property for its intended purpose are available to the boundaries of the Property or (if not currently available) will be extended to the boundaries of the Property, are or will be unencumbered, are or will be located in a publicly dedicated and accepted right-of-way, and are or will be in sufficient size, quantity, capacity and pressure to accommodate all intended construction, uses and operations at the Property; provided, however, that sanitary sewer is not currently available to the Property and a septic system will be installed to service the Property.

5.13 INGRESS AND EGRESS. All streets and roads necessary for ingress and egress to the Property have been completed and dedicated for public use and accepted for maintenance by the appropriate Governmental Authorities, except as to such private means of ingress and egress for which recorded permanent easements exist and which have been approved in writing by the Lender herewith.

5.14 TAXES. The Obligors have filed all federal, state and other tax returns required to be filed and has fully paid all taxes required under such returns. No Obligors have received any notice from the Internal Revenue Service or any other Governmental Authority asserting that any additional assessments or taxes are or may be due.

5.15 ENVIRONMENTAL MATTERS. To the best of the Obligors' knowledge, (a) the Property is free from Hazardous Materials in violation of any Governmental Requirement and

with the Loan, and all such properties and assets are free and clear of any deeds of trust, mortgages, liens, security interests, pledges and other encumbrances, except as otherwise reflected in said financial statements.

ARTICLE SIX
COVENANTS

The Borrower hereby covenants with the Lender for the duration of the Loan as follows:

6.1 INSPECTIONS. Upon reasonable advance notice, the Borrower shall permit the Lender or any person(s) designated by the Lender to enter upon and inspect the Property during normal business hours. The Borrower shall make available for audit, inspection and copying all property, equipment, books, contracts, records, leases, rent rolls and other papers and information related to the Borrower or the Property. The Borrower agrees to comply with all reasonable requirements and recommendations of the Lender with respect to any matters revealed by any of the foregoing inspections.

6.2 COMPLIANCE WITH GOVERNMENTAL REQUIREMENTS. The Borrower shall cause the Property to comply with all applicable Governmental Requirements, including without limitation the Americans with Disabilities Act, and with all recorded restrictive covenants and easements affecting the Property.

6.3 TAXES AND ASSESSMENTS. The Borrower shall promptly pay and discharge (or bond off or contest, provided the Borrower shall comply with the applicable provisions of the Mortgage) all taxes, assessments and other charges and levies imposed upon the Property or upon the Borrower or upon any of the income or other property of the Borrower, as well as all claims of any kind which, if unpaid, might become a lien or charge upon or against the Property.

6.4 COSTS AND EXPENSES. The Borrower shall promptly pay when due all reasonable charges, fees and expenses required to satisfy the terms and conditions of this Agreement, including without limitation all taxes and recording expenses, all reasonable legal fees and expenses of the Lender's and the Borrower's legal counsel, and all other reasonable costs and expenses of any nature incurred pursuant to the terms of this Agreement.

6.5 FURTHER ASSURANCES. The Borrower shall execute and deliver, or cause to be executed and delivered, to the Lender such further documents, instruments, certificates, assurances and other items, and shall do all such additional and further acts and deeds which the Lender shall deem reasonably necessary or desirable to comply with the terms and conditions of, or to effectuate the intent of, this Agreement or to preserve or protect the collateral or security for any of the Obligations.

6.11 INSURANCE REQUIREMENTS. The Borrower shall maintain and furnish to the Lender copies of all insurance policies and renewals thereof required of the Borrower pursuant to this Agreement and the Loan Documents in full force and effect throughout the term of the Loan with a Best's Insurance Reports Policyholder's Rating of A or A+ or better and a financial size category of Class X to XV or better, with such terms and deductibles as shall be acceptable to the Lender. Such policies and renewals thereof shall be held by the Lender, shall contain a non-contributory endorsement making losses payable to the Lender only, and shall provide that the same shall not be canceled or materially modified except upon thirty (30) days prior written notice to the Lender. At least fifteen (15) days prior to the expiration date of all such policies or renewals thereof, renewals of such policies satisfactory to the Lender shall be delivered to the Lender marked "Premium Paid" or accompanied by other evidence of premium payments satisfactory to the Lender. All such policies shall designate the Lender as the mortgagee or Loss Payee.

6.12 LICENSES AND PERMITS. Throughout the term hereof, the Borrower shall maintain in full force and effect all certificates, licenses, permits, authorizations, consents and approvals from applicable Governmental Authorities relating to the Property.

6.13 PERFORMANCE PURSUANT TO LOAN DOCUMENTS. The Obligors shall at all times perform in accordance with and comply with all terms, conditions, covenants, requirements, representations and warranties set forth herein, in the Note, the Mortgage and all of the Loan Documents.

6.14 ENVIRONMENTAL COMPLIANCE. The Borrower shall at all times comply with the provisions of the Mortgage pertaining to environmental compliance.

6.15 SUBORDINATION OF FEES. The Borrower shall not enter into any agreement of any nature with any affiliated or unaffiliated persons, funds or entities with respect to the development of the Property, unless such agreement(s) shall provide that the same shall not survive any foreclosure of the Property or other realization on the Mortgage by the Lender and that no management, development, sales, leasing or similar fees will be paid by the Borrower with respect to the management, sales, leasing or development of the Property unless and until all monthly debt service requirements set forth herein shall have been met and fully paid by the Borrower.

6.16 PRESERVATION OF EXISTENCE AND OWNERSHIP. The Borrower shall preserve and maintain its existence in good standing throughout the term of the Loan, without material modification. Except for changes in the membership of the Borrower resulting from the exercise of the buy-sell rights contained in Article 12 of the Operating Agreement of the Borrower, the Obligors, respectively, shall not cause, permit or allow any change of the controlling interests of each of them without the prior written consent of the Lender.

A. Remedies in Loan Documents. In addition to all other rights and remedies set forth herein, the Lender shall have the absolute right to assert and exercise any and all rights and remedies set forth in the Note, the Mortgage and all of the Loan Documents.

B. Termination. The Lender may suspend or terminate all obligations of the Lender under this Agreement, including without limitation, the obligation of the Lender to make further Advances, with the further right to apply any retainage or escrows then held by it to the outstanding Obligations.

C. Costs and Expenses. All reasonable costs and expenses of every nature and kind incurred by the Lender in the exercise of any of the foregoing remedies, including without limitation reasonable attorneys' fees, shall be and constitute a portion of the Obligations, which shall be secured by the Mortgage and all of the Loan Documents.

D. No Waiver. No delay or failure by the Lender to exercise any right or remedy conferred hereunder, and no making of any additional Advances after occurrence of any Event of Default hereunder, shall be deemed a waiver by the Lender of any future right to exercise such right or remedy or of any right to withhold any future Advance or of any other right or remedy provided herein; nor shall any waiver of any Event of Default be deemed to be a waiver of any other Event of Default or of the future occurrence of the same Event of Default.

E. Nature of Remedies. All of the foregoing rights and remedies are cumulative and concurrent; shall be in addition to any other right, power and remedy set forth herein or in any of the Loan Documents, and now or hereafter existing in law at equity, or otherwise; and may be pursued separately, successively or concurrently against all or any of the Obligors and/or the Property at the sole discretion of the Lender.

7.3 PURCHASE RIGHTS OF OBLIGORS. Upon the occurrence of an Event of Default hereunder, under the Note, the Mortgage, or any other Loan Document(s), prior to the exercise by the Lender of any right or remedy set forth in Section 3.2 of the Mortgage, Section 11 of the Note, or Section 9 of the Guaranties, the Obligors shall have forty-five (45) days to purchase the Note and all other Loan Documents from the Lender, at a purchase price not less than the par value of the Note, plus all late fees and all other sums, fees or charges then due and owing under the Loan.

Advances in the absence of strict compliance with any and all provisions hereof, and neither the Borrower nor any other person shall, under any other circumstances, be deemed to be a beneficiary of any such conditions, any or all of which may be freely waived in whole or in part by the Lender at any time if in its sole discretion the Lender deems it advisable to do so.

8.8 NOTICES. All notices, requests, demands and other communications allowed, made or required to be made pursuant to the terms of this Agreement shall be in writing and shall be deemed to be given or made when personally delivered (including personal delivery by Federal Express or other nationally recognized overnight private courier service) or when deposited in the United States mail, registered or certified, postage prepaid, return receipt requested, addressed in any such event to the party to whom such communication is directed at such address as is set forth for such party in the Loan Documents or at such other address as may hereafter be designated in writing by the respective parties hereto.

8.9 GOVERNING LAW. This Agreement and all of the Loan Documents shall be governed and construed under and in accordance with the laws of the State of South Carolina.

8.10 CONSENT TO JURISDICTION. The Obligors, by execution of this Agreement, agree that any legal actions or proceedings with respect to this Agreement and, at the Lender's sole option, any other Loan Documents shall be subject to the jurisdiction of and shall be brought in any state or federal court of competent jurisdiction sitting in the County of the State of South Carolina in which the Property is situate, to which jurisdiction and venue the Obligors hereby irrevocably consent by execution hereof. The Obligors each irrevocably waive any objection, including without limitation any objection to the laying of venue based on the grounds of forum non conveniens, which they or either of them may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction. Nothing herein shall affect the right of the Lender to serve process in any manner permitted by law nor shall limit the right of the Lender to bring proceedings upon any other Loan Documents or against another party to any of the Loan Documents in the courts of any other jurisdiction.

8.11 HEIRS, SUCCESSORS AND ASSIGNS. This Agreement shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns, provided that the Borrower shall not assign or otherwise transfer voluntarily, involuntarily or by operation of law any rights, responsibilities, liabilities or Obligations hereunder except pursuant to the applicable provisions of the Mortgage and with the express written consent of the Lender as provided thereunder.

8.12 PARTICIPATION. The Obligors hereby acknowledge that the Lender may now or hereafter sell, assign, transfer or grant participation in, or otherwise dispose of all or portions of the Lender's rights, title and interest in and to the Loan, this Agreement and the Loan Documents, none of which shall be construed to alter or waive any Obligations whatsoever of the Obligors hereunder.

IN WITNESS WHEREOF, this Loan Agreement has been duly executed by the parties hereto as of the date first written above.

BORROWER:

Signed, Sealed and Delivered
in the Presence of:

Tommy S. Smith
Melvin J. [Signature]

TALL PINES INVESTMENTS, LLC,
a South Carolina limited liability company

By: [Signature] (SEAL)
Name: Terry Horn
Title: Manager

GUARANTORS:

SILVER REAL ESTATE FUND I, L.P.,
a Delaware limited partnership

By: _____ (SEAL)
Name: _____
Title: _____

**GRANDE DUNES DEVELOPMENT
COMPANY, LLC,** a South Carolina limited
liability company

By: _____ (SEAL)
Name: _____
Title: _____

LENDER:

CAROLINA FIRST BANK

By: _____ (SEAL)
Name: _____
Title: _____

IN WITNESS WHEREOF, this Loan Agreement has been duly executed by the parties hereto as of the date first written above.

BORROWER:

**Signed, Sealed and Delivered
in the Presence of:**

TALL PINES INVESTMENTS, LLC,
a South Carolina limited liability company

By: _____ (SEAL)
Name: _____
Title: _____

GUARANTORS:

SILVER REAL ESTATE FUND I, L.P.,
a Delaware limited partnership

By: _____ (SEAL)
Name: _____
Title: _____

**GRANDE DUNES DEVELOPMENT
COMPANY, LLC,** a South Carolina limited
liability company

Bruce Magruder
Bruce Magruder

By: *Douglas P. Wendel* (SEAL)
Name: *Douglas P. Wendel*
Title: *President & CEO*

LENDER:

CAROLINA FIRST BANK

By: _____ (SEAL)
Name: _____
Title: _____

EXHIBIT "A"

All those certain pieces, parcels and tracts of land situate, lying and being in the County of Greenville, State of South Carolina, as follows:

Tract I (Wilkinson Parcel):

Beginning at a point located in the centerline intersection of Moody Bridge Road (S-23-101 – 66' right-of-way) and Talley Bridge Road S-23-124 – 66' right-of-way); thence along the centerline of Moody Bridge Road, N 61-18-16 W for 289.35 feet to a point; thence along a curve concave to the east having a radius of 267.57 feet, an arc length of 199.83 feet and a chord bearing and distance of N 39-54-32 W for 195.22 feet to a point; thence N 12-10-06 W for 224.05 feet to a point; thence N 15-30-03 W for 84.26 feet to a point; thence N 31-24-52 W for 106.39 feet to a point; thence along the common line of Vans Camp Limited Partnership (Deed Book 1908, page 1065), N 52-26-08 E for 1451.55 feet to an iron pin, crossing an iron pin at 49.03 feet; thence N 08-23-45 E for 659.15 feet to an iron pin; thence along the common line of Vinson (Deed Book 1570, page 44), S 82-06-09 E for 180.24 feet to a nail at stone; thence along the common line of Kickasola (Deed Book 1620, page 891), S 34-21-21 E for 488.90 feet to an iron pin; thence N 80-06-59 E for 1453.62 feet to a stone; thence N 79-36-39 E for 1537.43 feet to an iron pin; thence along the common line of Clawson (Deed Book 1983, page 953), S 10-59-04 E for 1820.24 feet a spike in the centerline of Moody Bridge Road, crossing an iron pin 855.18 feet; thence along the centerline of Moody Bridge Road, S 79-19-07 E for 333.72 feet to a nail found; thence along a curve concave to the north having a radius of 739.01 feet, an arc length of 583.18 feet and a chord bearing and distance of N 76-00-39 E for 568.17 feet to a point; thence N 47-45-07 E for 233.99 feet to a point; thence along a curve concave to the south having a radius of 442.20 feet, an arc length of 353.32 feet and a chord bearing and distance of N 75-56-33 E for 344.00 feet a nail found; thence S 81-10-05 E for 302.27 feet to a nail found; thence leaving said centerline along the common line of Cotwool Manufacturing Company (Deed Book 491, page 185), S 07-43-22 E for 788.43 feet to a concrete monument, crossing an iron pin at 34.45 feet; thence S 14-28-18 W for 901.78 feet to a concrete monument; thence S 86-15-13 W for 900.11 feet to a concrete monument; thence S 10-57-03 W for 1980.06 feet to a concrete monument; thence S 74-33-16 W for 1378.88 feet to a concrete monument; thence S 06-02-35 E for 1658.84 feet to an iron pin; thence S 68-50-35 E for 591.96 feet to a concrete monument; thence along the common line of Forbis (Deed Book 2208, page 1559), S 69-09-45 E for 2199.96 feet to a stone; thence along the common line of Moore (Deed Book 1662, page 690) and Thompson (Deed Book 2215, page 1608), S 04-21-42 E for 899.97 feet to a stone, crossing an iron pin at 466.29 feet; thence along the common line of Hart (Deed Book 1570, page 310), S 41-34-12 W for 1255.97 feet to an iron pin; thence along the common line of Moore (Deed Book 1662, page 690), S 41-03-18 W for 615.86 feet to an iron pin; thence along the common line of Marietta Baptist Camp (Deed Book 676, page 182), S 58-10-34 W for 395.11 feet to a stone; thence along N 58-53-33 W for 1349.50 feet to an iron pin; thence N 59-31-56 E for 622.91 feet to an iron pin; thence N 36-28-42 W for 1374.74 feet a stone; thence S 71-02-52 W for 1421.72 feet to an iron pin; thence along the common line of McGee (no deed), N 79-44-15 W for 1079.63 feet to a stone; thence along the common line of Borrow (no deed), N 20-09-09 W for 2218.15 feet to an iron pin; thence N 56-51-48 W for 308.12 feet to an iron pin; thence along the common line of Wood (Deed Book 1517-55) and Outlaw (Deed Book 2202, page 920), S 73-56-

and a chord bearing and distance of S 88-54-12 E for 382.89 feet to the Point of Beginning. Said tract contains 1,662.62 acres, more or less.

Tract 2 (Taylor Parcel):

Beginning at an iron pin located on the southern right-of-way of SC Hwy. 11 and 276 (Geer Highway – 66' total right-of-way) and being the common corner of Skahen (Deed Book 1730, page 661); thence along said right-of-way, N 89-28-47 E for 100.00 feet to an iron pin; thence S 88-48-13 E for 100.00 feet to an iron pin; thence S 87-44-47 E for 272.25 feet to a point; thence leaving said right-of-way along the common line of Vinson (Deed Book 1570, page 44), S 03-20-52 E for 580.91 feet to an iron pin crossing an iron pin at 1.71 feet; thence along the common line of Van's Camp Limited Partnership (Deed Book 1908, page 1065), N 82-00-44 W for 218.26 feet to an iron pin; thence S 83-33-48 W for 100.94 feet to an iron pin; thence S 83-36-56 W for 101.05 feet to an iron pin; thence along the common line of Skahen, N 08-40-13 W for 590.78 feet to the Point of Beginning. Said tract contains 5.82 acres, more or less.

Tract 3 (Vinson Parcels):

Beginning at a point located on the southern right-of-way of SC Hwy. 11 and 276 (Geer Highway – 66' total right-of-way) and being the common corner of Taylor (Deed Book 1429, page 760); thence along said right-of-way, S 87-58-24 E for 178.91 feet to an iron pin; thence S 87-13-10 E for 99.73 feet to a point; thence leaving said right-of-way along the common line of McCarson (Deed Book 2229, page 489), S 02-45-30 E for 499.46 feet to an iron pin crossing an iron pin at 4.80 feet; thence along the common line of Kickasola, Jr. (Deed Book 1620, page 891), S 76-16-11 W for 99.52 feet to an axle; thence S 05-22-40 E for 71.32 feet nail at stone; thence along the common line of Wilkinson, Jr. (Deed Book 795, page 443), N 82-06-09 W for 180.24 feet to an iron pin; thence along the common line of Taylor (Deed Book 1429, page 760), N 03-20-52 W for 580.91 to the Point of Beginning crossing an iron pin at 579.20 feet. Said tract contains 3.55 acres, more or less.

EXHIBIT "C"
The Development Cost Analysis

[TO BE ATTACHED]

EXHIBIT "C"

Grande Dunes Guaranty

GUARANTY AGREEMENT

GUARANTOR: GRANDE DUNES DEVELOPMENT COMPANY, LLC
BORROWER: TALL PINES INVESTMENTS, LLC
LENDER: CAROLINA FIRST BANK

THIS GUARANTY AGREEMENT is made and granted by the undersigned **GRANDE DUNES DEVELOPMENT COMPANY, LLC**, a South Carolina limited liability company (the "Guarantor") in order to induce **CAROLINA FIRST BANK** (the "Lender"), whose address is 104 South Main Street, Greenville, South Carolina 29601, to extend certain credit to or for the benefit of **TALL PINES INVESTMENTS, LLC**, a South Carolina limited liability company (the "Borrower"), and is given in consideration of the benefits flowing to the Guarantor therefrom (which the Guarantor hereby acknowledges and agrees constitute fair and adequate consideration for this Guaranty). In consideration of the foregoing, the receipt and sufficiency of which is hereby acknowledged, the Guarantor hereby covenants and agrees as follows:

1) GUARANTY OF OBLIGATIONS. Subject only to the Limitations on Guaranty set forth hereinafter, the Guarantor hereby jointly, severally, irrevocably, unconditionally and absolutely guarantees to the Lender, its successors and assigns, the punctual payment and performance as and when due of the following-described indebtedness, liabilities, obligations and duties (collectively, the "Obligations"):

(a) All monies now or hereafter owed to the Lender that are evidenced by that certain Promissory Note from the Borrower to the Lender of even date (the "Note") in the original maximum principal sum of Twelve Million Twenty-Four Thousand One Hundred Twenty-Four and No/100 (\$12,024,124.00) Dollars, including without limitation, all principal, interest, late charges, prepayment fees, other charges, reasonable attorneys' fees, costs and expenses whatsoever becoming due to the Lender pursuant to the Note and any renewals, extensions, modifications and rearrangements of, and any and all substitutes and replacements for, the Note and any other indebtedness, liabilities, duties and obligations whatsoever now or hereafter evidenced by or pursuant to the Note, whether direct, indirect or contingent.

(b) All other monies now or hereafter owed to the Lender and all performance under and/or compliance with all terms, conditions, covenants, representations, warranties and provisions set forth in the Note, the Loan Agreement of even date between the Borrower, the Guarantor, the Lender and any other guarantors identified therein (the "Loan Agreement") and all Loan Documents (as defined in the Loan Agreement) to be performed by or complied with on the part of the Borrower or any other guarantors thereof or parties thereto, including without limitation, any renewals, extensions, modifications and rearrangements of, and any and all substitutes and replacements for any of the foregoing.

(c) All obligations of the Borrower incurred pursuant to and in accordance with all "hedging agreements", if any, now or hereafter entered into by the Borrower with the Lender, in connection with the Note, which term shall include without limitation any

interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, commodity agreements, and other similar agreements or arrangements designed to protect against fluctuations in interest rates, currency values or commodity values, and all amendments, modifications, substitutions, replacements, and additions thereto.

(d) All costs or expenses incurred, or advances made, by the Lender, including without limitation court costs and reasonable attorneys' fees, to preserve the priority, validity or amount of the Note and/or any collateral now or hereafter existing as security for the Note and to enforce and/or the collection of all sums due to the Lender pursuant to the Note and any other Loan Documents and the performance of all terms and provisions of the Loan Documents and all collateral for the obligations of the Borrower owed to the Lender pursuant to the Loan Documents.

(e) All monies now or hereafter owed to the Lender pursuant to and all performance under and/or compliance with this Guaranty, and the terms, provisions, covenants and warranties contained herein, and any renewals, extensions, modifications and rearrangements of, and any and all substitutes for, this Guaranty including without limitation all costs, expenses and reasonable attorneys' fees incurred by the Lender in the enforcement of this Guaranty and the preservation of the Lender's rights hereunder.

2) NATURE OF GUARANTY. This Guaranty constitutes an irrevocable, unconditional, absolute, present and continuing guaranty of payment and performance and not a guaranty of collection. The Guarantor, without limitation on its obligations hereunder, agrees that it is jointly and severally liable for payment of the Obligations as a primary obligor of the Borrower. The obligations of the Guarantor hereunder shall not be subject to any counterclaim, setoff, deduction or other defense existing or claimed now or hereafter by or on behalf of the Borrower, any other guarantor or any other person or entity whomsoever, whether such setoff, counterclaim, deduction or defense arises in connection with the Obligations, the transactions creating the Obligations, or otherwise, nor, except as otherwise expressly provided herein, shall this Guaranty be reduced, released, discharged, diminished, impaired, or adversely affected, in whole or in part, by any of the foregoing. The Guarantor may not revoke this Guaranty and this Guaranty shall remain in full force and effect after any attempted revocation by the Guarantor, and shall remain in full force and effect until all of the Obligations shall have been paid, performed and satisfied in full.

3) CONSENTS. The Guarantor consents to and agrees that its Obligations hereunder shall not, except as otherwise expressly stated herein, be released, discharged, impaired, diminished, reduced, or otherwise affected by any act, event, happening, occurrence, circumstance, condition, matter or thing whatsoever, including without limitation all such items as are set forth hereinafter (whether occurring before, during or after the occurrence of any event of default under the Note or any Loan Document, and whether or not the Guarantor shall have any knowledge or notice thereof or have given its consent thereto). The Guarantor further waives any and all rights (including without limitation rights to notice) which it might otherwise have arising out of or as a result of, any of the following:

- (a) All renewals, extensions, continuations, modifications, supplements, amendments, exchanges, alterations, rearrangements, waivers, compromise, termination, release or surrender of any or all of the Obligations, any or all of the Loan Documents, and any or all written agreements pertaining to all or any part of the Obligations, whether in whole or in part;
- (b) All adjustments, indulgences, postponements, forbearances and compromises granted or given by the Lender to the Borrower or any other person;
- (c) The insolvency, bankruptcy, liquidation, reorganization, dissolution, or lack of power of any person, including, without limitation, the Borrower and the Guarantor;
- (d) The invalidity, illegality or unenforceability of all or any part of the Obligations, or any one or more agreements connected therewith, for any reason whatsoever, including without limitation that (1) the Obligations, or any part thereof, may exceed the amount permitted by law, (2) the act of creating the Obligations or any part thereof may be ultra vires, (3) the officers, partners, members, managers, or representatives executing the Note or other documents evidencing or pertaining to the Obligations or any part thereof acted in excess of their authority, (4) the Obligations or any part thereof may violate applicable usury law, (5) the Borrower may have valid defenses, claims or offsets (whether at law, in equity or by agreement) which may render the Obligations or any part thereof wholly or partially unenforceable or uncollectible from the Borrower, (6) the creation, performance or repayment of the Obligations (or the execution, delivery and performance of any one or more agreements connected with the Obligations) may be uncollectible, legally impossible or unenforceable, or (7) any notes or other agreements pertaining to the Obligations or any part thereof may have been forged or otherwise may be irregular or not genuine or authentic;
- (e) Any full or partial release of the Borrower or any other persons, from liability for payment or performance of the Obligations or any part thereof;
- (f) The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for any of the Obligations;
- (g) Any release, surrender, exchange, subordination, disposition, deterioration, waste, loss or impairment (including, without limitation, negligent, unreasonable or unjustifiable impairment) of any collateral, property or security, at any time existing in connection with, or securing payment of, any of the Obligations;
- (h) Failure by the Lender or any other person to exercise diligence, commercial reasonableness or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral, property or security;
- (i) The Lender's failure to obtain or perfect any security interest, lien or other guaranty agreement;

- (j) The determination or adjudication that any payment on any of the Obligations constitutes a preference under bankruptcy laws, or the requirement for any reason that the Lender must refund or relinquish such payment;
- (k) Any lack of disclosure to the Guarantor of any information;
- (l) Any sale, assignment, transfer, endorsement or granting of any interest, in whole or in part, by the Lender of the Note and/or any of the Loan Documents;
- (m) Any failure of consideration or failure of the Guarantor to receive or realize any or all of the benefits expected or contemplated by virtue of this Guaranty; and
- (n) Any other action or omission with respect to all or any part of the Obligations, or the security and collateral therefor, whether or not such action or omission prejudices the Guarantor or increases the likelihood that the Guarantor will be required to pay all or any part of the Obligations; it being the unambiguous and unequivocal intention of the Guarantor that the Guarantor be obligated to pay and perform the Obligations if the Borrower shall not punctually pay and perform such Obligations when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever, whether or not contemplated, and whether or not specifically described herein.

Notwithstanding the foregoing, the Guarantor does not waive or release (expressly or impliedly) any rights of subrogation, reimbursement or contribution which they may have, after payment in full of the Obligations, against others liable on the Obligations; provided, that the Guarantor's rights of subrogation and reimbursement shall be and at all times remain subordinate to Lender's rights and claims.

4) WAIVERS. The Guarantor hereby absolutely, unconditionally and irrevocably waives, to the fullest extent permitted by law, the following:

- (a) Any requirement that prior to making demand for payment or seeking to enforce any right or remedy under this Guaranty, the Lender first make demand upon, make claim against or take any action with respect to the Borrower or any other persons, or resort to or seek to exhaust any collateral, or seek to enforce any other right or remedy in any of the Loan Documents or resort to any other means available by law or in equity for obtaining payment of the Obligations;
- (b) Diligence, presentment, demand, protest, notice of acceptance, notice of dishonor, notice of protest and any other notice of any other kind;
- (c) Any right of subrogation to any right of the Borrower and any other right to reimbursement, indemnity or other recourse against the Borrower or any other person prior to the payment and performance in full of the Obligations;
- (d) Any right or benefit (whether directly or through the Borrower or any other persons) under any appraisalment, valuation, stay, extension or redemption laws; and

(e) Any right to require marshalling of any collateral.

5) SUBORDINATION OF GUARANTOR CLAIMS. Until the Obligations are paid in full and the Guarantor's liability hereunder has been released and discharged, the Guarantor covenants and agrees that it shall not claim, seek, sue for, receive or collect, directly or indirectly, from the Borrower or any other person any other material obligations, indebtedness, liabilities or duties owed or claimed to be owed by the Borrower or such other person to the Guarantor (the "Guarantor Claims"), including without limitation all rights and claims of the Guarantor against the Borrower or such person arising by way of subrogation or otherwise, whether direct or indirect, primary or secondary, joint, several or joint and several, fixed or contingent, whether acquired by the Guarantor in a transaction with the Borrower or in a transaction with one or more other persons, whether originally owed to the Guarantor or owed to other persons, whether resulting from the Guarantor's payment of all or any part of the Obligations, and whether arising in connection with or evidenced by notes, advances, bookkeeping entries, guaranty agreements, liens, security interest agreements, or any other method or means, and whether evidenced by liens, security interests, or other encumbrances of any nature, all of which Guarantor Claims shall be inferior and subordinate to all liens, security interests and other encumbrances upon the assets of the Borrower or such other person which shall secure the payment of the obligations, regardless of whether such encumbrances arise in favor of the Guarantor or the Lender and whether presently existing and hereafter arising. The Guarantor covenants and agrees that it shall not exercise and enforce any creditor's rights it may have against the Borrower or such other party, or foreclose or repossess, claim, or otherwise take steps or institute any actions or proceedings (judicial or otherwise, including without limitation, the commencement of or joinder in any liquidation, bankruptcy, rearrangement, debtors relief or other insolvency proceeding) to enforce any liens, security interests or other encumbrances on any of the assets of the Borrower or such other person so long as the Obligations remain outstanding. The Guarantor further covenants and agrees that the Lender may prove its claim for outstanding Obligations in any receivership, bankruptcy, reorganization, rearrangement, debtors relief or other insolvency proceeding in which the Borrower or such other party is a debtor so as to establish its rights hereunder and receive directly from the receiver, trustee or other court custodian, dividends and payments which would otherwise be payable upon Guarantor Claims, and in this connection the Guarantor hereby assigns to the extent of the outstanding Obligations such dividends and payments to the Lender and agrees that, with respect to the remainder of the Guarantor Claims, the Guarantor's rights shall be subordinate to the Lender's rights and claims. If the Lender receives, for application upon the Obligations, any such dividends or payments which, as between the Borrower and the Guarantor, constitute payments on the Guarantor Claims, then upon full payment of the Obligations to the Lender, the Guarantor shall be subrogated to the rights of the Lender to the extent that payments to the Lender on the Guarantor Claims have contributed to satisfaction of the Obligations; and such subrogation shall be in respect to that portion of the Obligations which would have been unpaid if the Lender had not received dividends or payments upon the Guarantor Claims.

6) REPRESENTATIONS AND WARRANTIES. The Guarantor hereby represents and warrants to the Lender that:

(a) As of the execution hereof, nothing exists to impair the effectiveness of this Guaranty or its immediate and continuing effectiveness;

(b) The Guarantor has received, or will receive, direct or indirect benefit and fair consideration in making this Guaranty;

(c) To the extent desired by the Guarantor, the Guarantor is familiar with the books and records regarding the Borrower's financial condition, the project which the Loan will finance, and the value of all collateral intended as security for payment of any of the Obligations; however, the Guarantor is not relying on such financial condition or collateral in making this Guaranty;

(d) No person has made any representation, warranty or statement to the Guarantor to induce the Guarantor to make this Guaranty;

(e) This Guaranty is the legal and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms.

7) EFFECT OF BANKRUPTCY. If, pursuant to any bankruptcy, insolvency or other debtor relief, laws or rules, or any judgment or order or decision thereunder, any payment received by the Lender shall be adjudicated as a voidable preference or the Lender must otherwise rescind or restore any amount taken, credited or received by the Lender in payment or satisfaction by any of the Obligations, any prior release or discharge by the terms of this Guaranty given by the Lender shall be without effect and this Guaranty shall remain in full force and effect. The Guarantor's Obligations hereunder shall not be discharged except by the Guarantor's performance of those Obligations and then only to the extent of such performance.

8) DEFAULT. The term "Event of Default", whenever used hereinafter, shall mean any one or more of the following events:

(a) Occurrence of an Event of Default set forth or defined in the Note or in any of the Loan Documents, including a breach of any of the terms or conditions of this Guaranty, which is not cured within any applicable grace period, if any, set forth herein or therein;

(b) The entry of any judgment against the Guarantor, or the attachment, levy or garnishment against any property of the Guarantor which in the reasonable judgment of the Lender would materially and adversely affect the Guarantor's ability to perform its Obligations under this Guaranty and which remains unsatisfied for a period of sixty (60) days after the filing or issuance of the same, or the occurrence of any other substantial change in the financial condition of the Guarantor which, in the reasonable judgment of the Lender, would materially and adversely affect the Guarantor's ability to perform its Obligations under this Guaranty;

(c) Except as permitted in the Loan Documents, any transfer, sale, conveyance, disposition or assignment of the membership, partnership, stock or other ownership interest or management rights of the Guarantor in the Borrower, whether voluntary,

involuntary, or by operation of law, without the express prior written consent of the Lender; and

(d) The death, insolvency, bankruptcy, liquidation, disability, reorganization, dissolution, or lack of power of the Guarantor.

9) REMEDIES. Upon occurrence of any Event of Default, subject to the provisions of Section 7.3 of the Loan Agreement, the Lender may take any or all of the following actions without any requirement of demand for payment or performance on the part of the Borrower or any other persons whomsoever and without requirement of resort to any collateral for any of the Obligations or to any other means of obtaining payment or performance of any of the Obligations, as follows:

(a) The Lender may declare all of the Borrower's Obligations under the Loan Documents, regardless of their terms and including the Guarantor's Obligations hereunder, immediately due and payable and that performance thereof is immediately required;

(b) The Lender may accelerate all or any part of the Obligations and require full payment and performance thereof by the Guarantor;

(c) The Lender shall have the right of setoff against, a lien upon and a continuing security interest in all instruments, documents, securities, cash or other property, and all proceeds of the foregoing, which may now or hereafter be owned by the Guarantor which may become in possession or control of the Lender or any other party acting on the Lender's behalf, directly or indirectly, regardless of the capacity in which the Lender may receive, hold or control the same;

(d) The Lender shall have all of the rights and remedies afforded to it under the Note and the Loan Documents or otherwise existing at law or in equity.

10) NATURE OF REMEDIES. The remedies provided herein, in the Note, and in all other Loan Documents shall be cumulative and none is exclusive and such remedies shall be exercised concurrently or consecutively at the option of the Lender. Any waiver, failure, or delay by the Lender in exercising any remedy provided herein, in the Note or in any Loan Document upon occurrence of any Event of Default, shall not constitute a waiver of such right or remedy or preclude its future exercise or that of any other right of remedy in the event of any subsequent default, whether of the same or different nature. No notice to or demand on the Guarantor by the Lender shall be deemed to be a waiver of the Lender's right to take other or further action and in no event shall any waiver or right, power or remedy of the Lender hereunder be effective unless the same is in writing and signed by the Lender.

11) SEVERABILITY. The invalidity, illegality or unenforceability of any provision of this Guaranty or in the Note or any of the Loan Documents shall not render invalid, illegal or unenforceable any other provision hereof.

12) SURVIVAL. All covenants, agreement, representations, and warranties of the Guarantor contained herein and in any document or item delivered pursuant hereto shall survive the execution hereof and continue and remain in full force and effect until the Obligations have been paid, performed and satisfied in full.

13) ENTIRE AGREEMENT. This Guaranty contains the entire agreement and understanding between the Guarantor and the Lender with respect to the subject matter hereof, and supersedes all prior agreements and understandings, whether oral or written.

14) GOVERNING LAW. This Guaranty shall be governed and construed in accordance with the internal laws of the State of South Carolina, without regard to any choice of law or conflict of law provisions which might apply the law of another jurisdiction.

15) CONSENT TO JURISDICTION. The Guarantor, by its execution hereof, agrees that any action or proceeding which the Lender may initiate with respect to this Guaranty shall, at the Lender's sole option, be brought in and subject to the jurisdiction of the any state or federal court of competent jurisdiction of the State of South Carolina, to which jurisdiction the Guarantor, by its execution hereof, hereby irrevocably consents. Notwithstanding the foregoing, however, the Guarantor additionally acknowledges and agrees that the Lender may initiate any action upon or for the enforcement of this Guaranty in any state or federal court of competent jurisdiction in any other State in which the Guarantor may at any time reside or possess material assets, to which jurisdictions the Guarantor, by its execution hereof, hereby further irrevocably consents. The Guarantor irrevocably waives any objection, including without limitation any objection to the laying of venue based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in any such jurisdiction. Nothing herein shall affect the right of the Lender to serve process in any manner permitted by law nor shall limit the right of the Lender to bring proceedings against another party to any of the Loan Documents in the courts of any other jurisdiction.

16) NOTICE. All notices made or required hereunder shall be in writing. The Effective Date of Notice shall be the date upon which such notice shall have been personally delivered (including personal delivery by Federal Express or other nationally recognized overnight private courier service) or the date of postmark when deposited in the United States Mail, registered or certified, postage prepaid, return receipt requested, addressed in any such event, to the Lender or the Guarantor at the address set forth after the Guarantor's signature hereinafter, or at such other addresses as may hereafter be designated in writing.

17) LIMITATIONS ON GUARANTY. Notwithstanding anything contained in this Guaranty to the contrary, the Guarantor's Obligations, as specified in Section 1 of this Guaranty, shall be limited to Fifty (50.0%) percent of the outstanding principal balance of the Note, plus Fifty (50.5%) percent of all outstanding interest, fees and costs of every nature and kind due or to become due to the Lender pursuant to the Loan Documents, plus the items set forth in Subsections (a) through (i) of this Section 17.

Notwithstanding the foregoing Limitation On Guaranty, however, the Guarantor shall remain fully, unconditionally and personally liable to the Lender hereunder, and the Lender shall have

the right to seek a personal judgment against the Guarantor for the full amount of such liability, for any loss, liability or damage to the Lender arising from: (a) any fraudulent or material misrepresentation by the Borrower or the Guarantor in connection with the execution, delivery or contents of the Loan Documents; (b) the misappropriation by the Borrower or the Guarantor of any insurance or condemnation proceeds attributable to any such collateral; (c) the misappropriation by the Borrower or the Guarantor of any unearned advance rents and security deposits paid by the Borrower's tenants and not refunded to or forfeited by such tenants; (d) the violation by the Borrower of any prohibitions contained in the Loan Documents against transfer of any collateral or of any interests in the Borrower, including without limitation those prohibitions set forth in Section 2.16 of the Mortgage, Security Agreement, and Fixture Financing Statement; (e) the misappropriation of any rentals assigned to the Lender following written notification by the Lender to the Borrower of the occurrence of an Event of Default under the Loan Documents; and/or (f) all court costs and reasonable attorneys' fees incurred by the Lender in connection with any of the foregoing.

[SIGNATURE PAGE TO FOLLOW]

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

Executed this 24th day of July, 2007.

IN THE PRESENCE OF:

GUARANTOR:

GRANDE DUNES DEVELOPMENT
COMPANY, LLC, a South Carolina limited
liability company

Peggy Magruder
(Witness 1)

By: Douglas P. Wendel (SEAL)
Name: Douglas P. Wendel
Title: President & CEO

Bruce A. Travel
(Witness 2)

GUARANTOR'S NOTICE ADDRESS:

2411 N. Oak St., Suite 402
Myrtle Beach SC 29577

EXHIBIT "D"

Silver Guaranty

GUARANTY AGREEMENT

GUARANTOR: SILVER REAL ESTATE FUND I, L.P.
BORROWER: TALL PINES INVESTMENTS, LLC
LENDER: CAROLINA FIRST BANK

THIS GUARANTY AGREEMENT is made and granted by the undersigned SILVER REAL ESTATE FUND I, L.P., a Delaware limited partnership (the "Guarantor") in order to induce CAROLINA FIRST BANK (the "Lender"), whose address is 104 South Main Street, Greenville, South Carolina 29601, to extend certain credit to or for the benefit of TALL PINES INVESTMENTS, LLC, a South Carolina limited liability company (the "Borrower"), and is given in consideration of the benefits flowing to the Guarantor therefrom (which the Guarantor hereby acknowledges and agrees constitute fair and adequate consideration for this Guaranty). In consideration of the foregoing, the receipt and sufficiency of which is hereby acknowledged, the Guarantor hereby covenants and agrees as follows:

1) GUARANTY OF OBLIGATIONS. Subject only to the Limitations on Guaranty set forth herein, the Guarantor hereby jointly, severally, irrevocably, unconditionally and absolutely guarantees to the Lender, its successors and assigns, the punctual payment and performance as and when due of the following-described indebtedness, liabilities, obligations and duties (collectively, the "Obligations"):

(a) All monies now or hereafter owed to the Lender that are evidenced by that certain Promissory Note from the Borrower to the Lender of even date (the "Note") in the original maximum principal sum of Twelve Million Twenty-Four Thousand One Hundred Twenty-Four and No/100 (\$12,024,124.00) Dollars, including without limitation, all principal, interest, late charges, prepayment fees, other charges, reasonable attorneys' fees, costs and expenses whatsoever becoming due to the Lender pursuant to the Note and any renewals, extensions, modifications and rearrangements of, and any and all substitutes and replacements for, the Note and any other indebtedness, liabilities, duties and obligations whatsoever now or hereafter evidenced by or pursuant to the Note, whether direct, indirect or contingent.

(b) All other monies now or hereafter owed to the Lender and all performance under and/or compliance with all terms, conditions, covenants, representations, warranties and provisions set forth in the Note, the Loan Agreement of even date between the Borrower, the Guarantor, the Lender and any other guarantors identified therein (the "Loan Agreement") and all Loan Documents (as defined in the Loan Agreement) to be performed by or complied with on the part of the Borrower or any other guarantors thereof or parties thereto, including without limitation, any renewals, extensions, modifications and rearrangements of, and any and all substitutes and replacements for any of the foregoing.

(c) All obligations of the Borrower incurred pursuant to and in accordance with all "hedging agreements", if any, now or hereafter entered into by the Borrower with the Lender, in connection with the Note, which term shall include without limitation any

interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, commodity agreements, and other similar agreements or arrangements designed to protect against fluctuations in interest rates, currency values or commodity values, and all amendments, modifications, substitutions, replacements, and additions thereto.

(d) All costs or expenses incurred, or advances made, by the Lender, including without limitation court costs and reasonable attorneys' fees, to preserve the priority, validity or amount of the Note and/or any collateral now or hereafter existing as security for the Note and to enforce and/or the collection of all sums due to the Lender pursuant to the Note and any other Loan Documents and the performance of all terms and provisions of the Loan Documents and all collateral for the obligations of the Borrower owed to the Lender pursuant to the Loan Documents.

(e) All monies now or hereafter owed to the Lender pursuant to and all performance under and/or compliance with this Guaranty, and the terms, provisions, covenants and warranties contained herein, and any renewals, extensions, modifications and rearrangements of, and any and all substitutes for, this Guaranty including without limitation all costs, expenses and reasonable attorneys' fees incurred by the Lender in the enforcement of this Guaranty and the preservation of the Lender's rights hereunder.

2) NATURE OF GUARANTY. This Guaranty constitutes an irrevocable, unconditional, absolute, present and continuing guaranty of payment and performance and not a guaranty of collection. The Guarantor, without limitation on its obligations hereunder, agrees that it is jointly and severally liable for payment of the Obligations as a primary obligor of the Borrower. The obligations of the Guarantor hereunder shall not be subject to any counterclaim, setoff, deduction or other defense existing or claimed now or hereafter by or on behalf of the Borrower, any other guarantor or any other person or entity whomsoever, whether such setoff, counterclaim, deduction or defense arises in connection with the Obligations, the transactions creating the Obligations, or otherwise, nor, except as otherwise expressly provided herein, shall this Guaranty be reduced, released, discharged, diminished, impaired, or adversely affected, in whole or in part, by any of the foregoing. The Guarantor may not revoke this Guaranty and this Guaranty shall remain in full force and effect after any attempted revocation by the Guarantor, and shall remain in full force and effect until all of the Obligations shall have been paid, performed and satisfied in full.

3) CONSENTS. The Guarantor consents to and agrees that its Obligations hereunder shall not, except as otherwise expressly stated herein, be released, discharged, impaired, diminished, reduced, or otherwise affected by any act, event, happening, occurrence, circumstance, condition, matter or thing whatsoever, including without limitation all such items as are set forth hereinafter (whether occurring before, during or after the occurrence of any event of default under the Note or any Loan Document, and whether or not the Guarantor shall have any knowledge or notice thereof or have given its consent thereto). The Guarantor further waives any and all rights (including without limitation rights to notice) which it might otherwise have arising out of or as a result of, any of the following:

- (a) All renewals, extensions, continuations, modifications, supplements, amendments, exchanges, alterations, rearrangements, waivers, compromise, termination, release or surrender of any or all of the Obligations, any or all of the Loan Documents, and any or all written agreements pertaining to all or any part of the Obligations, whether in whole or in part;
- (b) All adjustments, indulgences, postponements, forbearances and compromises granted or given by the Lender to the Borrower or any other person;
- (c) The insolvency, bankruptcy, liquidation, reorganization, dissolution, or lack of power of any person, including, without limitation, the Borrower and the Guarantor;
- (d) The invalidity, illegality or unenforceability of all or any part of the Obligations, or any one or more agreements connected therewith, for any reason whatsoever, including without limitation that (1) the Obligations, or any part thereof, may exceed the amount permitted by law, (2) the act of creating the Obligations or any part thereof may be ultra vires, (3) the officers, partners, members, managers, or representatives executing the Note or other documents evidencing or pertaining to the Obligations or any part thereof acted in excess of their authority, (4) the Obligations or any part thereof may violate applicable usury law, (5) the Borrower may have valid defenses, claims or offsets (whether at law, in equity or by agreement) which may render the Obligations or any part thereof wholly or partially unenforceable or uncollectible from the Borrower, (6) the creation, performance or repayment of the Obligations (or the execution, delivery and performance of any one or more agreements connected with the Obligations) may be uncollectible, legally impossible or unenforceable, or (7) any notes or other agreements pertaining to the Obligations or any part thereof may have been forged or otherwise may be irregular or not genuine or authentic;
- (e) Any full or partial release of the Borrower or any other persons, from liability for payment or performance of the Obligations or any part thereof;
- (f) The taking or accepting of any other security, collateral or guaranty, or other assurance of payment, for any of the Obligations;
- (g) Any release, surrender, exchange, subordination, disposition, deterioration, waste, loss or impairment (including, without limitation, negligent, unreasonable or unjustifiable impairment) of any collateral, property or security, at any time existing in connection with, or securing payment of, any of the Obligations;
- (h) Failure by the Lender or any other person to exercise diligence, commercial reasonableness or reasonable care in the preservation, protection, enforcement, sale or other handling or treatment of all or any part of such collateral, property or security;
- (i) The Lender's failure to obtain or perfect any security interest, lien or other guaranty agreement;

- (j) The determination or adjudication that any payment on any of the Obligations constitutes a preference under bankruptcy laws, or the requirement for any reason that the Lender must refund or relinquish such payment;
- (k) Any lack of disclosure to the Guarantor of any information;
- (l) Any sale, assignment, transfer, endorsement or granting of any interest, in whole or in part, by the Lender of the Note and/or any of the Loan Documents;
- (m) Any failure of consideration or failure of the Guarantor to receive or realize any or all of the benefits expected or contemplated by virtue of this Guaranty; and
- (n) Any other action or omission with respect to all or any part of the Obligations, or the security and collateral therefor, whether or not such action or omission prejudices the Guarantor or increases the likelihood that the Guarantor will be required to pay all or any part of the Obligations; it being the unambiguous and unequivocal intention of the Guarantor that the Guarantor be obligated to pay and perform the Obligations if the Borrower shall not punctually pay and perform such Obligations when due, notwithstanding any occurrence, circumstance, event, action, or omission whatsoever, whether or not contemplated, and whether or not specifically described herein.

Notwithstanding the foregoing, the Guarantor does not waive or release (expressly or impliedly) any rights of subrogation, reimbursement or contribution which they may have, after payment in full of the Obligations, against others liable on the Obligations; provided, that the Guarantor's rights of subrogation and reimbursement shall be and at all times remain subordinate to Lender's rights and claims.

4) WAIVERS. The Guarantor hereby absolutely, unconditionally and irrevocably waives, to the fullest extent permitted by law, the following:

- (a) Any requirement that prior to making demand for payment or seeking to enforce any right or remedy under this Guaranty, the Lender first make demand upon, make claim against or take any action with respect to the Borrower or any other persons, or resort to or seek to exhaust any collateral, or seek to enforce any other right or remedy in any of the Loan Documents or resort to any other means available by law or in equity for obtaining payment of the Obligations;
- (b) Diligence, presentment, demand, protest, notice of acceptance, notice of dishonor, notice of protest and any other notice of any other kind;
- (c) Any right of subrogation to any right of the Borrower and any other right to reimbursement, indemnity or other recourse against the Borrower or any other person prior to the payment and performance in full of the Obligations;
- (d) Any right or benefit (whether directly or through the Borrower or any other persons) under any appraisalment, valuation, stay, extension or redemption laws; and

(e) Any right to require marshalling of any collateral.

5) SUBORDINATION OF GUARANTOR CLAIMS. Until the Obligations are paid in full and the Guarantor's liability hereunder has been released and discharged, the Guarantor covenants and agrees that it shall not claim, seek, sue for, receive or collect, directly or indirectly, from the Borrower or any other person any other material obligations, indebtedness, liabilities or duties owed or claimed to be owed by the Borrower or such other person to the Guarantor (the "Guarantor Claims"), including without limitation all rights and claims of the Guarantor against the Borrower or such person arising by way of subrogation or otherwise, whether direct or indirect, primary or secondary, joint, several or joint and several, fixed or contingent, whether acquired by the Guarantor in a transaction with the Borrower or in a transaction with one or more other persons, whether originally owed to the Guarantor or owed to other persons, whether resulting from the Guarantor's payment of all or any part of the Obligations, and whether arising in connection with or evidenced by notes, advances, bookkeeping entries, guaranty agreements, liens, security interest agreements, or any other method or means, and whether evidenced by liens, security interests, or other encumbrances of any nature, all of which Guarantor Claims shall be inferior and subordinate to all liens, security interests and other encumbrances upon the assets of the Borrower or such other person which shall secure the payment of the obligations, regardless of whether such encumbrances arise in favor of the Guarantor or the Lender and whether presently existing and hereafter arising. The Guarantor covenants and agrees that it shall not exercise and enforce any creditor's rights it may have against the Borrower or such other party, or foreclose or repossess, claim, or otherwise take steps or institute any actions or proceedings (judicial or otherwise, including without limitation, the commencement of or joinder in any liquidation, bankruptcy, rearrangement, debtors relief or other insolvency proceeding) to enforce any liens, security interests or other encumbrances on any of the assets of the Borrower or such other person so long as the Obligations remain outstanding. The Guarantor further covenants and agrees that the Lender may prove its claim for outstanding Obligations in any receivership, bankruptcy, reorganization, rearrangement, debtors relief or other insolvency proceeding in which the Borrower or such other party is a debtor so as to establish its rights hereunder and receive directly from the receiver, trustee or other court custodian, dividends and payments which would otherwise be payable upon Guarantor Claims, and in this connection the Guarantor hereby assigns to the extent of the outstanding Obligations such dividends and payments to the Lender and agrees that, with respect to the remainder of the Guarantor Claims, the Guarantor's rights shall be subordinate to the Lender's rights and claims. If the Lender receives, for application upon the Obligations, any such dividends or payments which, as between the Borrower and the Guarantor, constitute payments on the Guarantor Claims, then upon full payment of the Obligations to the Lender, the Guarantor shall be subrogated to the rights of the Lender to the extent that payments to the Lender on the Guarantor Claims have contributed to satisfaction of the Obligations; and such subrogation shall be in respect to that portion of the Obligations which would have been unpaid if the Lender had not received dividends or payments upon the Guarantor Claims.

6) REPRESENTATIONS AND WARRANTIES. The Guarantor hereby represents and warrants to the Lender that:

(a) As of the execution hereof, nothing exists to impair the effectiveness of this Guaranty or its immediate and continuing effectiveness;

(b) The Guarantor has received, or will receive, direct or indirect benefit and fair consideration in making this Guaranty;

(c) To the extent desired by the Guarantor, the Guarantor is familiar with the books and records regarding the Borrower's financial condition, the project which the Loan will finance, and the value of all collateral intended as security for payment of any of the Obligations; however, the Guarantor is not relying on such financial condition or collateral in making this Guaranty;

(d) No person has made any representation, warranty or statement to the Guarantor to induce the Guarantor to make this Guaranty;

(e) This Guaranty is the legal and binding obligation of the Guarantor, enforceable against the Guarantor in accordance with its terms.

7) EFFECT OF BANKRUPTCY. If, pursuant to any bankruptcy, insolvency or other debtor relief, laws or rules, or any judgment or order or decision thereunder, any payment received by the Lender shall be adjudicated as a voidable preference or the Lender must otherwise rescind or restore any amount taken, credited or received by the Lender in payment or satisfaction by any of the Obligations, any prior release or discharge by the terms of this Guaranty given by the Lender shall be without effect and this Guaranty shall remain in full force and effect. The Guarantor's Obligations hereunder shall not be discharged except by the Guarantor's performance of those Obligations and then only to the extent of such performance.

8) DEFAULT. The term "Event of Default", whenever used hereinafter, shall mean any one or more of the following events:

(a) Occurrence of an Event of Default set forth or defined in the Note or in any of the Loan Documents, including a breach of any of the terms or conditions of this Guaranty, which is not cured within any applicable grace period, if any, set forth herein or therein;

(b) The entry of any judgment against the Guarantor, or the attachment, levy or garnishment against any property of the Guarantor which in the reasonable judgment of the Lender would materially and adversely affect the Guarantor's ability to perform its Obligations under this Guaranty and which remains unsatisfied for a period of sixty (60) days after the filing or issuance of the same, or the occurrence of any other substantial change in the financial condition of the Guarantor which, in the reasonable judgment of the Lender, would materially and adversely affect the Guarantor's ability to perform its Obligations under this Guaranty;

(c) Except as permitted in the Loan Documents, any transfer, sale, conveyance, disposition or assignment of the membership, partnership, stock or other ownership interest or management rights of the Guarantor in the Borrower, whether voluntary,

involuntary, or by operation of law, without the express prior written consent of the Lender; and

(d) The death, insolvency, bankruptcy, liquidation, disability, reorganization, dissolution, or lack of power of the Guarantor.

9) REMEDIES. Upon occurrence of any Event of Default, subject to the provisions of Section 7.3 of the Loan Agreement, the Lender may take any or all of the following actions without any requirement of demand for payment or performance on the part of the Borrower or any other persons whomsoever and without requirement of resort to any collateral for any of the Obligations or to any other means of obtaining payment or performance of any of the Obligations, as follows:

(a) The Lender may declare all of the Borrower's Obligations under the Loan Documents, regardless of their terms and including the Guarantor's Obligations hereunder, immediately due and payable and that performance thereof is immediately required;

(b) The Lender may accelerate all or any part of the Obligations and require full payment and performance thereof by the Guarantor;

(c) The Lender shall have the right of setoff against, a lien upon and a continuing security interest in all instruments, documents, securities, cash or other property, and all proceeds of the foregoing, which may now or hereafter be owned by the Guarantor which may become in possession or control of the Lender or any other party acting on the Lender's behalf, directly or indirectly, regardless of the capacity in which the Lender may receive, hold or control the same;

(d) The Lender shall have all of the rights and remedies afforded to it under the Note and the Loan Documents or otherwise existing at law or in equity.

10) NATURE OF REMEDIES. The remedies provided herein, in the Note, and in all other Loan Documents shall be cumulative and none is exclusive and such remedies shall be exercised concurrently or consecutively at the option of the Lender. Any waiver, failure, or delay by the Lender in exercising any remedy provided herein, in the Note or in any Loan Document upon occurrence of any Event of Default, shall not constitute a waiver of such right or remedy or preclude its future exercise or that of any other right of remedy in the event of any subsequent default, whether of the same or different nature. No notice to or demand on the Guarantor by the Lender shall be deemed to be a waiver of the Lender's right to take other or further action and in no event shall any waiver or right, power or remedy of the Lender hereunder be effective unless the same is in writing and signed by the Lender.

11) SEVERABILITY. The invalidity, illegality or unenforceability of any provision of this Guaranty or in the Note or any of the Loan Documents shall not render invalid, illegal or unenforceable any other provision hereof.

12) SURVIVAL. All covenants, agreement, representations, and warranties of the Guarantor contained herein and in any document or item delivered pursuant hereto shall survive the execution hereof and continue and remain in full force and effect until the Obligations have been paid, performed and satisfied in full.

13) ENTIRE AGREEMENT. This Guaranty contains the entire agreement and understanding between the Guarantor and the Lender with respect to the subject matter hereof, and supersedes all prior agreements and understandings, whether oral or written.

14) GOVERNING LAW. This Guaranty shall be governed and construed in accordance with the internal laws of the State of South Carolina, without regard to any choice of law or conflict of law provisions which might apply the law of another jurisdiction.

15) CONSENT TO JURISDICTION. The Guarantor, by its execution hereof, agrees that any action or proceeding which the Lender may initiate with respect to this Guaranty shall, at the Lender's sole option, be brought in and subject to the jurisdiction of the any state or federal court of competent jurisdiction of the State of South Carolina, to which jurisdiction the Guarantor, by its execution hereof, hereby irrevocably consents. Notwithstanding the foregoing, however, the Guarantor additionally acknowledges and agrees that the Lender may initiate any action upon or for the enforcement of this Guaranty in any state or federal court of competent jurisdiction in any other State in which the Guarantor may at any time reside or possess material assets, to which jurisdictions the Guarantor, by its execution hereof, hereby further irrevocably consents. The Guarantor irrevocably waives any objection, including without limitation any objection to the laying of venue based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in any such jurisdiction. Nothing herein shall affect the right of the Lender to serve process in any manner permitted by law nor shall limit the right of the Lender to bring proceedings against another party to any of the Loan Documents in the courts of any other jurisdiction.

16) NOTICE. All notices made or required hereunder shall be in writing. The Effective Date of Notice shall be the date upon which such notice shall have been personally delivered (including personal delivery by Federal Express or other nationally recognized overnight private courier service) or the date of postmark when deposited in the United States Mail, registered or certified, postage prepaid, return receipt requested, addressed in any such event, to the Lender or the Guarantor at the address set forth after the Guarantor's signature hereinafter, or at such other addresses as may hereafter be designated in writing.

17) LIMITATIONS ON GUARANTY. Notwithstanding anything contained in this Guaranty to the contrary, the Guarantor's Obligations, as specified in Section 1 of this Guaranty, shall be limited to Fifty (50.0%) percent of the outstanding principal balance of the Note, plus Fifty (50.0%) percent of all outstanding interest, fees and costs of every nature and kind due or to become due to the Lender pursuant to the Loan Documents, plus the items set forth in Subsections (a) through (i) of this Section 17.

Notwithstanding the foregoing Limitation On Guaranty, however, the Guarantor shall remain fully, unconditionally and personally liable to the Lender hereunder, and the Lender shall have

the right to seek a personal judgment against the Guarantor for the full amount of such liability, for any loss, liability or damage to the Lender arising from: (a) any fraudulent or material misrepresentation by the Borrower or the Guarantor in connection with the execution, delivery or contents of the Loan Documents; (b) the misappropriation by the Borrower or the Guarantor of any insurance or condemnation proceeds attributable to any such collateral; (c) the misappropriation by the Borrower or the Guarantor of any unearned advance rents and security deposits paid by the Borrower's tenants and not refunded to or forfeited by such tenants; (d) the violation by the Borrower of any prohibitions contained in the Loan Documents against transfer of any collateral or of any interests in the Borrower, including without limitation those prohibitions set forth in Section 2.16 of the Mortgage, Security Agreement, and Fixture Financing Statement; (e) the misappropriation of any rentals assigned to the Lender following written notification by the Lender to the Borrower of the occurrence of an Event of Default under the Loan Documents; and/or (f) all court costs and reasonable attorneys' fees incurred by the Lender in connection with any of the foregoing.

[SIGNATURE PAGE TO FOLLOW]

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

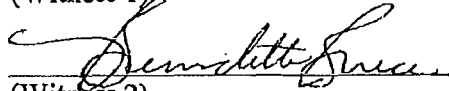
Executed this 24th day of July, 2007.

IN THE PRESENCE OF:

GUARANTOR:



(Witness 1)



(Witness 2)

SILVER REAL ESTATE FUND I, L.P.

A Delaware limited partnership

By: Silver Capital Advisors, LLC

By: [Signature] (SEAL)

Name: Marvin S. Botinger

Title: Vice President

GUARANTOR'S NOTICE ADDRESS:

1001 E. Telecom Dr.
Boca Raton FL 33431

EXHIBIT "E"

Mortgage



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FILED IN GREENVILLE COUNTY, SC

This Instrument Prepared by
And Upon Recording Return to:
 Matthew Trent
 Womble Carlyle Sandridge & Rice, PLLC
 P.O. Box 10208
 Greenville, South Carolina 29603

MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT

THIS MORTGAGE, SECURITY AGREEMENT AND FIXTURE FINANCING STATEMENT (this "Mortgage") is executed and granted as of this 24th day of July, 2007, by TALL PINES INVESTMENTS, LLC, a South Carolina limited liability company whose address is c/o Burroughs & Chapin Company, Inc., 2411 North Oak Street, Suite 402, Myrtle Beach, South Carolina 29578-2095 (the "Mortgagor") in favor of CAROLINA FIRST BANK (the "Mortgagee"), whose address is 104 South Main Street, Greenville, South Carolina 29601.

ARTICLE ONE

GRANT OF MORTGAGE AND SECURITY INTEREST

1.1 GRANT. In order to secure and enforce the payment, performance and observance of the Obligations set forth hereinafter, and for and in consideration thereof and of other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor does hereby execute and deliver this Mortgage to Mortgagee and does hereby grant, bargain, hypothecate, mortgage, sell, transfer, convey, assign, warrant and confirm unto Mortgagee, its successors and assigns, all of Mortgagor's right, title and interest in and to the Property identified hereinafter, together with and including a first security interest in that portion of the Property comprising the Collateral identified hereinafter, TO HAVE AND TO HOLD the Property, all parts thereof, and all and singular the rights, hereditaments and appurtenances appertaining or belonging thereto, unto Mortgagee, its successors and assigns, to its own use and benefit forever, subject, however, to the terms and conditions herein.

1.2 OBLIGATIONS SECURED. The Obligations secured by this Mortgage consist of the following (collectively, the "Obligations"):

(A) The Note. The payment of all indebtedness evidenced by that certain Promissory Note (the "Note"), of even date, executed by Mortgagor and payable to Mortgagee in the original maximum principal sum of up to TWELVE MILLION TWENTY-FOUR THOUSAND ONE HUNDRED TWENTY-FOUR AND NO/100 (\$12,024,124.00) Dollars, together with interest thereon, including without limitation any deferred, accrued or capitalized interest (if any) provided therein, and any renewals, extensions or modifications thereof, and all debts, liabilities and obligations of Mortgagor thereunder, upon which final payment in full is due (if not sooner paid) on July 31, 2008, and which Note is made a part hereof by reference as if set forth verbatim herein;

(B) Future Loans and Advances. The payment of all future advances or re-advances that may subsequently be made by Mortgagee to Mortgagor pursuant to Section 2.14

hereof, evidenced by the Note, any other promissory note, or by any other means, and all renewals or extensions thereof, all of which shall be secured hereunder in accordance with Section 29-3-50 of the Code of Laws of South Carolina, 1976, as amended;

(C) Loan Documents. The payment, performance and observance of all terms, provisions, covenants, conditions, representations and warranties set forth herein, in the Note, and in any and all other instruments, documents, security agreements and guaranty agreements of any nature and kind now or hereafter existing in connection with, as evidence of, or as security for the Note and the Obligations (collectively, the "Loan Documents"), including without limitation the following documents:

1. Loan Agreement dated on or about the date hereof executed by and between Mortgagor, Mortgagee, and any guarantors identified therein;
2. Assignment of Contracts, Contract Rights, Leases, Rents and Revenues dated on or about the date hereof executed by Mortgagor in favor of Mortgagee and pertaining to the Property; and
3. Guaranty Agreement(s) dated on or about the date hereof executed by the Guarantor(s) identified therein in favor of Mortgagee;

(D) "Hedging" and Similar Agreements. All obligations of the Mortgagor incurred pursuant to and in accordance with all "hedging agreements", if any, now or hereafter entered into by the Mortgagor with Mortgagee, which term shall include without limitation any interest rate swap, cap or collar agreements, interest rate future or option contracts, currency swap agreements, currency future or option contracts, commodity agreements, and other similar agreements or arrangements designed to protect against fluctuations in interest rates, currency values or commodity values, and all amendments, modifications, substitutions, replacements, and additions thereto;

(E) Other Indebtedness. The payment, performance and observance of all other indebtedness, liabilities and obligations of Mortgagor and all other parties to the Loan Documents owed to Mortgagee pursuant to the Loan Documents, now or hereafter existing, whether direct or indirect, whether primary, secondary, joint, several, joint and secured, unsecured, due or to become due whether for payment or for performance, whether or not presently contemplated by Mortgagor and Mortgagee, regardless of how the same arise and however evidenced, or whether evidenced by any instrument, agreement, or book account several, liquidated, unliquidated, fixed or contingent, and including without limitation all indebtedness, liabilities or obligations of any guarantors of the Obligations or any other persons whomsoever owed to Mortgagee pursuant to the Loan Documents arising out of this Loan transaction, together with and including all attorneys fees, court costs and other charges and expenses arising out of or attributable to any of the foregoing, together with and including all reasonable attorneys' fees, court costs and other charges and expenses arising out of or attributable to any of the foregoing, with all of the foregoing being subject to the provisions of this Section 1.2.

1.3 THE PROPERTY. The Property mortgaged and conveyed to Mortgagee hereunder consists of the following (collectively, the "Property"):

(A) The Land. All of Mortgagor's right, title and interest in and to that certain parcel of land described fully on Exhibit "A" attached hereto and incorporated herein (the "Land");

(B) The Buildings and Improvements. All buildings, structures and improvements of every nature and kind now or hereafter erected, affixed, or situate on, upon or beneath the Land, including without limitation all site preparation, grading, cleaning and grubbing, roadway construction and installation, paving, guttering, curbing, storm drainage facility construction and installation, installation of utilities, infrastructure and landscaping on the Land (the "Improvements");

(C) The Fixtures, Equipment and Personal Property. All fixtures, equipment (including Mortgagor's interest in any leases of such equipment), furnishings and personal property now or hereafter attached to, located at, stored upon, or used or intended to be used in connection with, or with the use, operation or maintenance of, the Land and/or the Improvements, in which Mortgagor now has, or at any time hereafter acquires an interest, including without limitation all heating, air conditioning, lighting, refrigeration, plumbing, ventilation and electrical equipment, and all appliances, engines machinery, elevators, pumps, motors, compressors, boilers, condensing units, doors, windows, window screens, blinds, awnings, electrical wiring, pipe, floor coverings, fire and sprinkler systems, and all items of personal property, furniture, computer hardware and software, inventory and stock, together with all contract rights to acquire any of the foregoing, all deposits and payments made under contract for the acquisition of the same, appertaining in any manner to the Property to the extent that any or all of the foregoing may now or hereafter become subject to the Uniform Commercial Code in effect in the State of South Carolina (it being agreed that the enumeration of specific items or categories of property hereinabove shall in no way be held to exclude items or categories of property not enumerated), and all renewals, replacements, additions, accessories, and substitutions thereof and additions thereto, all of which shall be deemed a part of and affixed to the Land (collectively, the "Personalty");

(D) Judgments, Awards and Insurance Proceeds. All insurance policies and proceeds, condemnation proceeds and payments due to any injury to, taking of or decrease in value of any of the Property; all rights and interest of Mortgagor against others, including adjoining property owners, arising out of any damage to the Property including without limitation damage due to environmental injury or release of Hazardous Materials (hereinafter defined);

(E) Easements or Other Interests. All rights, title and interest of Mortgagor in and to all easements, rights of way, covenants, rights and appurtenances now or subsequently pertaining to, serving, benefiting and appurtenant to or in favor of the Property, and all rights of enforcement thereof, and all rights of Mortgagor in and to all streets, alleys, passages, ways, waters and water courses adjoining the Land, whether any of the

foregoing be now owned or hereafter acquired by Mortgagor, and the reversion, remainder, rents, issues and profits thereof, and all of the estate, right, title, interests, property, possession, claim and demand whatsoever, at law as well as in equity, of Mortgagor thereto;

(F) Rents and Income. All mineral, timber, water, oil and gas rights, royalties and profits pertaining thereto or in favor of the Property and all income, rents, benefits, royalties and profits now or subsequently derived from or through the Property and/or by virtue of any lease, license, sublease, contract, or any other kind of use or occupancy agreement, whether written or verbal, for all or any portion of the Property;

(G) Contracts and Leases. All rights, title and interest of Mortgagor as seller or as lessor in and to all contracts, contract rights, leases, licenses, subleases, or any other kind of use or occupancy agreement, whether written or oral, if any, now or subsequently of or affecting the Property, or any portion thereof or space therein, and any rents, security deposits or other monies appertaining thereto;

(H) Licenses, Agreements and Other Rights. All rights, title and interest in and to any licenses, permits, regulatory approvals, governmental authorizations, franchise agreements, license agreements, equipment or chattel leases, service agreements or contracts, trade names, or other rights arising out of, or issued in connection with, or in any way related to the use, operation, occupancy, maintenance or security of the Property;

(I) Building Materials. All building materials intended for construction, renovation, alteration or improvement of or to the Property, whether stored on-site or off-site; and

(J) Other Rights. All replacements, renewals, substitutions, accessions, additions, proceeds, profits or products of any of the foregoing; all proceeds of the conversion, voluntary or involuntary, of any of the foregoing into cash or liquidated claims; and all estates, interests, rights, titles, powers and privileges appurtenant or incident to any of the foregoing; all other personal property of Mortgagor located at, pertaining to or to be used in any of the operations at the Property whether or not affixed thereto or constituting a portion thereof or used in connection with the business operations of Grantor and any and all presently existing or hereafter acquired contract rights, general intangibles, accounts, accounts receivable, inventory, tax refunds, chattel paper, franchise rights, licenses, actions, and rights of action of any nature whatsoever, and all insurance policies and proceeds, condemnation proceeds, and payments due to any injury to, taking of, or decrease in value of any of the Property, appertaining in any manner to the Property to the extent that any or all of the foregoing may now or hereafter become subject to the Uniform Commercial Code in effect in the State of South Carolina.

All components of the Property identified in subsections (C) through (J) of this Section are referred to hereinafter, from time to time, as the "Collateral."

1.4 SECURITY AGREEMENT. This Mortgage is a self-operative security agreement with respect to all Collateral, but Mortgagor agrees to execute, deliver, record and/or file on demand such other and further security agreements, financing statements, continuation statements, and other instruments as Mortgagee may request from time to time in order to establish, continue, preserve and/or perfect its security interest or to impose the lien hereof more specifically upon any such Collateral, with Mortgagor to pay all costs and expenses of any filings in connection therewith and any and all Uniform Commercial Code searches connected thereto.

1.5 FIXTURE FINANCING STATEMENT. As to those items of the Collateral which are or shall become affixed to the Land and/or the Improvements, and all products and proceeds thereof, this Mortgage is and shall be effective as a Financing Statement filed as a fixture filing as and from the date of its recordation in the real estate records of the County in which the Land is situated. The name of the record owner of the Land and Improvements is Mortgagor, identified on the first page of this Mortgage. The name and address of Mortgagor, as debtor, is set forth on the first page of this Mortgage. The name and address of Mortgagee, as secured party, and from whom information concerning the security interest created herein may be obtained, is set forth on the first page of this Mortgage. The provisions of Article One of this Mortgage describe the types and items of the Collateral affixed or to be affixed to the Land and the Improvements.

1.6 WARRANTIES OF TITLE. Mortgagor covenants and warrants that it is seized of an indefeasible estate in fee simple in and to the Land and the Improvements and that it has the full title and ownership to all of the Property; that it has the full right, power and lawful authority to mortgage, grant, convey and grant security interests in the Property; and that the Property is free and clear of all liens, security interests and encumbrances whatsoever except for those "Permitted Exceptions" contained in Schedule B of Mortgagee's title insurance commitment to be issued and delivered to Mortgagee herewith. Mortgagor further covenants to warrant and forever defend the Property unto Mortgagee, its successors and assigns forever, from and against Mortgagor and the claims of all other persons whomsoever. This Mortgage shall remain in full force and effect unless and until all of the Obligations are paid, performed, observed and discharged in full.

ARTICLE TWO COVENANTS OF MORTGAGOR

2.1 PERFORMANCE AND PAYMENT. Mortgagor shall perform, observe, and comply with all provisions of the Note, this Mortgage, and all of the Loan Documents, and shall promptly pay to Mortgagee all principal, interest, and all other sums of money payable under the Note and pursuant to the provisions of this Mortgage and all other Loan Documents without deduction or credit of any nature, and whether in due course and whether due by virtue of acceleration as provided hereinafter.

2.2 COMPLIANCE WITH LAWS AND COVENANTS. Mortgagor represents that the Property presently complies with, and further covenants and warrants that the Property will continue to comply in all material respects with, all applicable private restrictive covenants, easements and conditions of public record applicable to the Property, all applicable zoning and subdivision ordinances and building codes, all applicable ordinances and regulations affecting

the use, construction and/or occupancy of the Improvements and all other applicable federal, state and local laws, rules, regulations, ordinances, codes, permits, licenses, interpretations and/or orders of any nature whatsoever with respect to the Property, including without limitation the provisions of the Americans with Disabilities Act. Mortgagor shall, promptly upon receipt, forward to Mortgagee any notice received from any federal, state, local or other governmental body claiming that Mortgagor or the Property is not in compliance with any such law, rule, regulation, covenant, or ordinance, and Mortgagor shall take all necessary steps to cure any such non-compliance.

2.3 TAXES, ASSESSMENTS AND LIENS.

(A) Taxes and Assessments. Mortgagor shall promptly pay or bond off, when and as due, all regular and special taxes, assessments, utility charges, and other charges, rates, dues, fees, levies, fines, impositions, liabilities, obligations, judgments, rents, and encumbrances of every nature and kind whatsoever now or subsequently levied or assessed upon or applicable to the Property or any operations thereon, or upon or against the interest of Mortgagee therein, as well as all income taxes, assessments and other governmental charges levied and imposed by the United States of America or any state, county or other governmental taxing authority upon or against Mortgagor or in respect of the Property or any part thereof. Mortgagor shall deliver satisfactory official certificates evidencing the discharge or payment of taxes, and upon written request from Mortgagee, any other of the foregoing items, not less than ten (10) days prior to the date that the same shall become delinquent. Notwithstanding the foregoing, however, Mortgagor shall be entitled by appropriate proceedings to contest the validity of any such tax, assessment or charge, provided that: (1) collection of the same by foreclosure of the lien thereof or otherwise upon the Property is stayed during the pendency of such proceedings, (2) Mortgagor deposits with the authority to which such tax, assessment or charge is payable, or in some other escrow arrangement satisfactory to Mortgagee, funds or other appropriate security satisfactory to Mortgagee for payment of or security for payment of the same, together with any applicable interest and penalties, should the same be determined to be due and owing, and (3) Mortgagee shall retain the right to require payment thereof by Mortgagor should Mortgagee determine in its sole discretion that payment thereof is necessary to protect Mortgagee's interest hereunder.

(B) Mechanic's and Other Liens. In the event of the filing of any mechanic's, materialmen's or laborers' lien upon the Property, or any portion thereof, in excess of \$25,000.00, Mortgagor shall give written notice thereof to Mortgagee within ten (10) days following service of written notice of such lien upon Mortgagor and Mortgagor shall obtain the discharge of such lien by payment, bonding or other means allowable at law or acceptable to Mortgagee within thirty (30) days following service of notice of such lien or claim of lien upon Mortgagor.

(C) Taxes Affecting Mortgagee's Interest. If any state, federal, municipal or other governmental law, order, rule or regulation, passed subsequent to the date hereof, shall in any manner change or modify existing laws governing the taxation of mortgages or debts secured by mortgages, or the manner of the collection of any such taxes, and imposing a

tax (either directly or indirectly) on this Mortgage or the Obligations secured hereby, Mortgagee shall have the right to require Mortgagor to pay to Mortgagee within ten (10) days following written notice thereof, any reasonable costs to be borne by Mortgagee attributable to the change of such law or laws.

(D) No Credit Against the Obligations. Mortgagor shall not claim, demand or be entitled to receive any credit against the Obligations for so much of the taxes, assessments or similar impositions assessed against the Property or any part thereof, as are applicable to the Obligations or to Mortgagee's interest in the Property. No deduction shall be claimed from the taxable value of the Property or any part thereof by reason of the Note, this Mortgage or any of the Loan Documents.

2.4 INSURANCE. Mortgagor shall at its sole expense obtain for, deliver to, and assign and maintain for the benefit of Mortgagee, during the life of this Mortgage, such insurance policies in such amounts as may be required pursuant to the terms of the Loan Agreement, including comprehensive general liability insurance covering the legal liability of Mortgagor against claims for bodily injury, death or property damages occurring on, in or about the Property, and Mortgagor shall pay promptly, when due, any premiums on such insurance policies and any renewals thereof. All insurance coverages required hereunder shall be maintained in such form and amounts, through such companies and agents, with such terms and deductibles as shall be acceptable to Mortgagee. At least fifteen (15) days prior to the expiration date of all such policies or renewals thereof, renewals of such coverages satisfactory to Mortgagee shall be delivered to Mortgagee marked "premium paid" or accompanied by other evidence of premium payments satisfactory to Mortgagee. Mortgagor further agrees to deliver to Mortgagee promptly upon receipt copies of all inspection reports and insurance recommendations received by Mortgagor from any insurer. In the event of the foreclosure of this Mortgage or any other transfer of title to the Property in extinguishment or reduction of the Obligations, all such policies, together with any rights to unearned premiums appertaining thereto, shall become the property of the transferee of the Property. Mortgagee may at any time at its reasonable discretion procure and substitute at the sole reasonable expense of Mortgagor such other or additional policy or policies of insurance, in such amounts and with such terms, as it may determine without prejudice to its rights hereunder, should Mortgagor fail or refuse to maintain the required coverage or should any material amendment be made to any coverage which shall be unacceptable to Mortgagee.

Notwithstanding the foregoing provisions of this Section 2.4, the following shall apply to insurance proceeds:

(A) In the event that the insurance proceeds are less than \$100,000, Mortgagor is entitled to retain such insurance proceeds provided that Mortgagor hereby agrees that any such insurance proceeds retained pursuant to this provision shall be applied to the repair or restoration of the portion of the Property for which the insurance proceeds have been paid.

(B) In the event that insurance proceeds exceed \$100,000, but provided that all of the following conditions are fully satisfied by Mortgagor, Mortgagee shall disburse insurance proceeds for repair and restoration of the Property in accordance with Mortgagee's

standard construction loan disbursement conditions and requirements: (i) no Event of Default shall have occurred and be continuing; (ii) Mortgagor shall have delivered evidence satisfactory to Mortgagee that the Property can be fully repaired and restored at least six (6) months prior to the maturity of the Obligations; (iii) the work is performed under a fixed price or guaranteed maximum price contract satisfactory to Mortgagee in accordance with plans and specifications and a budget satisfactory to Mortgagee in accordance with all legal requirements; (iv) Mortgagor shall have deposited with Mortgagee for disbursement in the connection with the restoration the greater of: (A) the applicable deductible under the insurance policies covering the loss; or (B) the amount by which the cost of restoration of the Property to substantially the same value, condition and character as existed prior to such damage is estimated by Mortgagee to exceed the net insurance proceeds; (v) Mortgagor has paid as and when due all of Mortgagee's costs and expenses incurred in connection with the collection and disbursement of insurance proceeds, including without limitation, inspection, monitoring, engineering and legal fees. If not paid on demand, at Mortgagee's option, such costs may be deducted from the disbursements made by Mortgagee or added to the sums secured by this Mortgage; and (vi) such other terms and conditions as Mortgagee may reasonably require.

2.5 ESCROWS. Upon occurrence and continuance of an Event of Default, whether or not thereafter cured, and if thereafter required by Mortgagee, Mortgagor shall deposit with Mortgagee on the first day of each month, in addition to any other payments due under the Obligations and until the Obligations are fully paid, an amount equal to one-twelfth (1/12) of the annual property taxes, insurance premiums and/or assessments applicable to the Property as estimated by Mortgagee which, when added to such additional amount as shall be stipulated by Mortgagee to Mortgagor in writing at the time of imposition of such escrow requirement, shall be sufficient to enable Mortgagee to pay the same at least thirty (30) days prior to the due date thereof. Such deposits shall not constitute trust funds, and may be commingled with other funds on deposit with Mortgagee. Mortgagor shall, within thirty (30) days following written notice from Mortgagee, deliver to Mortgagee such additional monies as are required to make up any deficiencies in the amounts necessary to enable Mortgagee to pay such taxes, assessments, premiums and similar charges, and Mortgagee shall not be under any obligation to pay any such charges unless and until Mortgagor shall have delivered to Mortgagee such additional monies as are required to make up such deficiencies. In the event of any default hereunder, Mortgagee may apply any such funds so held to the reduction of the Obligations in such manner as Mortgagee shall determine, with any such monies not applied to the Obligations to become the property of the purchaser of the Property at foreclosure or otherwise.

2.6 MAINTENANCE OF THE PROPERTY.

(A) Maintenance and Repair. Mortgagor shall preserve and maintain the Property in good condition and repair, ordinary wear and tear excepted. Mortgagor shall not permit, commit or suffer any waste, nuisance, impairment or deterioration of the Property or any part thereof, or any action or omission which will increase the risk of fire or other hazard to the Property or any part thereof.

(B) No Alterations. No part of the Property shall be removed, demolished or materially altered without the prior written consent of Mortgagee. Notwithstanding the foregoing, however, Mortgagor shall have the right in the ordinary course of its business, without such consent, to remove and dispose of, free from the lien of this Mortgage, any part of the Property which from time to time may become worn out or obsolete, provided that prior to or simultaneously with such removal the same shall be replaced with similar Property of equal or superior utility or value to the Property removed or replaced, which substitute or replacement Property shall, without further action, be subject to the lien of this Mortgage, free of any prior or superior lien or encumbrance.

(C) Inspection. Mortgagee and its representatives are authorized to enter upon and inspect the Property at any time during the life of this Mortgage upon reasonable advance notice to Mortgagor. Mortgagor shall promptly make any repairs or maintenance which may reasonably be required by Mortgagee or its designated inspector as a result of any such inspection.

(D) Damage and Destruction. If all or any part of the Property shall be lost, damaged or destroyed by fire or any other cause, Mortgagor shall give immediate written notice thereof to Mortgagee and shall, whether or not Mortgagee makes any insurance proceeds available, promptly restore the Property to the equivalent of its original condition. If a part of the Property shall be lost, physically damaged, or destroyed through condemnation or similar proceedings or takings, Mortgagor will diligently proceed to restore, repair or replace the remaining Property, with repairs or restoration to be accomplished in a manner reasonably satisfactory to Mortgagee. In the event that Mortgagee approves any disbursement of any insurance or condemnation proceeds payable on account of such damage, destruction or taking, no such work shall be undertaken until the plans and specifications therefor, which shall be prepared by an architect or engineer satisfactory to Mortgagee, have been submitted to and approved in writing by Mortgagee, which approval shall not be unreasonably withheld. In such event, all disbursements of such proceeds shall be made by Mortgagee only in accordance with Mortgagee's normal construction loan requirements then in effect for loans of similar size and type.

(E) Compliance with Laws. Mortgagor shall promptly comply with all present and future laws, ordinances, rules and regulations of any governmental authority affecting the Property. Mortgagor shall not initiate, join in, or consent to any change in any private restrictive covenants, zoning ordinances or other private or public restrictions limiting or defining the uses that may be made of the Property or any part thereof without the prior express written consent of Mortgagee.

2.7 CONDEMNATION. Mortgagor represents to Mortgagee that to the best of its knowledge and belief, no condemnation or eminent domain proceedings are threatened or pending which will or might affect the Property, and in the event that Mortgagor acquires knowledge or notice of such pending or threatened condemnation or eminent domain, Mortgagor shall immediately thereafter give to Mortgagee written notice of all details respecting such potential action. Mortgagor hereby assigns, transfers and sets over to Mortgagee, up to the

amount of the Obligations secured hereby, all compensation, awards, damages, claims, rights of action and proceeds due to or arising from any taking or condemnation of all or any part of the Property for public use by any governmental body, quasi-public authority or public authority, together with the proceeds of all such awards, after payment of all reasonable expenses and attorneys fees incurred by Mortgagee in contesting and recovering the same, which awards shall include, without limitation, damages arising from the change of grade of any street or for the access thereto, the taking of air rights, damages caused by noise, temporary taking, or any other adverse condition. Mortgagor hereby authorizes and empowers Mortgagee, at its option, to commence, appear in and prosecute in its own or Mortgagor's name, any action or proceeding related to any such condemnation or proceeding, and to settle or compromise any claim in connection therewith. Mortgagee shall have the sole discretion to apply any awards or proceeds received toward the repair, restoration or replacement of the Property so taken or toward repayment of any of the outstanding Obligations. In the event that Mortgagee so elects to apply the proceeds of any such taking to the restoration, repair or replacement of the Property, disbursement of such proceeds and approval of all plans and specifications therefor, shall be made in accordance with Mortgagee's normal construction loan requirements then in effect for loans of similar size and type, and the balance of the proceeds of such taking remaining after such restoration, repair or replacement, if any, shall be applied, at the option of Mortgagee, to the Obligations. Notwithstanding the foregoing, in the event that proceeds received from the condemnation are less than \$100,000, Mortgagee shall be entitled to retain such proceeds and apply same in Mortgagee's sole discretion, provided however, that if the condemnation results in a default under any agreement between Mortgagee and any third party (other than Mortgagee), the proceeds will be applied to the cure of such default.

2.8 PERFORMANCE AND EXPENDITURES BY MORTGAGEE.

(A) Preservation of Mortgagee's Interest. Mortgagee may, at its sole reasonable discretion, take any action and make any disbursements necessary to protect its interest hereunder or under any of the Loan Documents, including without limitation, actions or disbursements with respect to threatened, pending or contemplated actions, proceedings or disputes in which Mortgagee is or might be made a party or is a party plaintiff or party defendant, or which affects or might affect the Note, this Mortgage or any of the interest of Mortgagee or Mortgagor therein or in any of the Loan Documents, including without limitation foreclosure of this Mortgage, condemnation of any portion of the Property or any action to protect the security hereof. Mortgagor will pay or reimburse Mortgagee immediately without demand for all reasonable costs, fees, charges, expenses and attorneys' fees incurred or paid by Mortgagee in any foregoing matter, including but not limited to bankruptcy, insolvency, litigation, code enforcement, eminent domain, or any other matter or proceeding involving the Note, this Mortgage, the Loan Documents, or the Property, or in which Mortgagee is otherwise designated a party plaintiff or party defendant in a matter or proceeding arising out of or related to the Property, the Obligations or the Loan Documents.

(B) Performance of Defaults. If Mortgagor shall not pay when due any tax, assessment, insurance premium or utility or other charge (or contest the same, with such security therefor as shall be reasonably acceptable to Mortgagee) or timely perform or

observe any other covenant, condition, term, representation or warranty in this Mortgage, the Note or any of the Loan Documents, then Mortgagee, at its sole discretion may perform or observe the same, or authorize itself or others to enter the Property or any part thereof for such purposes without thereby becoming liable to Mortgagor or any person in possession, with all payments so made or reasonable costs or expenses so incurred to be added to the Obligations secured hereby and to be repaid immediately by Mortgagor upon demand.

(C) Nature of Expenditures. All sums paid or incurred by Mortgagee pursuant to this provision shall bear interest at the highest rate then applicable to principal under the Note until the date of payment. Mortgagee shall be the sole judge of the legality, validity and priority of any tax, assessment, premium, charge, claim or payment, and of the necessity or advisability of such expenditure.

2.9 FURTHER ASSURANCES. At any time, and from time to time, upon Mortgagee's request, Mortgagor shall make, execute and deliver, and cause to be made, executed and delivered to Mortgagee and, where appropriate, shall cause to be recorded, filed, re-recorded or re-filed and in such offices and places as shall be deemed desirable by Mortgagee any and all such further mortgages, financing statements, instruments of further assurance, certificates and other documents as Mortgagee may consider reasonably necessary in order to effectuate, complete, perfect, continue and preserve the Obligations, this Mortgage, and the lien and security interest of this Mortgage upon all of the Property, whether now or hereafter acquired by Mortgagor, subject only to such "Permitted Exceptions" as are accepted by Mortgagee pursuant to Section 1.6 hereof. Upon any failure by Mortgagor to do so or to the extent otherwise allowable at law, Mortgagee may make, execute, procure, record, file, rerecord or re-file any and all such mortgages, instruments, financing statements, certificates and documents for and in its own name or in the name of Mortgagor, and for any such actions taken by Mortgagee in the name of Mortgagor, Mortgagor hereby irrevocably appoints Mortgagee as the agent and attorney-in-fact of Mortgagor to do so.

2.10 ESTOPPEL AFFIDAVITS. Mortgagor or Mortgagee, within ten (10) days after written request from the other party, shall furnish a written statement, duly acknowledged, in such form as may be reasonably requested by the other party, setting forth the unpaid principal balance of the Note and that there are no offsets or defenses against full payment and performance thereof or, if such offsets and defenses are claimed, specifying the same in reasonable detail. Mortgagor or Mortgagee, within ten (10) days after written request from the other party, shall furnish its written statement to the requesting party setting forth the unpaid principal of the Note, the date through which payments have been received, and that it has no knowledge of any default by Mortgagor or, if any default is known to Mortgagee, a statement of the same in reasonable detail.

2.11 ASSIGNMENT OF LEASES, RENTS AND REVENUES. Mortgagor does hereby transfer, assign and set over to Mortgagee all of Mortgagor's interest as lessor in and to all present and future leases and occupancy agreements of and rents and profits from the Property, provided that so long as Mortgagor is not in default hereunder, Mortgagor may collect and retain all such rents, issues, income and profits therefrom. Mortgagor shall comply with and observe its obligations as lessor under all leases and occupancy agreements of the Property and shall not,

without the prior written consent of Mortgagee, further assign any rents; modify, extend, terminate, accept or acquiesce in any surrender of any lease; accept or negotiate for payment of any advance rents, lease buyout fees, or lease cancellation fees; borrow against, pledge or assign any rents due under any leases; or permit any assignment of any lease or any sublease of any portion of the Property. In no event shall the foregoing assignment impose any duties of landlord upon Mortgagee under any leases. The rights of Mortgagee contained in this Section are in addition to and shall be cumulative with the rights of Mortgagee set forth in any Assignment of Contracts, Contract Rights, Deposits, Leases, Rents, and Revenues or any other instrument of similar import, given herewith by Mortgagor to Mortgagee as security for the payment and performance of the Obligations, and to the extent of any inconsistency between the terms of such Assignment of Contracts, Contract Rights, Deposits, Leases, Rents and Revenues or similar instrument and the terms of this Section, the terms of such Assignment of Contracts, Contract Rights, Deposits, Leases, Rents and Revenues or similar instrument shall control.

2.12 AFTER ACQUIRED PROPERTY. The lien of this Mortgage will automatically attach, without further act, to all after acquired property attached to the Property or any part thereof.

2.13 BOOKS AND RECORDS. Mortgagor shall keep and maintain at all times, complete, true and accurate books and records with respect to the Property, the construction of the Improvements thereon, any operations thereon, and as to Mortgagor, in form and content reasonably satisfactory to Mortgagee, in reasonable detail, in accordance with generally accepted accounting principles consistently applied, all as may be required from time to time pursuant to the Loan Documents. Mortgagee shall, upon reasonable advance notice during Mortgagor's normal business hours, have the right to examine the books, records, accounts and rent rolls maintained by Mortgagor, or such other person as maintains the records, and to make such copies or abstracts thereof (at Mortgagee's expense) as Mortgagee shall desire, and to discuss the affairs, finances and accounts with the manager or appropriate officer of Mortgagor. In the event that Mortgagor fails or refuses to comply with any requirements set forth in the Loan Documents with respect to any of the foregoing books or records, Mortgagee shall have the right to hire, at Mortgagor's sole reasonable cost and expense, an independent certified public accountant to audit the subject books and records.

2.14 FUTURE ADVANCES. This Mortgage shall secure any future advances, with interest thereon at the rate then applicable to principal under the Note, made by Mortgagee to or for the benefit of Mortgagor in accordance with Section 29-3-50, Code of Laws of South Carolina 1976, as amended, whether obligatory or not, to the same extent as though such future advances were made at the execution of the Note and this Mortgage; provided, however, that at no time shall the outstanding indebtedness secured by this Mortgage exceed twice the original principal sum secured hereby, plus interest thereon, and such other sums as may become Obligations secured pursuant to the provisions of this Mortgage.

2.15 INDEMNIFICATION. Mortgagor shall appear in and defend any suit, action or proceeding that might in any way, in Mortgagee's sole reasonable judgment, affect the value of the Property, Mortgagor's title thereto, Mortgagee's lien thereupon and/or security interest thereon, or any rights, powers or interests of Mortgagee hereunder. Mortgagor shall at all times indemnify, hold harmless and reimburse Mortgagee within ten (10) days following written

demand therefor for any and all loss, damage, reasonable expense or costs, including without limitation reasonable attorney's fees arising out of or incurred in connection with any such suit, action or proceeding.

2.16 TRANSFER OF THE PROPERTY. Except as otherwise expressly set forth in this Mortgage, Mortgagor shall not, whether voluntarily, involuntarily or by process of law, sell, convey, transfer, ground lease, encumber or in any other manner change the ownership of or title to all or any portion of the Property; nor consent to, create, permit or allow any encumbrance, subordinate mortgage, pledge or lien, or any other debt, charge or lien against the Property whatsoever; nor cause, permit or allow any change of the controlling interests in the Mortgagor or of any entity which now constitutes a member of Mortgagor, without in any case the prior written consent of Mortgagee. Notwithstanding the foregoing, however, the members of the Borrower and downstream members, shareholders, partners or affiliates shall be permitted to transfer membership interests with each other and to otherwise perform the transactions contemplated by the Operating Agreement of the Borrower.

2.17 ENVIRONMENTAL COMPLIANCE.

(A) Hazardous Materials. As used herein, the term "Hazardous Materials" shall mean any substance (i) which is or becomes defined as a "hazardous waste", "hazardous substance", pollutant or contaminant under any applicable federal, state, or local law, rule or regulation ("Governmental Requirement") relating to the protection of human health or the environment including, without limitation, the Comprehensive Environmental Response, Compensation and Liability Act (42 U.S.C. Section 9601, et. seq.), and the Resource Conservation and Recovery Act (42 U.S.C. Section 6903, et. seq.), (ii) the presence of which requires investigation or remediation under any Governmental Requirement relating to the protection of human health or the environment; (iii) which is toxic, explosive, corrosive, flammable, infectious, radioactive, carcinogenic, mutagenic, otherwise hazardous and is or may become regulated by any federal, state or local governmental authorities ("Governmental Authority"); (iv) the presence of which on the Property causes or threatens to cause a nuisance upon the Property or to adjacent properties, or poses or threatens to pose a hazard to the health or safety of persons on or about the Property or adjacent properties; (v) the presence of which on adjacent properties could constitute a trespass thereon by Mortgagor; or (vi) which contains gasoline, diesel fuel, other petroleum hydrocarbons, asbestos, asbestos-containing materials, formaldehyde, or polychlorinated biphenols.

(B) Representations. Except and unless otherwise expressly set forth in writing by Mortgagor to Mortgagee, which writing shall not be deemed to have been agreed to by Mortgagee unless countersigned by an officer of Mortgagee, Mortgagor represents and warrants to Mortgagee that (a) the Property is free from Hazardous Materials in violation of any Governmental Requirement and does not constitute an environmental hazard of any type under any Governmental Requirement; (b) there are no surface impoundments, lagoons, waste piles, land fills, injection wells, underground storage areas, or other manmade facilities thereat which have contained or accommodated Hazardous Materials; (c) except in accordance with applicable Governmental Requirements, neither Mortgagor

nor any third parties have developed, discharged, buried, released or otherwise placed Hazardous Materials on the Property, including the soil, surface water or ground water thereof; (d) there are no buried, partially buried, above ground or other tanks, storage vessels, drums or containers located on the Property; (e) there is no evidence of any prior or present release of Hazardous Materials onto or into the Property; (f) there has been no treatment, storage, disposal, discharge or other type of release of Hazardous Materials onto property adjacent to or near the Property which may constitute a risk of contamination of the Property or of surface or ground water flowing to the Property; and (g) any existing or proposed operations on the Property, including construction of any improvements thereon and materials to be generated therewith, do not and will not generate Hazardous Materials. To the best of Mortgagor's knowledge, no inspections, audits, or investigations have been commissioned or conducted with respect thereto by any prior owner, third party or governmental authority. Mortgagor has received no judicial or administrative complaint or other formal notice with respect to any Hazardous Materials on the Property. All environmental permits and licenses required pursuant to any Governmental Requirements with respect to the Property and the conditions thereon have been obtained and are currently valid, or would not normally be required at this time and may be obtained in the ordinary course of business, including without limitation licenses and permits with respect to storage, treatment, and disposal of all waste products. The construction and operation of the Improvements on the Property does not and will not violate any Governmental Requirements.

(C) Environmental Compliance. Except and unless otherwise expressly set forth in writing by Mortgagor to Mortgagee, which writing shall not be deemed to have been agreed to by Mortgagee unless countersigned by an officer of Mortgagee, Mortgagor shall not, and shall not permit Mortgagor's agents, employees, contractors or tenants to generate, manufacture, refine, transport, treat, store, handle, dispose of, release, discharge, produce or process any Hazardous Materials at or on the Property. Mortgagor, and its agents, employees, contractors and any other persons under its control shall comply with all Governmental Regulations regarding environmental protection, shall keep the Property free and clear of any liens imposed pursuant to any Governmental Requirements, and shall conduct and complete all investigations, studies, sampling and testing, and all remedial, removal and other actions necessary to clean up and remove any such hazardous materials on, from or affecting the Property pursuant to any such Governmental Requirements. Mortgagor shall indemnify, defend and hold harmless Mortgagee from and against all liens, claims, damages, actions, causes of action, loss, damages, liabilities, costs and expenses whatsoever, including without limitation, penalties and reasonable attorney's fees, incurred or suffered by or asserted against Mortgagee, for, with respect to or as a direct or indirect result of the presence on or under, or the escape, seepage, leakage, spillage, discharge, emission or release upon or from the Property of any such Hazardous Materials, regardless of whether the same may be caused by or due to the violation of any Governmental Requirements or any covenant or representation contained in any of the Loan Documents with respect thereto. The foregoing covenants, provisions and indemnities shall survive any foreclosure, deed in lieu of foreclosure, or other realization by Mortgagee on this Mortgage which may result

in acquisition by Mortgagee or conveyance by Mortgagee of fee title or any other lesser right, title or interest, in or to the Property.

(D) Inspection and Remediation. Mortgagor hereby grants, and will cause any tenants of space within the Property to grant to Mortgagee, its agents, attorneys, employees, consultants and contractors, an irrevocable license and authorization to enter upon and inspect the Property at reasonable times and upon reasonable notice and to perform or cause to be performed, at Mortgagor's sole expense, such environmental tests and assessments, including without limitation subsurface testing, soils and ground water testing, and other tests which may physically invade the Property or any improvements thereon, as Mortgagee in its sole discretion, determines is necessary or advisable in order to protect its interest hereunder, with the further right, but not the obligation, to conduct or to take such other actions as Mortgagee in its sole discretion deems necessary or advisable to clean up, remediate, encapsulate, remove, resolve or minimize the impact of, or otherwise deal with, any Hazardous Materials thereat or any breach of any Governmental Regulations pertaining thereto which, in the sole opinion of Mortgagee, could jeopardize its security under this Mortgage. Except as otherwise expressly provided in this Section, all costs and expenses whatsoever incurred by Mortgagee for good cause in its sole reasonable judgment in connection with its exercise of the foregoing rights shall be secured by this Mortgage and shall be payable by Mortgagor upon demand. Notwithstanding the foregoing, Mortgagee shall have no obligation to enter upon the Property, to test or inspect the same, or take any actions authorized hereinabove with respect thereto.

ARTICLE THREE DEFAULTS AND REMEDIES

3.1 EVENTS OF DEFAULT. The term "Event of Default," wherever used in this Mortgage, shall mean any one of the following events:

- (A) Failure by Mortgagor to pay when due any installment of principal and/or interest or any other sums due under the Note within any grace period set forth therein;
- (B) Failure by Mortgagor or any other party thereto, to perform, keep or observe any other covenant, condition, warranty, representation, obligation or agreement set forth in the Note, this Mortgage or any of the Loan Documents, which failure is not cured to Mortgagee's satisfaction within thirty (30) days following the Effective Date of Notice to Mortgagor from Mortgagee specifying such breach;
- (C) Falsity in any material respect of any representations or warranties contained in the Note, this Mortgage or any of the Loan Documents as of the date made;
- (D) The occurrence of any other event which is defined in any of the Loan Documents as an event of default thereunder, with a default thereunder remaining uncured for such cure period as is set forth therein or, if no cure period is set forth therein, if such default

thereunder remains uncured thirty (30) days following the Effective Date of Notice to Mortgagee specifying such event of default to constitute a default hereunder;

(E) Any of the following actions by, against or involving Mortgagor or any Guarantor or endorser of all or any part of the Obligations: (1) filing of a voluntary petition in bankruptcy; (2) adjudication as a bankrupt or insolvent; (3) the filing of any petition or answer seeking or acquiescing in any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief for itself under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency, or other relief for debtors; (4) any voluntary petition for, consent to or acquiescence in the appointment of any trustee, receiver or liquidator for Mortgagor, such Guarantor, such endorser, or of all or any part of the Property or of the rents, issues, royalties, income or profits therefrom; (5) the making of any general assignment for the benefit of creditors; (6) the admission in writing of its inability to pay its debts when due; (7) the entry by a court of competent jurisdiction of any order, judgment or decree approving a petition filed against Mortgagor, such Guarantor, or such endorser seeking any reorganization, arrangement, composition, readjustment, liquidation, dissolution or similar relief under any present or future federal, state or other statute, law or regulation relating to bankruptcy, insolvency or other relief for debtors, which order, judgment or decree remains unvacated and unstayed for an aggregate of sixty (60) days from the date of entry thereof; or (8) the appointment of any trustee, receiver or liquidator of Mortgagor, such Guarantor, such endorser, or of all or any substantial part of the Property or of any or all of the rents, revenues, issues, earnings, profits or income thereof, without the prior written consent of Mortgagee, which appointment shall remain unvacated or unstayed for an aggregate of sixty (60) days from the date of appointment; or

(F) The occurrence of any event of default under any other loan agreement, loan document, deed of trust, mortgage, security agreement, promissory note, security instrument of any kind, financing arrangement or any other loan or financing arrangement to which Mortgagor and Mortgagee are a party.

3.2 REMEDIES UPON DEFAULT. Upon the occurrence of any Event of Default, Mortgagee shall have the right to immediately exercise any and all of the following rights and remedies without further notice to Mortgagor, subject only to the provisions of Section 7.3 of the Loan Agreement:

(A) Right to Perform for Mortgagor. Mortgagee may, but shall not be obligated to, perform any covenant, duty or Obligation of Mortgagor hereunder, the expense or payment of which shall be added to and become a part of the Obligations which Mortgagor hereby covenants and agrees to pay to Mortgagee immediately upon demand, with interest at the "Default Rate", if any, as set forth in the Note;

(B) Right to Accelerate. Mortgagee shall have the right to accelerate and declare the Note and all outstanding Obligations to be immediately due and payable in full;

(C) Right to Foreclose. Mortgagee shall have the right to foreclose this Mortgage and to have a judicial sale of the Property, as an entirety, or judicial sales of such portions thereof as Mortgagee shall in its sole discretion determine, in separate lots or parcels, whose configuration and sizes shall be determined by Mortgagee in its sole discretion, with any such sale(s) to be under the judgment or decree of a Court of competent jurisdiction. Mortgagee shall retain the right at all times to bid upon and purchase the Property, or any portion thereof, at such sale and, upon compliance with such bid, to hold, retain, possess and dispose of the Property or the portion thereof so acquired in its own absolute right without further accountability of any nature to Mortgagor or any other persons whomsoever. Mortgagee shall further, at its option, be authorized to foreclose this Mortgage subject to the rights of any tenants of the Property, and the failure to name any such tenants as parties defendant to any such foreclosure proceedings and to foreclose their rights will not be, nor be asserted by Mortgagor or any other persons to be, a defense to any proceedings instituted by Mortgagee to collect the sums secured hereby or to collect any deficiency remaining unpaid after the foreclosure sale of the Property. Mortgagee shall have the right to credit the amount of its bid, should it be the successful bidder on the Property or any portion thereof, upon the unpaid outstanding amount of the Obligations in lieu of a cash payment therefor;

(D) Right to Sue for Enforcement of Obligations. In addition to all rights of foreclosure set forth hereinabove and with or without entry into or taking possession of the Property as hereinafter provided, Mortgagee shall have the right to enforce payment, performance and/or observance of any of the Obligations by instituting any other proceedings at law or in equity (including specific performance) for payment, observance or performance of the Obligations or of any other terms or conditions set forth in the Note, this Mortgage or in the Loan Documents, including without limitation the right to seek judgment for the recovery of all outstanding Obligations either before, after or during the pendency of or as a part of any actions for foreclosure or enforcement of this Mortgage or any Loan Documents, without any impairment of the lien of this Mortgage or the rights, powers and remedies conferred upon Mortgagee, or the foreclosure of the lien hereof;

(E) Right to Appointment of Receiver. Mortgagee, upon application to a court of competent jurisdiction, shall have the absolute right to the appointment of a receiver of the Property and of the income, rents, issues and profits thereof, without regard to the value or occupancy of the Property and without any showing of any insolvency, fraud, or mismanagement on the part of Mortgagor, and without the necessity of filing any judicial or other proceeding other than the proceeding for the appointment for such receiver. Such receiver shall have all powers granted to Mortgagee herein to enter upon and operate the Property, together with any other powers available to receivers by law and as may be conferred by the Court which appoints such receiver. All expenditures of any nature incurred in connection with such receivership shall be deemed to be a part of the Obligations and shall be secured by this Mortgage;

(F) Rights to Collect Rents and Other Income. Mortgagee shall have the right to collect and receive all income, revenues, rents, security deposits and other deposits, and

issues and profits of or attributable to the Property, and operations thereon, and any leases thereof, with or without entry upon or taking possession of the Property as provided hereinafter;

(G) Right to Enter, Take Possession of, and Operate the Property. Mortgagor shall, immediately upon demand from Mortgagee, forthwith surrender to Mortgagee actual possession of the Property. To the extent permitted by law, Mortgagee, itself or through its agents or representatives, may enter upon, take and maintain (subject to any rights of tenants) exclusive possession of, or require Mortgagor to deliver immediate possession of the Property, or any part thereof, including without limitation all cash, escrows, insurance proceeds, condemnation proceeds, security deposits, income, rents, issues, profits, documents, instruments, books, records, papers, and accounts of Mortgagor in connection herewith or attributable to the Property, with all costs and expenses thereof (including without limitation all costs, expenses and attorneys fees incurred in connection with any suit or proceeding which may be brought by Mortgagee to obtain immediate possession of the Property as aforesaid) to be a part of the Obligations secured by this Mortgage. Upon such entry and taking possession of the Property, Mortgagee, in its own name or in the name of Mortgagor, may hold, store, use, operate, manage, insure, control and maintain the Property, conduct the business thereof, make repairs, replacements, alterations and improvements to the Property and any portion thereof, and enter into agreements with others to exercise any of the foregoing powers, all as Mortgagee may deem necessary or desirable;

(H) Suits to Protect the Property. Mortgagee shall have the right to institute and maintain any suits and proceedings which it may deem advisable for the purpose of preventing any impairment of the Property by any acts which may be unlawful or in violation of this Mortgage, preserving and protecting its interest in the Property, or restraining the enforcement of or compliance with any legislation or governmental regulations, rules or orders, the enactment or enforcement of which may impair the security hereunder or Mortgagee's interest herein;

(I) Rights of a Secured Party. Mortgagee shall have, in addition to all other rights and remedies hereunder, the remedies of a secured party under the Uniform Commercial Code as in effect in the State of South Carolina including, without limitation, the right and power to repossess, retain and sell, at public or private sale or sales, or otherwise dispose of, lease or utilize the Collateral, or any part thereof, or any proceeds and products thereof. To the extent permitted by law, Mortgagee shall be entitled to take immediate and exclusive possession of the Collateral or any part thereof, and with or without judicial process, enter upon the Property and remove the Collateral therefrom without being deemed guilty of trespass and without liability for damages resulting therefrom. Mortgagee shall have the right to require Mortgagor to assemble the Collateral and make the same available to Mortgagee for any purposes allowable hereunder at the Property or at such other place to be designated by Mortgagee that is reasonably convenient to Mortgagee and Mortgagor. Mortgagee shall be entitled to hold, maintain, preserve and prepare the Collateral for sale; control, manage and lease the Collateral, either separately or in conjunction with the Property; collect all rents and income from

the Collateral and apply the same to the Obligations in such order of priority as Mortgagee shall determine. Mortgagee without removal may also render the Collateral unusable, or repair and renovate the same, and dispose of the Collateral on the Property. Mortgagor expressly waives any right or requirement for election of remedy by Mortgagee existing after default hereunder, except that Mortgagee shall give Mortgagor reasonable notice of the time and place of any public sale thereof and of the time after which any private sale or any other intended disposition thereof is to be made. The requirement of reasonable notice shall be met if such notice is mailed to Mortgagor in accordance with the provisions set forth hereinafter at least ten (10) days before the time of the intended sale or disposition. Any person, including both Mortgagor and Mortgagee, shall be eligible to purchase any part or all of the Collateral at any such sale or disposition. The proceeds realized from such disposition, after deduction for the expenses of retaking, holding, storing, maintaining, leasing, repairing, preparing for sale, selling or the like, including reasonable attorney's fees and costs incurred therewith by Mortgagee, shall be applied to payment of the Obligations in such order of priority as Mortgagee shall determine;

(J) Foreclosure of Personal Property with Real Property. Notwithstanding anything contained herein to the contrary, Mortgagee may proceed to foreclose hereunder as to all Collateral covered hereby or, at Mortgagee's election, Mortgagee may exercise its right to foreclose with respect to the Collateral pursuant to Subsection (C) hereof as a part of a single action to foreclose upon the Land, Improvements, the Collateral, and any other components of the Property covered hereby, in which case the provisions of the Uniform Commercial Code (and Subsection (I) hereof) shall not apply or shall be deemed to have been fulfilled by virtue of the foreclosure action; and

(K) Other Rights and Remedies. Mortgagee shall have the right to exercise any other rights, remedies and powers granted to it under the Loan Documents or otherwise existing at law or in equity.

3.3 WAIVER OF REDEMPTION. To the fullest extent permitted by law, Mortgagor, for itself and all who may at any time claim through or under it, hereby waives and releases all benefits of any applicable law exempting the Property from attachment, levy or sale on execution or providing for stay of execution, exemption from civil process, redemption or extension of time for payment, or permitting or requiring the assets comprising the Property to be marshaled; Mortgagor agrees that Mortgagee's right to foreclose the Property hereunder shall include the right to sell the Property in one or more parcels or in its entirety.

3.4 APPLICATION OF PROCEEDS. Any proceeds of any nature and kind derived from the exercise of any remedy conferred herein following occurrence of an Event of Default shall be applied to the Obligations in such order of priority as is required by law or otherwise as Mortgagee shall determine.

3.5 DISCONTINUANCE OF PROCEEDINGS. Mortgagee at its sole option for any reason whatsoever, shall have the right to discontinue at any time any proceedings for enforcement of this Mortgage or any Loan Document, in which case Mortgagor and Mortgagee shall be restored

to their former positions and rights hereunder, and all rights, powers and remedies of Mortgagee shall continue as if no such proceeding had occurred or had been taken.

3.6 NO WAIVER. No delay or failure by Mortgagee to exercise any right or remedy conferred hereunder upon occurrence of an Event of Default shall be deemed a waiver by Mortgagee of any future right to exercise such right or remedy or any other right or remedy provided herein; nor shall any waiver of any Event of Default be deemed to be a waiver of any other Event of Default or of the future occurrence of the same Event of Default.

3.7 NATURE OF REMEDIES. No right, power or remedy conferred upon or reserved to Mortgagee by the Note, this Mortgage or any of the Loan Documents is exclusive of any other right, power or remedy. Each right, power and remedy is cumulative and concurrent; shall be in addition to any other right, power and remedy under the Note, this Mortgage and the Loan Documents and now or hereafter existing at law, in equity or by statute; and may be pursued separately, successively or concurrently against Mortgagor, any Guarantors, or any endorsers of any of the Obligations, and/or the Property, at the sole discretion of Mortgagee.

ARTICLE FOUR MISCELLANEOUS

4.1 USURY. Mortgagor and Mortgagee intend at all times to comply with all applicable usury and similar laws, if any. Should any such laws, whether now or hereafter existing at any time render usurious any provisions of the Note, this Mortgage or any of the Loan Documents, then all excess amounts theretofore collected by Mortgagee shall be refunded to Mortgagor or applied to the reduction of the unpaid outstanding principal balance of the Note, with the Note thereupon be reformed, and the amounts collectable thereafter to be reduced to permit the recovery by Mortgagee of the fullest amount allowable by law and otherwise called for in the Note.

4.2 SURVIVAL. All representations, warranties and covenants made herein, in the Note, and in the Loan Documents shall survive the execution and delivery hereof and shall remain in full force and effect until complete payment and discharge of the Obligations.

4.3 SEVERABILITY. Unenforceability or invalidity for any reason of any provision of this Mortgage, the Note or any of the Loan Documents shall not limit or impair the operation, validity or enforceability of any other provision of this Mortgage, the Note or the Loan Documents.

4.4 NOTICES. All notices, requests and demands to or upon the respective parties made or required to be made pursuant to the terms of the Note, this Mortgage or any of the Loan Documents shall be in writing. The Effective Date of Notice shall be the date upon which such notice shall have been personally delivered (including personal delivery by Federal Express or other comparable overnight courier service) or two (2) business days after the date of postmark of any notice deposited in the United States Mail, registered or certified, postage prepaid, return receipt requested, addressed to Mortgagee or Mortgagor at the address set forth herein, or at such other addresses may hereafter be designated in writing.

4.5 GOVERNING LAW. This Mortgage and all of the Loan Documents shall be governed and construed under and in accordance with the internal laws of the State of South Carolina without regard to any choice of law or conflict of law doctrines recognized therein.

4.6 CONSENT TO JURISDICTION. Mortgagor, by its execution hereof, agrees that any actions or proceedings with respect to this Mortgage shall be subject to the exclusive jurisdiction of and shall be brought in the Courts of the State of South Carolina, to which jurisdiction Mortgagor, by its execution hereof, hereby irrevocably consents. Mortgagor irrevocably waives any objection, including without limitation any objection to the laying of venue based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction. Nothing herein shall affect the right of Mortgagee to serve process in any manner permitted by law nor shall limit the right of Mortgagee to bring proceedings against another party to any of the Loan Documents in the courts of any other jurisdiction.

4.7 HEIRS, SUCCESSORS AND ASSIGNS. This Mortgage shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns. It is expressly recognized and agreed by Mortgagor that Mortgagee may assign this Mortgage and the Loan Documents, or interests therein, to other persons, firms or entities and that, in such event, all provisions of this Mortgage and the Loan Documents shall continue in full force and effect notwithstanding such assignments.

4.8 CAPTIONS. The headings and captions in this Mortgage are included only as a matter of convenience and for reference, and in no way define, limit, extend or describe the scope of this Mortgage or the intent of any other provision hereof.

[SIGNATURE PAGE TO FOLLOW]

EXHIBIT "A"

All those certain pieces, parcels and tracts of land situate, lying and being in the County of Greenville, State of South Carolina, as follows:

Tract 1 (Wilkinson Parcel):

Beginning at a point located in the centerline intersection of Moody Bridge Road (S-23-101 - 66' right-of-way) and Talley Bridge Road S-23-124 - 66' right-of-way); thence along the centerline of Moody Bridge Road, N 61-18-16 W for 289.35 feet to a point; thence along a curve concave to the east having a radius of 267.57 feet, an arc length of 199.83 feet and a chord bearing and distance of N 39-54-32 W for 195.22 feet to a point; thence N 12-10-06 W for 224.05 feet to a point; thence N 15-30-03 W for 84.26 feet to a point; thence N 31-24-52 W for 106.39 feet to a point; thence along the common line of Vans Camp Limited Partnership (Deed Book 1908, page 1065), N 52-26-08 E for 1451.55 feet to an iron pin, crossing an iron pin at 49.03 feet; thence N 08-23-45 E for 659.15 feet to an iron pin; thence along the common line of Vinson (Deed Book 1570, page 44), S 82-06-09 E for 180.24 feet to a nail at stone; thence along the common line of Kickasola (Deed Book 1620, page 891), S 34-21-21 E for 488.90 feet to an iron pin; thence N 80-06-59 E for 1453.62 feet to a stone; thence N 79-36-39 E for 1537.43 feet to an iron pin; thence along the common line of Clawson (Deed Book 1983, page 953), S 10-59-04 E for 1820.24 feet a spike in the centerline of Moody Bridge Road, crossing an iron pin 855.18 feet; thence along the centerline of Moody Bridge Road, S 79-19-07 E for 333.72 feet to a nail found; thence along a curve concave to the north having a radius of 739.01 feet, an arc length of 583.18 feet and a chord bearing and distance of N 76-00-39 E for 568.17 feet to a point; thence N 47-45-07 E for 233.99 feet to a point; thence along a curve concave to the south having a radius of 442.20 feet, an arc length of 353.32 feet and a chord bearing and distance of N 75-56-33 E for 344.00 feet a nail found; thence S 81-10-05 E for 302.27 feet to a nail found; thence leaving said centerline along the common line of Cotwool Manufacturing Company (Deed Book 491, page 185), S 07-43-22 E for 788.43 feet to a concrete monument, crossing an iron pin at 34.45 feet; thence S 14-28-18 W for 901.78 feet to a concrete monument; thence S 86-15-13 W for 900.11 feet to a concrete monument; thence S 10-57-03 W for 1980.06 feet to a concrete monument; thence S 74-33-16 W for 1378.88 feet to a concrete monument; thence S 06-02-35 E for 1658.84 feet to an iron pin; thence S 68-50-35 E for 591.96 feet to a concrete monument; thence along the common line of Forbis (Deed Book 2208, page 1559), S 69-09-45 E for 2199.96 feet to a stone; thence along the common line of Moore (Deed Book 1662, page 690) and Thompson (Deed Book 2215, page 1608), S 04-21-42 E for 899.97 feet to a stone, crossing an iron pin at 466.29 feet; thence along the common line of Hart (Deed Book 1570, page 310), S 41-34-12 W for 1255.97 feet to an iron pin; thence along the common line of Moore (Deed Book 1662, page 690), S 41-03-18 W for 615.86 feet to an iron pin; thence along the common line of Marietta Baptist Camp (Deed Book 676, page 182), S 58-10-34 W for 395.11 feet to a stone; thence along N 58-53-33 W for 1349.50 feet to an iron pin; thence N 59-31-56 E for 622.91 feet to an iron pin; thence N 36-28-42 W for 1374.74 feet a stone; thence S 71-02-52 W for 1421.72 feet to an iron pin; thence along the common line of McGee (no deed), N 79-44-15 W for 1079.63 feet to a stone; thence along the common line of Borrow (no deed), N 20-09-09 W for 2218.15 feet to an iron pin; thence N 56-51-48 W for 308.12 feet to an iron pin; thence along the common line of Wood (Deed Book 1517-55) and Outlaw (Deed Book 2202, page 920), S 73-56-

36 W for 1423.48 feet to an iron pin crossing an iron pin at 219.66 feet; thence along the common line of Outlaw and Tankersley (Deed Book 1783, page 681), S 74-03-38 W for 726.20 feet to an iron pin; thence along the common line of Barnett (Deed Book 2249, page 1052), S 74-00-01 W for 331.27 feet to an iron pin; thence S 74-00-11 W for 780.45 feet to an iron pin; thence S 54-49-57 W for 1495.11 feet to an iron pin; thence along the common line of Brown (Deed Book 2074, page 1565), S 54-44-16 W for 2000.39 feet to an iron pin; thence N 46-17-45 W for 2137.82 feet to a stone; thence S 45-49-49 W for 1223.63 feet to an iron pin; thence along the common line of Woods (Deed Book 2211, page 1439), N 19-29-05 W for 83.99 feet to an iron pin; thence South Saluda Woods, LP (Deed Book 2211, page 1439), N 10-18-20 E for 807.36 feet to a stone, crossing an iron pin at 171.20 feet and 692.43 feet; thence N 16-05-15 E for 404.26 feet to a stone; thence N 19-24-26 E for 177.97 feet to a stone; thence N 27-19-49 E for 183.71 feet to a stone; thence N 06-28-24 W for 208.87 feet to a stone; thence N 18-15-58 E for 148.81 feet to a stone; thence N 30-58-02 E for 332.60 feet to a stone; thence N 59-56-14 E for 136.51 feet to a stone; thence S 79-52-24 E for 175.36 feet to a nail; thence N 81-11-44 E for 212.15 feet to a stone; thence N 18-07-59 E for 205.25 feet to a stone; thence N 30-40-29 E for 189.42 feet to a stone; thence N 51-23-30 E for 408.56 feet to a stone; thence N 69-13-25 E for 184.10 feet to a stone; thence N 64-35-36 E for 245.17 feet to a stone; thence N 67-19-00 E for 212.15 feet to a stone; thence S 59-55-11 E for 133.96 feet to a stone; thence S 89-34-38 E for 222.07 feet to a stone; thence N 65-29-54 E for 173.65 feet to an iron pin; thence N 81-50-05 E for 173.65 feet to an iron pin; thence along the common line of Crowe (Deed Book 355, page 145), S 57-51-39 E for 165.43 feet to an iron pin; thence S 40-01-27 E for 263.11 feet to a stone; thence S 50-54-38 E for 156.51 feet to an iron pin; thence N 82-52-40 E for 949.45 feet to an iron pin; thence N 41-14-55 E for 340.94 feet to an iron pin; thence N 45-51-03 E for 296.61 feet to an iron pin; thence N 07-18-30 E for 124.31 feet to an iron pin; thence N 08-45-34 W for 1906.90 feet to a point located in the centerline of the South Saluda River, crossing an iron pin at 1849.82 feet; thence along said centerline, S 59-28-53 E for 267.56 feet; thence N 57-28-25 E for 107.61 feet; thence N 81-32-24 E for 117.08 feet; thence S 80-03-09 E for 117.06 feet; thence N 80-57-19 E for 90.51 feet; thence N 03-39-48 W for 82.96 feet; thence N 13-29-12 W for 148.70 feet; thence N 10-47-29 E for 130.56 feet; thence N 07-48-29 W for 94.64 feet; thence N 21-22-04 E for 64.69 feet; thence S 82-13-48 E for 83.23 feet; thence S 17-00-50 E for 84.11 feet; thence S 38-28-01 E for 53.10 feet; thence N 76-20-11 E for 32.63 feet; thence N 51-37-36 E for 88.50 feet; thence N 63-07-50 E for 166.49 feet; thence S 77-34-42 E for 99.31 feet; thence S 83-22-57 E for 113.60 feet; thence N 87-10-18 E for 147.39 feet; thence S 72-37-56 E for 147.97 feet; thence S 62-59-39 E for 123.80 feet; thence S 56-49-22 E for 139.20 feet; thence S 27-10-11 E for 123.60 feet; thence S 15-34-43 E for 121.45 feet; thence S 01-15-09 E for 50.69 feet; thence N 78-12-13 E for 114.72 feet; thence N 60-36-32 E for 56.39 feet; thence N 51-25-19 E for 148.88 feet; thence N 39-07-32 E for 184.80 feet; thence N 24-37-04 E for 186.18 feet; thence N 40-31-49 E for 153.96 feet; thence N 50-38-44 E for 110.25 feet; thence N 30-18-26 E for 160.55 feet; thence N 37-40-39 E for 111.59 feet; thence N 30-07-43 E for 343.82 feet to a point located in the centerline of Talley Bridge Road and South Saluda River; thence along the centerline of Talley Bridge Road, N 85-40-39 E for 219.39 feet to a point; thence along a curve concave to the south having a radius of 959.75 feet, an arc length of 320.64, and a chord bearing and distance of S 86-41-09 E for 319.15 feet to a point; thence along a curve concave to the north having a radius of 525.97 feet, an arc length of 226.08 feet and a chord bearing and distance of S 89-25-43 E for 224.34 feet to a point; thence N 76-13-35 E for 247.15 feet to a point; thence along a curve concave to the south having a radius of 604.00 feet, an arc length of 389.61 feet

CLT 1060256v1

and a chord bearing and distance of S 88-54-12 E for 382.89 feet to the Point of Beginning. Said tract contains 1,662.62 acres, more or less.

Tract 2 (Taylor Parcel):

Beginning at an iron pin located on the southern right-of-way of SC Hwy. 11 and 276 (Geer Highway – 66' total right-of-way) and being the common corner of Skahen (Deed Book 1730, page 661); thence along said right-of-way, N 89-28-47 E for 100.00 feet to an iron pin; thence S 88-48-13 E for 100.00 feet to an iron pin; thence S 87-44-47 E for 272.25 feet to a point; thence leaving said right-of-way along the common line of Vinson (Deed Book 1570, page 44), S 03-20-52 E for 580.91 feet to an iron pin crossing an iron pin at 1.71 feet; thence along the common line of Van's Camp Limited Partnership (Deed Book 1908, page 1065), N 82-00-44 W for 218.26 feet to an iron pin; thence S 83-33-48 W for 100.94 feet to an iron pin; thence S 83-36-56 W for 101.05 feet to an iron pin; thence along the common line of Skahen, N 08-40-13 W for 590.78 feet to the Point of Beginning. Said tract contains 5.82 acres, more or less.

Tract 3 (Vinson Parcels):

Beginning at a point located on the southern right-of-way of SC Hwy. 11 and 276 (Geer Highway – 66' total right-of-way) and being the common corner of Taylor (Deed Book 1429, page 760); thence along said right-of-way, S 87-58-24 E for 178.91 feet to an iron pin; thence S 87-13-10 E for 99.73 feet to a point; thence leaving said right-of-way along the common line of McCarson (Deed Book 2229, page 489), S 02-45-30 E for 499.46 feet to an iron pin crossing an iron pin at 4.80 feet; thence along the common line of Kickasola, Jr. (Deed Book 1620, page 891), S 76-16-11 W for 99.52 feet to an axle; thence S 05-22-40 E for 71.32 feet nail at stone; thence along the common line of Wilkinson, Jr. (Deed Book 795, page 443), N 82-06-09 W for 180.24 feet to an iron pin; thence along the common line of Taylor (Deed Book 1429, page 760), N 03-20-52 W for 580.91 to the Point of Beginning crossing an iron pin at 579.20 feet. Said tract contains 3.55 acres, more or less.

The above parcels being the same premises conveyed to Tall Pines Investments, LLC by the following deeds: 1) from George R. Wilkinson, Jr. and Mildred R. Wilkinson dated July 20, 2007 and recorded simultaneously herewith; 2) from David Vinson dated July 20, 2007 and recorded simultaneously herewith; and 3) from William D. Taylor and Nannie L. Taylor dated July 20, 2007 and recorded simultaneously herewith.

CLT 1060256v1

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2007073798 Book: MO 4820 Page: 1117-1141
July 24, 2007 01:59:15 PM
Timothy J. Henney

EXHIBIT "F"

Spreader Agreement



2008011997

MOD/AGREE
5 PGS

Book.MO 4914

Page:1186-1190

February 07, 2008 10 43 48 AM

Rec \$10 00

Cnty Tax \$0 00

State Tax \$0 00

FILED IN GREENVILLE COUNTY, SC

LOAN MODIFICATION AND SPREADER AGREEMENT

This **LOAN MODIFICATION AND SPREADER AGREEMENT** (the "Amendment") is made and entered into as of this 6th day of February, 2008, by and between **TALL PINES INVESTMENTS, LLC**, a South Carolina limited liability company ("Borrower") and **CAROLINA FIRST BANK** ("Lender") and pertains to that certain outstanding loan in the original maximum principal sum of \$12, 024,124.00 (the "Loan") from Lender to Borrower secured by the following documents (collectively, the "Security Instruments"):

1. Mortgage, Security Agreement, and Fixture Financing Statement from Borrower to Lender dated as of July 24, 2007, and recorded in the Office of the Register of Deeds for Greenville County in Book 4820 at Pages 1117 through 1141 (the "Mortgage");
2. Assignment of Contracts, Contract Rights, Leases, Rents and Profits from Borrower to Lender dated as of July 24, 2007, and recorded in the Office of the Register of Deeds for Greenville County in Book 2280 at Pages 658 through 667 (the "Assignment"); and
3. UCC-1 Financing Statement identifying Borrower as debtor and Lender as secured party, filed in the Office of the Register of Deeds for Greenville County in Book 2007 at Pages 1464 through 1470 (the "Fixture Filing").

NOW THEREFORE, in consideration of the mutual covenants and conditions set forth hereinafter, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, the parties hereto hereby amend and spread the lien of the Mortgage and the Security Instruments, effective as of the date hereof, as follows:

1. In order to further secure unto Lender, its successors and assigns, and to enforce the payment, performance and observance of the Obligations set forth in the Mortgage and the Security Instruments and the observance of all other terms and provisions of the Security Instruments, the receipt and sufficiency of which are hereby acknowledged, Borrower has granted, bargained, hypothecated, mortgaged, sold, transferred, conveyed, assigned, warranted and confirmed and by these presents does hereby irrevocably grant, bargain, hypothecate, mortgage, sell, transfer, convey, assign, warrant and confirm unto Lender, its successors and assigns, all of Borrower's rights, title and interest in and to the Additional Property more particularly described on Exhibit "A" attached hereto and incorporated herein by reference, together with and including a first security interest in that portion of the Additional Property comprising the Collateral (as defined in the Mortgage), **TO HAVE AND TO HOLD** the Additional Property, all parts thereof, and all and singular the rights, hereditaments and appurtenances appertaining or belonging thereto unto Lender, its successors and assigns, to its own use and benefit forever, subject, however, to the terms and conditions of the Mortgage, the Security Instruments, and this Amendment, with the same effect as if the Additional Property was included as a part of the Property originally encumbered by the Mortgage and the Security Instruments. Accordingly, the liens of the Mortgage and the Security Instruments shall also constitute liens upon the Additional Property, as a result of which the Mortgage and the Security

Instruments shall each constitute a single consolidated lien encumbering the Property previously described therein and the Additional Property as granted and conveyed by this Amendment. All references in the Security Instruments to the "Property" shall henceforth be deemed to include and refer to the Property described therein not heretofore released, together with the Additional Property. All references to the Mortgage, to the Assignment and/or to the Fixture Filing that may be contained therein or in any other documents evidencing, securing or otherwise pertaining to the Loan, shall henceforth be deemed to include the modifications set forth in this Amendment.

2. This Amendment shall amplify and modify as set forth herein, but shall not replace or constitute a novation of, the Mortgage or the Security Instruments, and shall not constitute in any respect a new obligation. Except as specifically modified and spread hereby, all terms, conditions and obligations set forth in the Mortgage and the Security Instruments shall continue in full force and effect in accordance with their terms, and are hereby expressly ratified, confirmed and reaffirmed by Borrower. The Mortgage and the Security Instruments are hereby modified only to the extent necessary to incorporate therein the terms hereof, and shall otherwise remain in full force and effect and unchanged.

3. This Amendment shall be binding upon and inure to the benefit of the parties hereto, and their respective successors, legal representatives and assigns.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, the undersigned hereby set its hand and seal as of the day and year first written above.

Signed, Sealed and Delivered
In The Presence Of:

BORROWER:

TALL PINES INVESTMENTS, LLC

Robert W. Spren
(Witness 1)
Dwight A. Menden
(Witness 2)

By: Terry Horak
Name: Terry Horak
Title: Manager

STATE OF SOUTH CAROLINA)
COUNTY OF Horry)

ACKNOWLEDGMENT

I, Jean Lupiano, a Notary Public in and for the County and State aforesaid, certify that Terry Horak personally appeared before me this day and acknowledged that he is the Manager of Tall Pines Investments, LLC, and that by authority duly given, the foregoing instrument was signed by him on its behalf.

WITNESS my hand and official stamp or seal this 5 day of February, 2008.

Jean Lupiano
Notary Public for SOUTH CAROLINA
My Commission Expires: 11-15-2014

IN WITNESS WHEREOF, the undersigned hereby sets its hands and seal as of the day and year first written above.

Signed, Sealed and Delivered
In The Presence Of:

LENDER:

CAROLINA FIRST BANK

Kathryn M. Harlf
(Witness 1)
[Signature]
(Witness 2)

By: [Signature]
Name: Matthew S. Waller
Title: Vice President

STATE OF SOUTH CAROLINA)
) CHARLESTON)
COUNTY OF GREENVILLE)

ACKNOWLEDGMENT

I, Robert H. Moring a Notary Public in and for the County and State aforesaid, certify that Matthew J. Waller personally appeared before me this day and acknowledged that he is the authorized Vice President of Carolina First Bank, and that by authority duly given, the foregoing instrument was signed by him on its behalf.

WITNESS my hand and official stamp or seal this 5th day of February, 2008.

[Signature]
Notary Public for South Carolina
My Commission Expires: February 14, 2012

EXHIBIT "A"
Legal Description of the Additional Property

ALL that certain piece, parcel, lot or tract of land, together with the buildings and other improvements thereon, if any, situate, lying and being in the County of Greenville, State of South Carolina, containing eighty-five (85) acres, more or less, and being shown and designated as "PART TMS 678.1-1-12.2 N/F JAMES E. BARNETT TRUSTEES PB 4L-193 85.00 ACRES" on that certain plat entitled "ALTA/ACSM LAND TITLE SURVEY FOR TALL PINES INVESTMENTS, LLC" prepared by Freeland & Associates, Inc., dated June 25, 2007, last revised July 23, 2007 and recorded July 24, 2007 in the Office of the Register of Deeds for Greenville County, South Carolina in Plat Cabinet 1045, at Page 41. Said property having such size, shape, location, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

DERIVATION: BEING the same premises conveyed to Tall Pines Investments, LC by deed of James E. Barnett, Marion Brett Tankersley, Michael Shay Tankersley and Marilyn S. Tankersley, as Trustees of the Barnett-Tankersley Trust, which deed is dated February 6, 2008, and recorded in the Office of the Register of Deeds for Greenville County, South Carolina simultaneously herewith.

TAX MAP PARCEL NUMBER(S): 0678-01-01-012-02

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2008011997 Book:MO 4914 Page:1186-1190
February 07, 2008 10:43:48 AM

Timothy J. Hanney

WCSR 3832831v2

EXHIBIT "G"

Mortgage Amendment



2010068914

AMEND/MTG
3 PGS
Page:2963-2965

5100116028

October 08, 2010 02:54 21 PM
Rec:\$8.00 Cnty Tax:\$0 00 State Tax:\$0 00

FILED IN GREENVILLE COUNTY, SC

AMENDMENT TO MORTGAGE

THIS AMENDMENT TO MORTGAGE (the "Amendment") is made and entered into as of this 31st day of July, 2008 by and between COPPER LAKES, LLC, a South Carolina limited liability company, formerly known as TALL PINES INVESTMENTS, LLC, whose address is c/o Burroughs & Chapin Company, Inc., 2411 North Oak Street, Suite 402, Myrtle Beach, South Carolina 29578-2095 ("Mortgagor") and CAROLINA FIRST BANK, whose address is 104 South Main Street, Greenville, South Carolina 29601 ("Mortgagee").

RECITALS:

WHEREAS, Mortgagee and Mortgagor entered into that certain Loan Agreement (the "Loan Agreement"), dated July 24, 2007, whereby Mortgagee, as lender, made certain financing available to Mortgagor in the maximum outstanding principal amount of up to \$12,024,124.00 (the "Loan");

WHEREAS, the Loan is evidenced by that certain Promissory Note, dated July 24, 2007, executed by Mortgagor to the order of Mortgagee in the maximum principal amount of \$12,024,124.00 (the "Note") and was secured by (i) that certain Mortgage, Security Agreement and Fixture Financing Statement, dated July 24, 2007 and recorded in Book 4820 at Page 1117 in the Office of the Register of Deeds for Greenville County, South Carolina (the "Mortgage"), and (ii) that certain Assignment of Contracts, Contract Rights, Deposits, Leases, Rents and Revenues, dated July 24, 2007 and recorded in Book 2280 at Page 658 in the Office of the Register of Deeds for Greenville County, South Carolina.

WHEREAS, Mortgagor and Mortgagee have agreed to extend the term of the Loan and reduce the maximum principal balance thereof, to wit: (i) the maturity date of the Note is extended from July 31, 2008 to July 31, 2010, and (ii) the maximum principal balance of the Loan and the face amount of the Note is reduced from \$12,024,124.00 to \$11,992,500.00 (collectively, the "Loan Modification").

NOW, THEREFORE, in consideration of the foregoing, and other good and valuable consideration, the receipt and sufficiency of which is hereby acknowledged, Mortgagor and Mortgagee hereby agree as follows:

1. The Mortgage and the Assignment are hereby amended to secure the Note and all Obligations (as such term is defined in the Loan Agreement), as modified and amended by the Loan Modification.
2. Except as amended hereby or as necessary to give effect to the express intent of the parties hereto, all terms and provisions of the Mortgage shall remain in full force and effect.

[SIGNATURE PAGE TO FOLLOW]

IN WITNESS WHEREOF, this Amendment to Mortgage has been executed as of the day and year first above written.

**Signed, Sealed and Delivered
In The Presence Of:**

MORTGAGOR:

COPPER LAKES, LLC, f/k/a TALL PINES
INVESTMENTS, LLC

Paula A. Sage
(Witness 1)
Dinger A. Weldon
(Witness 2)

By: Terry J. Horak
Name: Terry J. Horak
Title: Authorized Manager

STATE OF SOUTH CAROLINA)
)
COUNTY OF Horry)

ACKNOWLEDGMENT

I, Dinger A. Weldon, a Notary Public in and for the County and State aforesaid, certify that Terry J. Horak personally appeared before me this day and acknowledged the execution of the foregoing instrument by him as the Authorized Manager of Copper Lakes, LLC.

WITNESS my hand and official stamp or seal this 15th day of August, 2008.

Dinger A. Weldon
Notary Public for South Carolina
My Commission Expires: 02.24.2014

IN WITNESS WHEREOF, this Amendment to Mortgage has been executed as of the day and year first above written.

Signed, Sealed and Delivered
In The Presence Of:

MORTGAGEE:

CAROLINA FIRST BANK

Janice Sutton
(Witness 1)
Julie McCarron
(Witness 2)

By: [Signature]
Name: Carl Gent
Title: EVP

STATE OF SOUTH CAROLINA)

ACKNOWLEDGMENT

COUNTY OF Greenville)

I, Julie A. McCarron, a Notary Public in and for the County and State aforesaid, certify that Carl Gent personally appeared before me this day and acknowledged the execution of the foregoing instrument by him as the EVP of Carolina First Bank, the Mortgagee.

WITNESS my hand and official stamp or seal this 18 day of August, 2008.

Julie A. McCarron
Notary Public for South Carolina
My Commission Expires: 10-28-15

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2010068914 Book: MO 5095 Page: 2963-2965
October 08, 2010 02:54:21 PM

Timothy J. Hanney

EXHIBIT "H"

Contract Assignment



2007073799 ASMT/LEASE
 10 PGS
 Book DE 2280 Page 658-667

July 24, 2007 01:59.16 PM
 Rec: \$16.00 Cnty Tax: \$0 00 State Tax: \$0 00

FILED IN GREENVILLE COUNTY, SC

This Instrument Prepared by
And Upon Recording Return to:
 Matthew Trent
 Womble Carlyle Sandridge & Rice, PLLC
 P.O. Box 10208
 Greenville, South Carolina 29603

**ASSIGNMENT OF CONTRACTS, CONTRACT RIGHTS,
 DEPOSITS, LEASES, RENTS, AND REVENUES**

THIS ASSIGNMENT OF CONTRACTS, CONTRACT RIGHTS, DEPOSITS, LEASES, RENTS, AND REVENUES (the "Assignment") is made and executed this 24th day of July, 2007, by **TALL PINES INVESTMENTS, LLC**, a South Carolina limited liability company (the "Borrower") to **CAROLINA FIRST BANK** (the "Lender") pursuant to the Loan Agreement of even date among the Borrower, the Lender and the Guarantors, if any, identified therein (the "Loan Agreement") in order to better secure all Obligations (as such term is defined in the Loan Agreement) of the Borrower to be paid, performed or observed in connection with that certain Loan in the principal sum of TWELVE MILLION TWENTY-FOUR THOUSAND ONE HUNDRED TWENTY-FOUR AND NO/100 (\$12,024,124.00) Dollars being made available to the Borrower by the Lender herewith (the "Loan") pursuant to the Loan Agreement.

NOW, THEREFORE, for value received and in consideration of the Loan, and for other good and valuable consideration, the sufficiency and receipt of which are hereby acknowledged, the Borrower hereby makes, transfers, delivers and assigns unto the Lender, its successors and assigns, the assignments set forth hereinafter, subject to and upon the terms and conditions set forth hereinafter, as follows:

1. **ASSIGNMENT.** The Borrower hereby collaterally sells, transfers, sets over and assigns unto the Lender, its successors and assigns, all of the Borrower's rights, title and interest in and to any and all sales contracts, reservation agreements, option contracts, listing agreements, exchange agreements, license agreements, and other agreements and contracts of every nature and kind (collectively, the "Contracts") now existing or hereafter entered into by the Borrower pertaining to all of the real property, or any portion thereof, described in the Mortgage, Security Agreement and Fixture Financing Statement of even date being granted by the Borrower to the Lender (the "Mortgage"), and described on Exhibit "A" attached hereto and incorporated herein (the "Property"), together with all modifications, extensions, renewals, revisions or guarantees of payment and performance thereof (collectively, the "Contracts"), all rights and privileges of the Borrower arising out of or pertaining to the Contracts (collectively, the "Contract Rights"), all earnest monies, down payments and/or other deposits paid or payable to or for the benefit of the Borrower pursuant to the Contracts, whether now due, becoming due or arising therefrom (collectively, the "Deposits"), all of the Borrower's rights, title and interest in and to those certain leases and occupancy agreements which may now or hereafter be entered into by the Borrower, as landlord, pertaining to all or any portion of the Property, together with all modifications, extensions, renewals, revisions, replacements, or guarantees of payment and performance thereof (collectively, the "Leases"), and all rents or other monies, however

denominated, due to the Lender pursuant to the terms of the Leases, whether now due, becoming due or arising out of or pertaining to the Leases (collectively, the "Rents") and all other issues, income, revenues, royalties, rights, benefits, profits, or funds of any nature arising out of, pertaining to, or received or receivable on account of any Contracts and/or any Leases (collectively, the "Revenues"). This Assignment is absolute and effective immediately with respect to the Contracts, and the Borrower agrees that any Revenues derived from the Contracts, including specifically but without limitation, proceeds from sales of portions of the Property or interval ownership or other interests in the Property, shall be applied to the indebtedness of the Borrower to the Lender evidenced by the Promissory Note from the Borrower to the Lender of even date in the maximum principal sum of Twelve Million Twenty-Four Thousand One Hundred Twenty-Four and No/100 (\$12,024,124.00) Dollars (the "Note"). Notwithstanding the foregoing, however, until occurrence of an Event of Default as set forth herein, in the Note, in the Mortgage, or in the Loan Agreement or in any other documents evidencing, securing or guaranteeing the Note (collectively, with the Note, the Mortgage, and the Loan Agreement, the "Loan Documents"), the Borrower shall retain a license to hold the Deposits in a depository account with the Lender, from which disbursements shall be made only to (i) refund the Deposits in accordance with the terms of the Contracts, or (ii) apply the Deposits to the sales prices of portions of the Property or interval ownership or other interests in the Property at closings thereof in accordance with the Contracts, unless and until the Borrower shall be notified in writing to the contrary by the Lender. This Assignment is also absolute and effective immediately with respect to the Leases; provided, however, that until occurrence of an Event of Default as set forth herein, in the Note, in the Mortgage, or in any other Loan Documents, the Borrower shall retain a license to collect, retain, use and enjoy all Rents from the Leases, unless and until the Borrower shall be notified in writing to the contrary by the Lender.

2. REPRESENTATIONS AND WARRANTIES. In order to induce Lender to make the Loan to the Borrower, the Borrower makes the following representations and warranties to the Lender each and all of which shall survive the execution of this Assignment.

2.1 Right to Assign. The Borrower has the full right and title to assign to Lender all of the Contracts (subject to any limitations on assignability contained therein), the Contract Rights, the Deposits, the Leases, the Rents, and the Revenues, and no other assignment of any interest therein has been made by the Borrower to any other persons whomsoever. The Borrower has performed no act nor executed any other instrument which might inhibit the exercise by the Lender of the rights and remedies set forth herein.

2.2 Validity and Enforceability. To the best of the Borrower's knowledge, all Leases and Contracts now existing or hereafter entered into are or will be genuine and enforceable, in full force and effect at all times during the term of the Loan, properly executed, not in violation of any applicable statutes, laws, ordinances, rules, regulations or requirements of any governmental or regulatory authority having jurisdiction thereof, and free of default as of the date hereof.

2.3 Litigation. No actions, suits or proceedings are pending or, to the best of the Borrower's knowledge, threatened, involving the validity, priority or enforceability of

any of the Contracts, Contract Rights, Deposits, Leases, Rents, or Revenues, or which would interfere with the rights of the Borrower to execute and deliver this Assignment and to perform all of the Borrower's Obligations set forth herein or the Lender's ability or right to exercise any right or remedy set forth herein.

3. COVENANTS OF BORROWER. The Borrower hereby covenants with the Lender as follows:

3.1 No Pledge. The Borrower shall not further pledge, convey, transfer, mortgage, encumber or otherwise assign all or any of the Contracts, Contract Rights, Deposits, Leases, Rents, or Revenues without the prior written consent of the Lender.

3.2 No Modifications or Releases. The Borrower shall not modify, alter, amend, release or accept any surrender of any Contracts, Contract Rights, Deposits, Leases, Rents or Revenues except with the prior written consent of the Lender in its sole discretion, or as otherwise permitted in the Loan Documents.

3.3 Obligations of the Borrower. The Borrower will faithfully and punctually fulfill, perform, abide by, observe and discharge each and every term, obligation, covenant and agreement set forth in the Contracts and the Leases and will enforce the observance and performance thereof by all parties thereunder.

3.4 Indemnity and Hold Harmless. The Borrower shall indemnify, defend and hold harmless the Lender from all liens, claims, demands, actions, causes of actions, assessments, losses, damages, liabilities, reasonable costs and expenses, including without limitation interest, reasonable attorneys' fees and penalties, unless arising solely from the conduct of the Lender, arising out of, affecting or in connection with this Assignment, any breach thereof, and the exercise by the Lender of any rights or remedies conferred herein with respect to enforcement, or other actions taken or withheld by the Lender pertaining to any of the Contracts, Contract Rights, Deposits, Leases, Rents, or Revenues.

4. REMEDIES UPON DEFAULT. Upon breach of any assignment, covenant, representation or warranty by or of the Borrower herein, or upon occurrence of any Event of Default as defined in the Note, the Mortgage or in any of the Loan Documents, the Lender may exercise any one or more of the following rights and remedies.

4.1 Remedies in Loan Documents. In addition to all rights and remedies set forth herein, the Lender shall have the absolute right to assert and exercise any rights and remedies set forth in the Note, the Mortgage, the Loan Documents, and/or any Contracts and/or Leases now existing or hereinafter entered into by the Borrower, and/or any other rights and remedies available at law, in equity or by statute.

4.2 Collection of Deposits, Rents and Revenues. The Lender shall have the right, in person or by agent, with or without bringing any action or proceeding, or by a receiver to

be appointed by a Court, to (i) collect, enforce, compromise, or apply any and all of the Deposits, Rents and Revenues as and when they may become payable under the terms of the Contracts and the Leases, (ii) direct purchasers of portions of the Property or interval ownership or other interests in the Property pursuant to Contracts to pay all Deposits and Revenues therefrom directly to the Lender, and (iii) direct all tenants under the Leases and other parties holding or having rights to Deposits, Rents and Revenues to pay the same directly to the Lender, with the Borrower to have no further rights therein, and with all Deposits, Rents and Revenues so paid or held by the Lender in accordance with this paragraph to be applied to the Obligations in accordance with the Loan Documents.

4.3 Right to Appointment of Receiver. The Lender, upon application to a court of competent jurisdiction, shall have the absolute right to the appointment of a receiver of the Property and of the Contracts, Contract Rights, and Leases, and of the Deposits, Rents and Revenues therefrom without regard to the value or occupancy of the Property and without any showing of any insolvency, fraud, or mismanagement on the part of the Borrower, and without the necessity of filing any judicial or other proceeding other than the proceeding for the appointment for such receiver. Such receiver shall have all powers granted to the Lender herein to enter upon, operate, lease, and/or sell or convey the Property, together with any other powers available to receivers by law and as may be conferred by the Court which appoints such receiver. All reasonable expenditures of any nature incurred in connection with such receivership shall be deemed to be a part of the Obligations and shall be secured by this Assignment.

4.4 Possession and Performance. The Lender shall have the right, but not the obligation, to enter upon, take possession of and operate the Property under this Assignment without becoming a mortgagee-in-possession, including without limitation, the rights to (a) perform any and all obligations of the Borrower contained in any of the Contracts and the Leases and exercise any and all rights of the Borrower contained therein as fully as the Borrower itself could and without regard to their adequacy as security for the Obligations, or with or without bringing of any legal action or the causing of any receiver to be appointed by any court, and, in this connection, the Lender shall have the full right to employ agents, managers and legal counsel; (b) appear in and defend any actions or proceedings affecting the Contracts, the Contract Rights, the Deposits, the Leases, the Rents, and/or the Revenues; and (c) pay the reasonable costs and expenses incurred pursuant to the foregoing, with all such expenditures to be reimbursable by the Borrower upon demand, with interest thereon from the dates of expenditure to accrue at the highest Default Rate set forth in the Note. The entry upon and taking possession of the Property as aforesaid shall not cure or waive any default, or waive, modify or affect any notice of default under the Note, the Mortgage, or any of the Loan Documents or invalidate any act done pursuant to such notice.

4.5 Other Rights and Remedies. The Lender shall have the right, subject to the rights of other parties under the Contracts, but not the obligation to (a) execute and carry out any terms of any Contracts and any Leases, or modify any terms thereof, including without limitation the prices under the Contracts and the Rents under the Leases; (b)

execute new Contracts and Leases; (c) cancel and modify existing Contracts and Leases; (d) sell and market portions of or interval ownership or other interests within the Property; (e) fix or modify Rents; (f) hire managers, listing, sales and leasing agents, and marketing representatives; (g) make repairs, alterations or improvements to the Property; (h) perform any and all obligations of the Borrower contained in the Contracts and the Leases and exercise any and all rights of the Borrower contained therein as fully as the Borrower itself could with or without the bringing of any legal action or the causing of any receiver to be appointed by any court and (i) do all other acts in connection with the management, operation, leasing, sales and marketing of the Property which the Lender may deem necessary or desirable in order to protect its security therein.

4.6 Limitations. Notwithstanding any of the foregoing, the Lender shall not be obligated to abide by, perform, observe or discharge any obligation or duty imposed under any of the Contracts or Leases or upon the Borrower, or under or by reason of this Assignment, and this Assignment, prior to the taking of control of the Property by Lender, shall not place responsibility for the control, care, management, sales, leasing, construction, maintenance, or repairs of the Property upon the Lender, or make the Lender responsible or liable for any negligence in sales, leasing, management, operation, upkeep, or control of the Property resulting in any loss or injury to any buyer, tenant, licensee, employee, invitee or stranger. Should the Lender incur or be threatened with any such liability, loss or damage under the Contracts or Leases pursuant to or by reason of this Assignment or in the defense of any such claims or demands, the amount thereof, including all reasonable costs, expenses and reasonable attorneys' fees, shall be deemed to be a part of the Obligations secured hereby and the Borrower shall reimburse the Lender therefor immediately upon demand.

4.7 Discontinuance of Proceedings. The Lender, at its sole option for any reason whatsoever, shall have the right to discontinue at any time any proceedings for enforcement of this Assignment, in which case the Lender and the Borrower shall be restored to their former positions and rights hereunder, and all rights, powers and remedies of the Lender shall continue as if no such proceeding had occurred or had been taken.

4.8 No Waiver. No waiver or delay in the exercise at any time of any provisions, conditions, rights or remedies conferred upon the Lender pursuant to this Assignment, or the granting of any indulgences with respect thereto by the Lender, shall be construed as a waiver of the future exercise of such provision or of any other rights or remedies conferred thereunder, nor shall a waiver or delay in the exercise of any provisions or remedies be construed as a right to a subsequent waiver of the same or any other provision or remedy.

4.9 Nature of Remedies. No right, power or remedy conferred upon or reserved to the Lender herein, in the Note, the Mortgage or any of the Loan Documents is exclusive of any other right, power or remedy. Each right, power and remedy is cumulative and concurrent; shall be in addition to any other right, power and remedy available thereunder

or now or hereafter existing at law, in equity or by statute and may be pursued separately, successively or concurrently at the option of the Lender.

4.10 Termination of Assignment. At such time as the Loan has been fully paid, performed, observed and discharged, the Lender, upon request from the Borrower, agrees to and shall execute and deliver to the Borrower such instrument as the Borrower may reasonably require for the purpose of terminating or canceling this Assignment or reassigning the Contracts, Contract Rights, Deposits, Leases, Rents and Revenues which are the subject hereof unto the Borrower. The parties further agree that satisfaction and cancellation of record of the Mortgage shall automatically terminate and cancel this Assignment without the necessity of any further acts on the part of either party hereto.

5. MISCELLANEOUS.

5.1 Severability. Wherever possible, each provision of this Assignment shall be interpreted in such a manner as to be effective and valid under applicable law but unenforceability or invalidity for any reason of any provision of this Assignment shall be limited strictly to such provision and shall not limit or impair the operation, validity or enforceability of any other provision of this Assignment.

5.2 Relationship of Parties. It is hereby acknowledged by the Borrower and the Lender that the relationship between them created hereby is and shall remain that of debtor and creditor only, and is not intended to be and shall not in any way be construed to be that of a partnership, a joint venture or that of principal and agent. All rights and remedies conferred upon the Lender herein shall not be deemed to make the Lender a partner, a joint venturer, principal or agent of the Borrower, but rather shall be deemed to be solely for the purpose of better securing the Lender for the payment and performance of the Obligations.

5.3 Governing Law. This Assignment shall be governed and construed under and in accordance with the laws of the State of South Carolina.

5.4 Consent to Jurisdiction. The Borrower, by its execution hereof, agrees that any actions or proceedings with respect to this Assignment shall be subject to the exclusive jurisdiction of and shall be brought in the Courts of the State of South Carolina, to which jurisdiction the Borrower, by its execution hereof, hereby irrevocably consents. The Borrower irrevocably waives any objection, including without limitation any objection to the laying of venue based on the grounds of forum non conveniens, which it may now or hereafter have to the bringing of any such action or proceeding in such jurisdiction. Nothing herein shall affect the right of the Lender to serve process in any manner permitted by law nor shall limit the right of the Lender to bring proceedings against another party to any of the Loan Documents in the courts of any other jurisdiction.

5.5 Binding Effect. This Assignment shall be binding upon and inure to the benefit of the parties hereto and their respective heirs, successors and assigns; provided that the

Borrower shall not be entitled to assign or otherwise transfer any of its rights or responsibilities hereunder.

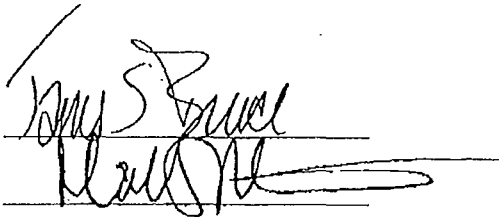
5.6 Captions. The headings and captions in this Assignment are included only as a matter of convenience and for reference and in no way define, limit, extend or describe the scope of this Assignment or the intent of any other provision hereof.

IN WITNESS WHEREOF, this Assignment of Contracts, Contract Rights, Deposits, Leases, Rents and Revenues has been duly executed by the Borrower as of the date first above written.

Signed, Sealed and Delivered in the presence of:

BORROWER:

TALL PINES INVESTMENTS, LLC
A South Carolina limited liability company



By: Terry Horak (Seal)
Name: Terry Horak
Title: Manager

STATE OF South Carolina)
COUNTY OF Charleston)

ACKNOWLEDGMENT

I, Wanda D. Hill, a Notary Public in and for the County and State aforesaid, certify that TERRY Horak personally appeared before me this day and acknowledged that s/he is the Manager of TALL PINES INVESTMENTS, LLC, the Borrower, and that by authority duly given, the foregoing instrument was signed by him/her on behalf of the Borrower.

WITNESS my hand and official stamp or seal this 24th day of July, 2007.

Wanda D. Hill
Notary Public for South Carolina
My Commission Expires: 5-28-08

EXHIBIT "A"

All those certain pieces, parcels and tracts of land situate, lying and being in the County of Greenville, State of South Carolina, as follows:

Tract 1 (Wilkinson Parcel):

Beginning at a point located in the centerline intersection of Moody Bridge Road (S-23-101 – 66' right-of-way) and Talley Bridge Road S-23-124 – 66' right-of-way); thence along the centerline of Moody Bridge Road, N 61-18-16 W for 289.35 feet to a point; thence along a curve concave to the east having a radius of 267.57 feet, an arc length of 199.83 feet and a chord bearing and distance of N 39-54-32 W for 195.22 feet to a point; thence N 12-10-06 W for 224.05 feet to a point; thence N 15-30-03 W for 84.26 feet to a point; thence N 31-24-52 W for 106.39 feet to a point; thence along the common line of Vans Camp Limited Partnership (Deed Book 1908, page 1065), N 52-26-08 E for 1451.55 feet to an iron pin, crossing an iron pin at 49.03 feet; thence N 08-23-45 E for 659.15 feet to an iron pin; thence along the common line of Vinson (Deed Book 1570, page 44), S 82-06-09 E for 180.24 feet to a nail at stone; thence along the common line of Kickasola (Deed Book 1620, page 891), S 34-21-21 E for 488.90 feet to an iron pin; thence N 80-06-59 E for 1453.62 feet to a stone; thence N 79-36-39 E for 1537.43 feet to an iron pin; thence along the common line of Clawson (Deed Book 1983, page 953), S 10-59-04 E for 1820.24 feet a spike in the centerline of Moody Bridge Road, crossing an iron pin 855.18 feet; thence along the centerline of Moody Bridge Road, S 79-19-07 E for 333.72 feet to a nail found; thence along a curve concave to the north having a radius of 739.01 feet, an arc length of 583.18 feet and a chord bearing and distance of N 76-00-39 E for 568.17 feet to a point; thence N 47-45-07 E for 233.99 feet to a point; thence along a curve concave to the south having a radius of 442.20 feet, an arc length of 353.32 feet and a chord bearing and distance of N 75-56-33 E for 344.00 feet a nail found; thence S 81-10-05 E for 302.27 feet to a nail found; thence leaving said centerline along the common line of Cotwool Manufacturing Company (Deed Book 491, page 185), S 07-43-22 E for 788.43 feet to a concrete monument, crossing an iron pin at 34.45 feet; thence S 14-28-18 W for 901.78 feet to a concrete monument; thence S 86-15-13 W for 900.11 feet to a concrete monument; thence S 10-57-03 W for 1980.06 feet to a concrete monument; thence S 74-33-16 W for 1378.88 feet to a concrete monument; thence S 06-02-35 E for 1658.84 feet to an iron pin; thence S 68-50-35 E for 591.96 feet to a concrete monument; thence along the common line of Forbis (Deed Book 2208, page 1559), S 69-09-45 E for 2199.96 feet to a stone; thence along the common line of Moore (Deed Book 1662, page 690) and Thompson (Deed Book 2215, page 1608), S 04-21-42 E for 899.97 feet to a stone, crossing an iron pin at 466.29 feet; thence along the common line of Hart (Deed Book 1570, page 310), S 41-34-12 W for 1255.97 feet to an iron pin; thence along the common line of Moore (Deed Book 1662, page 690), S 41-03-18 W for 615.86 feet to an iron pin; thence along the common line of Marietta Baptist Camp (Deed Book 676, page 182), S 58-10-34 W for 395.11 feet to a stone; thence along N 58-53-33 W for 1349.50 feet to an iron pin; thence N 59-31-56 E for 622.91 feet to an iron pin; thence N 36-28-42 W for 1374.74 feet a stone; thence S 71-02-52 W for 1421.72 feet to an iron pin; thence along the common line of McGee (no deed), N 79-44-15 W for 1079.63 feet to a stone; thence along the common line of Borrow (no deed), N 20-09-09 W for 2218.15 feet to an iron pin; thence N 56-51-48 W for 308.12 feet to an iron pin; thence along the common line of Wood (Deed Book 1517-55) and Outlaw (Deed Book 2202, page 920), S 73-56-

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36 W for 1423.48 feet to an iron pin crossing an iron pin at 219.66 feet; thence along the common line of Outlaw and Tankersley (Deed Book 1783, page 681), S 74-03-38 W for 726.20 feet to an iron pin; thence along the common line of Barnett (Deed Book 2249, page 1052), S 74-00-01 W for 331.27 feet to an iron pin; thence S 74-00-11 W for 780.45 feet to an iron pin; thence S 54-49-57 W for 1495.11 feet to an iron pin; thence along the common line of Brown (Deed Book 2074, page 1565), S 54-44-16 W for 2000.39 feet to an iron pin; thence N 46-17-45 W for 2137.82 feet to a stone; thence S 45-49-49 W for 1223.63 feet to an iron pin; thence along the common line of Woods (Deed Book 2211, page 1439), N 19-29-05 W for 83.99 feet to an iron pin; thence South Saluda Woods, LP (Deed Book 2211, page 1439), N 10-18-20 E for 807.36 feet to a stone, crossing an iron pin at 171.20 feet and 692.43 feet; thence N 16-05-15 E for 404.26 feet to a stone; thence N 19-24-26 E for 177.97 feet to a stone; thence N 27-19-49 E for 183.71 feet to a stone; thence N 06-28-24 W for 208.87 feet to a stone; thence N 18-15-58 E for 148.81 feet to a stone; thence N 30-58-02 E for 332.60 feet to a stone; thence N 59-56-14 E for 136.51 feet to a stone; thence S 79-52-24 E for 175.36 feet to a nail; thence N 81-11-44 E for 212.15 feet to a stone; thence N 18-07-59 E for 205.25 feet to a stone; thence N 30-40-29 E for 189.42 feet to a stone; thence N 51-23-30 E for 408.56 feet to a stone; thence N 69-13-25 E for 184.10 feet to a stone; thence N 64-35-36 E for 245.17 feet to a stone; thence N 67-19-00 E for 212.15 feet to a stone; thence S 59-55-11 E for 133.96 feet to a stone; thence S 89-34-38 E for 222.07 feet to a stone; thence N 65-29-54 E for 173.65 feet to an iron pin; thence N 81-50-05 E for 173.65 feet to an iron pin; thence along the common line of Crowe (Deed Book 355, page 145), S 57-51-39 E for 165.43 feet to an iron pin; thence S 40-01-27 E for 263.11 feet to a stone; thence S 50-54-38 E for 156.51 feet to an iron pin; thence N 82-52-40 E for 949.45 feet to an iron pin; thence N 41-14-55 E for 340.94 feet to an iron pin; thence N 45-51-03 E for 296.61 feet to an iron pin; thence N 07-18-30 E for 124.31 feet to an iron pin; thence N 08-45-34 W for 1906.90 feet to a point located in the centerline of the South Saluda River, crossing an iron pin at 1849.82 feet; thence along said centerline, S 59-28-53 E for 267.56 feet; thence N 57-28-25 E for 107.61 feet; thence N 81-32-24 E for 117.08 feet; thence S 80-03-09 E for 117.06 feet; thence N 80-57-19 E for 90.51 feet; thence N 03-39-48 W for 82.96 feet; thence N 13-29-12 W for 148.70 feet; thence N 10-47-29 E for 130.56 feet; thence N 07-48-29 W for 94.64 feet; thence N 21-22-04 E for 64.69 feet; thence S 82-13-48 E for 83.23 feet; thence S 17-00-50 E for 84.11 feet; thence S 38-28-01 E for 53.10 feet; thence N 76-20-11 E for 32.63 feet; thence N 51-37-36 E for 88.50 feet; thence N 63-07-50 E for 166.49 feet; thence S 77-34-42 E for 99.31 feet; thence S 83-22-57 E for 113.60 feet; thence N 87-10-18 E for 147.39 feet; thence S 72-37-56 E for 147.97 feet; thence S 62-59-39 E for 123.80 feet; thence S 56-49-22 E for 139.20 feet; thence S 27-10-11 E for 123.60 feet; thence S 15-34-43 E for 121.45 feet; thence S 01-15-09 E for 50.69 feet; thence N 78-12-13 E for 114.72 feet; thence N 60-36-32 E for 56.39 feet; thence N 51-25-19 E for 148.88 feet; thence N 39-07-32 E for 184.80 feet; thence N 24-37-04 E for 186.18 feet; thence N 40-31-49 E for 153.96 feet; thence N 50-38-44 E for 110.25 feet; thence N 30-18-26 E for 160.55 feet; thence N 37-40-39 E for 111.59 feet; thence N 30-07-43 E for 343.82 feet to a point located in the centerline of Talley Bridge Road and South Saluda River; thence along the centerline of Talley Bridge Road, N 85-40-39 E for 219.39 feet to a point; thence along a curve concave to the south having a radius of 959.75 feet, an arc length of 320.64, and a chord bearing and distance of S 86-41-09 E for 319.15 feet to a point; thence along a curve concave to the north having a radius of 525.97 feet, an arc length of 226.08 feet and a chord bearing and distance of S 89-25-43 E for 224.34 feet to a point; thence N 76-13-35 E for 247.15 feet to a point; thence along a curve concave to the south having a radius of 604.00 feet, an arc length of 389.61 feet

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and a chord bearing and distance of S 88-54-12 E for 382.89 feet to the Point of Beginning. Said tract contains 1,662.62 acres, more or less.

Tract 2 (Taylor Parcel):

Beginning at an iron pin located on the southern right-of-way of SC Hwy. 11 and 276 (Geer Highway – 66' total right-of-way) and being the common corner of Skahen (Deed Book 1730, page 661); thence along said right-of-way, N 89-28-47 E for 100.00 feet to an iron pin; thence S 88-48-13 E for 100.00 feet to an iron pin; thence S 87-44-47 E for 272.25 feet to a point; thence leaving said right-of-way along the common line of Vinson (Deed Book 1570, page 44), S 03-20-52 E for 580.91 feet to an iron pin crossing an iron pin at 1.71 feet; thence along the common line of Van's Camp Limited Partnership (Deed Book 1908, page 1065), N 82-00-44 W for 218.26 feet to an iron pin; thence S 83-33-48 W for 100.94 feet to an iron pin; thence S 83-36-56 W for 101.05 feet to an iron pin; thence along the common line of Skahen, N 08-40-13 W for 590.78 feet to the Point of Beginning. Said tract contains 5.82 acres, more or less.

Tract 3 (Vinson Parcels):

Beginning at a point located on the southern right-of-way of SC Hwy. 11 and 276 (Geer Highway – 66' total right-of-way) and being the common corner of Taylor (Deed Book 1429, page 760); thence along said right-of-way, S 87-58-24 E for 178.91 feet to an iron pin; thence S 87-13-10 E for 99.73 feet to a point; thence leaving said right-of-way along the common line of McCarson (Deed Book 2229, page 489), S 02-45-30 E for 499.46 feet to an iron pin crossing an iron pin at 4.80 feet; thence along the common line of Kickasola, Jr. (Deed Book 1620, page 891), S 76-16-11 W for 99.52 feet to an axle; thence S 05-22-40 E for 71.32 feet nail at stone; thence along the common line of Wilkinson, Jr. (Deed Book 795, page 443), N 82-06-09 W for 180.24 feet to an iron pin; thence along the common line of Taylor (Deed Book 1429, page 760), N 03-20-52 W for 580.91 to the Point of Beginning crossing an iron pin at 579.20 feet. Said tract contains 3.55 acres, more or less.

The above parcels being the same premises conveyed to Tall Pines Investments, LLC by the following deeds: 1) from George R. Wilkinson, Jr. and Mildred R. Wilkinson dated July 20, 2007 and recorded simultaneously herewith; 2) from David Vinson dated July 20, 2007 and recorded simultaneously herewith; and 3) from William D. Taylor and Nannie L. Taylor dated July 20, 2007 and recorded simultaneously herewith.

FILED FOR RECORD IN GREENVILLE COUNTY, SC ROD
2007073799 Book:DE 2280 Page:658-667
July 24, 2007 01:59:18 PM

Timothy J. Hanney

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EXHIBIT "T"
DEMAND LETTER

**WOMBLE
CARLYLE
SANDRIDGE
& RICE**
A PROFESSIONAL LIMITED
LIABILITY COMPANY



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August 27, 2010

VIA U.S. MAIL

Copper Lakes, LLC f/k/a
Tall Pines Investments, LLC
2411 North Oaks Street, Suite 402
Myrtle Beach, South Carolina 29577-3165

Re: Loan No. 5100116628 from Carolina First Bank to Copper Lakes, LLC f/k/a Tall Pines Investments, LLC (the "Loan")

Dear Sir or Madam:

This firm represents Carolina First Bank with respect to the above referenced Loan. Reference is hereby made to the Promissory Note of Tall Pines Investments, LLC (now known as Copper Lakes, LLC) ("Borrower") to the order of Carolina First Bank ("Lender"), dated as of July 24, 2007, in the original maximum principal amount of \$12,024,124.00 (the "Note"), and all loan documents evidencing, securing, guaranteeing, amending, extending, or executed in connection with the Loan (collectively with the Note, the "Loan Documents").

As you know, the Note matured as of July 31, 2010, upon which date all outstanding principal, interest and other charges were immediately due and payable in full. As of the date hereof, Borrower has failed to tender such payment. In accordance with the terms of the Note and the Loan Documents, the failure to make such payments is an event of default under the Loan, and Lender has the option to exercise all rights and remedies available to it under the Loan Documents, at law or in equity.

As of August 27, 2010, the following amounts are outstanding under the Loan:

| | | |
|---------------|-----------------|--------------------------|
| 1. Principal: | \$11,992,500.00 | |
| 2. Interest: | \$82,267.78 | (Per Diem: \$936.580937) |
| 3. Late Fees: | \$11,432.75 | |
| Total: | \$12,086,200.53 | |

Immediate payment of the foregoing total sum is hereby demanded of Borrower. If payment of the foregoing total sum is not made within ten (10) days of the date of this letter, Lender may, without further notice to Borrower or any guarantors of the Loan, exercise all of the rights and remedies available to it under any of the Loan Documents, at law or in equity, including without limitation (i) the right to initiate foreclosure proceedings against any collateral for the Loan, (ii) the right to seek the appointment of a receiver for any collateral for the Loan, (iii) the right to exercise any rights and remedies available to Lender against any guarantors of the Loan, and/or (iv) the right to exercise any other rights or remedies set forth in any of the Loan Documents, at law or in equity.

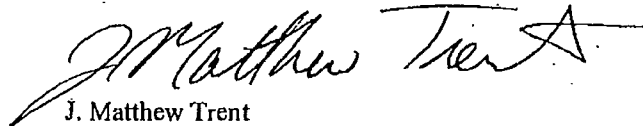
This notice is given without prejudice to or waiver of the rights or remedies of Lender under the Loan Documents or any other right or remedy available to Lender at law or in equity. Nothing contained in this letter or in the previous or subsequent discussions or communications between Borrower, the guarantors and Lender or their respective representatives or counsel shall serve or be deemed to waive or modify any provision of the Loan Documents, establish a custom or waiver, or limit or condition the rights and remedies of Lender under the Loan Documents. Any partial payment made by Borrower or any other entity to Lender, if accepted, shall not constitute a waiver or a modification of any default, or a waiver or postponement of any rights or remedies of Lender. This letter does not purport to describe all events or conditions relating to the Loan that may constitute events of default, and this letter has no bearing on, and in no way supersedes or affects, any current or future default notices issued on behalf of Lender in connection with the Loan.

Lender has not agreed to any modification or extension of the Loan, or to any forbearance with respect to the exercise of its rights and remedies under the Loan Documents. Please be advised that any prior or future discussions or communications between Lender, Borrower, the guarantors or their respective representatives or counsel regarding the above matters shall not cause a modification or extension of the Loan Documents or an agreement by Lender to forbear in exercising its rights and remedies, establish a custom or practice, or waive, limit or condition Lender's rights and remedies under the Loan Documents. Any agreement by Lender, including any agreement to forbear following an event of default, to modify the Loan Documents or waive any rights or remedies, must be in writing and signed by an authorized representative of Lender. No oral or implied agreement of any kind with respect thereto will be recognized or enforceable.

Lender expressly reserves all of its rights and remedies under the Loan Documents and any other right or remedy available to Lender at law or in equity.

Very truly yours,

WOMBLE CARLYLE SANDRIDGE & RICE
A Professional Limited Liability Company



J. Matthew Trent

cc: Mr. Michael C. Rose, SVP

SCHEDULE 1

Description of the Real Property

SCHEDULE 1

Legal Description of the Real Property

All those certain pieces, parcels and tracts of land situate, lying and being in the County of Greenville, State of South Carolina, as follows:

Tract 1 (Wilkinson Parcel):

Beginning at a point located in the centerline intersection of Moody Bridge Road (S-23-101 - 66' right-of-way) and Talley Bridge Road S-23-124 - 66' right-of-way); thence along the centerline of Moody Bridge Road, N 61-18-16 W for 289.35 feet to a point; thence along a curve concave to the east having a radius of 267.57 feet, an arc length of 199.83 feet and a chord bearing and distance of N 39-54-32 W for 195.22 feet to a point; thence N 12-10-06 W for 224.05 feet to a point; thence N 15-30-03 W for 84.26 feet to a point; thence N 31-24-52 W for 106.39 feet to a point; thence along the common line of Vans Camp Limited Partnership (Deed Book 1908, page 1065), N 52-26-08 E for 1451.55 feet to an iron pin, crossing an iron pin at 49.03 feet; thence N 08-23-45 E for 659.15 feet to an iron pin; thence along the common line of Vinson (Deed Book 1570, page 44), S 82-06-09 E for 180.24 feet to a nail at stone; thence along the common line of Kickasola (Deed Book 1620, page 891), S 34-21-21 E for 488.90 feet to an iron pin; thence N 80-06-59 E for 1453.62 feet to a stone; thence N 79-36-39 E for 1537.43 feet to an iron pin; thence along the common line of Clawson (Deed Book 1983, page 953), S 10-59-04 E for 1820.24 feet a spike in the centerline of Moody Bridge Road, crossing an iron pin 855.18 feet; thence along the centerline of Moody Bridge Road, S 79-19-07 E for 333.72 feet to a nail found; thence along a curve concave to the north having a radius of 739.01 feet, an arc length of 583.18 feet and a chord bearing and distance of N 76-00-39 E for 568.17 feet to a point; thence N 47-45-07 E for 233.99 feet to a point; thence along a curve concave to the south having a radius of 442.20 feet, an arc length of 353.32 feet and a chord bearing and distance of N 75-56-33 E for 344.00 feet a nail found; thence S 81-10-05 E for 302.27 feet to a nail found; thence leaving said centerline along the common line of Cotwool Manufacturing Company (Deed Book 491, page 185), S 07-43-22 E for 788.43 feet to a concrete monument, crossing an iron pin at 34.45 feet; thence S 14-28-18 W for 901.78 feet to a concrete monument; thence S 86-15-13 W for 900.11 feet to a concrete monument; thence S 10-57-03 W for 1980.06 feet to a concrete monument; thence S 74-33-16 W for 1378.88 feet to a concrete monument; thence S 06-02-35 E for 1658.84 feet to an iron pin; thence S 68-50-35 E for 591.96 feet to a concrete monument; thence along the common line of Forbis (Deed Book 2208, page 1559), S 69-09-45 E for 2199.96 feet to a stone; thence along the common line of Moore (Deed Book 1662, page 690) and Thompson (Deed Book 2215, page 1608), S 04-21-42 E for 899.97 feet to a stone, crossing an iron pin at 466.29 feet; thence along the common line of Hart (Deed Book 1570, page 310), S 41-34-12 W for 1255.97 feet to an iron pin; thence along the common line of Moore (Deed Book 1662, page 690), S 41-03-18 W for 615.86 feet to an iron pin; thence along the common line of Marietta Baptist Camp (Deed Book 676, page 182), S 58-10-34 W for 395.11 feet to a stone; thence along N 58-53-33 W for 1349.50 feet to an iron pin; thence N 59-31-56 E for 622.91 feet to an iron pin; thence N 36-28-42 W for 1374.74 feet a stone; thence S 71-02-52 W for 1421.72 feet to an iron pin; thence along the common line of McGee (no deed), N 79-44-15 W for 1079.63 feet to a stone; thence along the common line of Borrow (no deed), N 20-09-09 W for 2218.51 feet to an

iron pin; thence N 56-51-48 W for 308.12 feet to an iron pin; thence along the common line of Wood (Deed Book 1517-55) and Outlaw (Deed Book 2202, page 920), S 73-56-36 W for 1423.48 feet to an iron pin crossing an iron pin at 219.66 feet; thence along the common line of Outlaw and Tankersley (Deed Book 1783, page 681), S 74-03-38 W for 726.20 feet to an iron pin; thence along the common line of Barnett (Deed Book 2249, page 1052), S 74-00-01 W for 331.27 feet to an iron pin; thence S 74-00-11 W for 780.45 feet to an iron pin; thence S 54-49-57 W for 1495.11 feet to an iron pin; thence along the common line of Brown (Deed Book 2074, page 1565), S 54-44-16 W for 2000.39 feet to an iron pin; thence N 46-17-45 W for 2137.82 feet to a stone; thence S 45-49-49 W for 1223.63 feet to an iron pin; thence along the common line of Woods (Deed Book 2211, page 1439), N 19-29-05 W for 83.99 feet to an iron pin; thence South Saluda Woods, LP (Deed Book 2211, page 1439), N 10-18-20 E for 807.36 feet to a stone, crossing an iron pin at 171.20 feet and 692.43 feet; thence N 16-05-15 E for 404.26 feet to a stone; thence N 19-24-26 E for 177.97 feet to a stone; thence N 27-19-49 E for 183.71 feet to a stone; thence N 06-28-24 W for 208.87 feet to a stone; thence N 18-15-58 E for 148.81 feet to a stone; thence N 30-58-02 E for 332.60 feet to a stone; thence N 59-56-14 E for 136.51 feet to a stone; thence S 79-52-24 E for 175.36 feet to a nail; thence N 81-11-44 E for 212.15 feet to a stone; thence N 18-07-59 E for 205.25 feet to a stone; thence N 30-40-29 E for 189.42 feet to a stone; thence N 51-23-30 E for 408.56 feet to a stone; thence N 69-13-25 E for 184.10 feet to a stone; thence N 64-35-36 E for 245.17 feet to a stone; thence N 67-19-00 E for 212.15 feet to a stone; thence S 59-55-11 E for 133.96 feet to a stone; thence S 89-34-38 E for 222.07 feet to a stone; thence N 65-29-54 E for 173.65 feet to an iron pin; thence N 81-50-05 E for 179.71 feet to an iron pin; thence along the common line of Crowe (Deed Book 355, page 145), S 57-51-39 E for 165.43 feet to an iron pin; thence S 40-01-27 E for 263.11 feet to a stone; thence S 50-54-38 E for 156.51 feet to an iron pin; thence N 82-52-40 E for 949.45 feet to an iron pin; thence N 41-14-55 E for 340.94 feet to an iron pin; thence N 45-51-03 E for 296.61 feet to an iron pin; thence N 07-18-30 E for 124.31 feet to an iron pin; thence N 08-45-34 W for 1906.90 feet to a point located in the centerline of the South Saluda River, crossing an iron pin at 1849.82 feet; thence along said centerline, S 59-28-53 E for 267.56 feet; thence N 57-28-25 E for 107.61 feet; thence N 81-32-24 E for 117.08 feet; thence S 80-03-09 E for 117.06 feet; thence N 80-57-19 E for 90.51 feet; thence N 03-39-48 W for 82.96 feet; thence N 13-29-12 W for 148.70 feet; thence N 10-47-29 E for 130.56 feet; thence N 07-48-29 W for 94.64 feet; thence N 21-22-04 E for 64.69 feet; thence S 82-13-48 E for 83.23 feet; thence S 17-00-50 E for 84.11 feet; thence S 38-28-01 E for 53.10 feet; thence N 76-20-11 E for 32.63 feet; thence N 51-37-36 E for 88.50 feet; thence N 63-07-50 E for 166.49 feet; thence S 77-34-42 E for 99.31 feet; thence S 83-22-57 E for 113.60 feet; thence N 87-10-18 E for 147.39 feet; thence S 72-37-56 E for 147.97 feet; thence S 62-59-39 E for 123.80 feet; thence S 56-49-22 E for 139.20 feet; thence S 27-10-11 E for 123.60 feet; thence S 15-34-43 E for 121.45 feet; thence S 01-15-09 E for 50.69 feet; thence N 78-12-13 E for 114.72 feet; thence N 60-36-32 E for 56.39 feet; thence N 51-25-19 E for 148.88 feet; thence N 39-07-32 E for 184.80 feet; thence N 24-37-04 E for 186.18 feet; thence N 40-31-49 E for 153.96 feet; thence N 50-38-44 E for 110.25 feet; thence N 30-18-26 E for 160.55 feet; thence N 37-40-39 E for 111.59 feet; thence N 30-07-43 E for 343.82 feet to a point located in the centerline of Talley Bridge Road and South Saluda River; thence along the centerline of Talley Bridge Road, N 85-40-39 E for 219.39 feet to a point; thence along a curve concave to the south having a radius of 959.75 feet, an arc length of 320.64, and a chord bearing and distance of S 86-41-09 E for 319.15 feet to a point; thence along a curve concave to the north having a radius of 525.97 feet, an arc length of 226.08 feet and a chord bearing and distance of S 89-25-43

E for 224.34 feet to a point; thence N 76-13-35 E for 247.15 feet to a point; thence along a curve concave to the south having a radius of 604.00 feet, an arc length of 389.61 feet and a chord bearing and distance of S 88-54-12 E for 382.89 feet to the Point of Beginning. Said tract contains 1,662.62 acres, more or less.

Tract 2 (Taylor Parcel):

Beginning at an iron pin located on the southern right-of-way of SC Hwy. 11 and 276 (Geer Highway - 66' total right-of-way) and being the common corner of Skahen (Deed Book 1730, page 661); thence along said right-of-way, N 89-28-47 E for 100.00 feet to an iron pin; thence S 88-48-13 E for 100.00 feet to an iron pin; thence S 87-44-47 E for 272.25 feet to a point; thence leaving said right-of-way along the common line of Vinson (Deed Book 1570, page 44), S 03-20-52 E for 580.91 feet to an iron pin crossing an iron pin at 1.71 feet; thence along the common line of Van's Camp Limited Partnership (Deed Book 1908, page 1065), N 82-00-44 W for 218.26 feet to an iron pin; thence S 83-33-48 W for 100.94 feet to an iron pin; thence S 83-36-56 W for 101.05 feet to an iron pin; thence along the common line of Skahen, N 08-40-13 W for 590.78 feet to the Point of Beginning. Said tract contains 5.82 acres, more or less.

Tract 3 (Vinson Parcels):

Beginning at a point located on the southern right-of-way of SC Hwy. 11 and 276 (Geer Highway - 66' total right-of-way) and being the common corner of Taylor (Deed Book 1429, page 760); thence along said right-of-way, S 87-58-24 E for 178.91 feet to an iron pin; thence S 87-13-10 E for 99.73 feet to a point; thence leaving said right-of-way along the common line of McCarson (Deed Book 2229, page 489), S 02-45-30 E for 499.46 feet to an iron pin crossing an iron pin at 4.80 feet; thence along the common line of Kickasola, Jr. (Deed Book 1620, page 891), S 76-16-11 W for 99.52 feet to an axle; thence S 05-22-40 E for 71.32 feet nail at stone; thence along the common line of Wilkinson, Jr. (Deed Book 795, page 443), N 82-06-09 W for 180.24 feet to an iron pin; thence along the common line of Taylor (Deed Book 1429, page 760), N 03-20-52 W for 580.91 to the Point of Beginning crossing an iron pin at 579.20 feet. Said tract contains 3.55 acres, more or less.

The above parcels being the same premises conveyed to Tall Pines Investments, LLC by the following deeds: 1) from George R. Wilkinson, Jr. and Mildred R. Wilkinson dated July 20, 2007 and recorded July 24, 2007 in the Office of the Register of Deeds for Greenville County in Deed Book 2280 at Page 646; 2) from David Vinson dated July 20, 2007, and recorded on July 24, 2007 in the Office of the Register of Deeds for Greenville County in Deed Book 2280 at Page 654; and 3) from William D. Taylor and Nannie L. Taylor dated July 20, 2007 and recorded on July 24, 2007 in the Office of the Register of Deeds for Greenville County in Deed Book 2280 at Page 650.

Tract 4:

ALL that certain piece, parcel, lot or tract of land, together with the buildings and other improvements thereon, if any, situate, lying and being in the County of Greenville, State of South Carolina, containing eighty-five (85) acres, more or less, and being shown and designated

as **"PART TMS 678.1-1-12.2 N/F JAMES E. BARNETT TRUSTEES PB 4L-193 85.00 ACRES"** on that certain plat entitled **"ALTA/ACSM LAND TITLE SURVEY FOR TALL PINES INVESTMENTS, LLC"** prepared by Freeland & Associates, Inc., dated June 25, 2007, last revised July 23, 2007 and recorded July 24, 2007 in the Office of the Register of Deeds for Greenville County, South Carolina in Plat Cabinet 1045, at Page 41. Said property having such size, shape, location, dimensions, buttings and boundings as will by reference to said plat more fully and at large appear.

DERIVATION: BEING the same premises conveyed to Tall Pines Investments, LLC by deed of James E. Barnett, Marion Brett Tankersley, Michael Shay Tankersley and Marilyn S. Tankersley, as Trustees of the Barnett-Tankersley Trust, which deed is dated February 6, 2008, and recorded in the Office of the Register of Deeds for Greenville County, South Carolina on February 7, 2008 in Deed Book 2311 at Page 2099.

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE) IN THE COURT OF COMMON PLEAS
)
) THIRTEENTH JUDICIAL CIRCUIT

TD Bank, National Association,)
 Successor by Merger to)
 Carolina First Bank,) Civil Action No. 2010-CP-23-10047
)
 Plaintiff,)

vs.)

ANSWER)

Copper Lakes, LLC, f/k/a Tall Pines)
 Investments, LLC, Grand Dunes)
 Development Company, LLC and)
 Silver Real Estate Fund, I,L.P.,)
)
 Defendants.)

Defendant Copper Lakes, LLC (“Copper Lakes”) answers Plaintiff’s Complaint by denying each and every allegation not specifically admitted, qualified, or explained below, and further alleges as follows:

FOR A FIRST DEFENSE

1. Copper Lakes admits the allegations of paragraph one of the Complaint.
2. Copper Lakes lacks information sufficient to form a belief as to the truth of falsity of the allegations of paragraph two of the Complaint and therefore denies them.
3. Copper Lakes admits that portion of paragraph three of the Complaint that alleges that Copper Lakes is a South Carolina limited liability company formerly known as Tall Pines Investments, LLC. The remaining allegations of paragraph three of the Complaint are conclusions of law that Copper Lakes neither admits nor denies. To the extent that those allegations are deemed to be allegations of fact, they are denied.
4. Copper Lakes admits that portion of paragraph four of the Complaint that alleges that Grande Dunes Development Company, LLC, is a South Carolina limited

liability company. The remaining allegations of paragraph three of the Complaint are conclusions of law that Copper Lakes neither admits nor denies. To the extent that those allegations are deemed to be allegations of fact, they are denied.

5. Copper Lakes admits that portion of paragraph five of the Complaint that alleges that Silver Real Estate Fund I, LP, is a Delaware limited partnership. The remaining allegations of paragraph five of the Complaint are conclusions of law that Copper Lakes neither admits nor denies. To the extent that those allegations are deemed to be allegations of fact, they are denied.

6. Copper Lakes admits the allegations of paragraph six of the Complaint.

7. Copper Lakes admits the allegations of paragraph seven of the Complaint.

8. Responding to the allegations in paragraph eight of the Complaint, Copper Lakes admits that Tall Pines Investments, LLC, signed a document titled "loan agreement" dated July 24, 2007 and craves reference thereto for a complete statement of its terms. Copper Lakes lacks information sufficient to form a belief as to the truth or falsity of the remaining allegations of paragraph eight of the Complaint and therefore denies them.

9. Copper Lakes lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph nine of the Complaint and therefore denies them.

10. Copper Lakes lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph ten of the Complaint and therefore denies them.

11. Responding to the allegations of paragraph eleven of the Complaint, Copper Lakes admits the execution of the Mortgage, Spreader Agreement, and Mortgage Amendment referred to therein. Copper Lakes denies the remaining allegations of

paragraph eleven as stated and craves reference to the documents themselves for a complete statement of their terms.

12. Copper Lakes lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph twelve of the Complaint and therefore denies them.

13. Responding to the allegations of paragraph thirteen of the Complaint, Copper Lakes admits the execution of the Assignment referred to therein. Copper Lakes denies the remaining allegations of paragraph eleven as stated and craves reference to the Assignment for a complete statement of its terms.

14. Copper Lakes denies the allegations of paragraph fourteen of the Complaint as stated and craves reference to the note itself for a complete statement of its terms.

15. Copper Lakes admits the allegations of paragraph fifteen of the Complaint.

16. The allegations of paragraph sixteen of the complaint constitute conclusions of law that Copper Lakes neither admits nor denies. To the extent that those allegations are deemed to be allegations of fact, they are denied.

17. Copper Lakes lacks information sufficient to form a belief as to the truth or falsity of the allegations of paragraph seventeen of the Complaint and therefore denies them.

FOR A SECOND DEFENSE

18. Copper Lakes realleges each allegation set forth above as if repeated here.

19. Copper Lakes demands a complete accounting of all moneys, payments, and credits that have been made to Plaintiff, or which were claimed or received by Plaintiff, related in any way to the amounts claimed as owed, and demands that Plaintiff itemize the charges associated with the alleged debt on which Plaintiff's Complaint is based.

FOR A THIRD DEFENSE

20. Copper Lakes realleges each allegation set forth above as if repeated here.

21. Copper Lakes is informed and believes that the purported waivers set forth in the loan documents, including the waiver of appraisal, are unconscionable and are against the public policy of South Carolina.

22. Copper Lakes therefore seeks an order modifying the loan documents so as to void all terms and conditions thereof that are unconscionable or against the public policy of the State of South Carolina, and permitting Copper Lakes to assert any such defenses or legal positions that may be applicable to the facts of this case.

FOR A FOURTH DEFENSE

23. Copper Lakes realleges each allegation set forth above as if repeated here.

24. In addition to the foregoing defenses, Copper Lakes reserves any and all additional and further defenses as may be revealed during discovery or upon receipt of additional information.

WHEREFORE, Copper Lakes prays:

A. That Plaintiff's claims against Copper Lakes be dismissed with prejudice and forever barred;

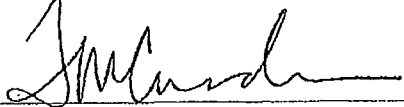
B. That the cost of this action be taxed against the Plaintiff;

C. For a trial by jury on all issues so triable; and,

D. For such other and further relief in favor of Copper Lakes as the Court may deem just and proper.

SOWELL GRAY STEPP & LAFFITTE, LLC

By: _____


Robert E. Stepp

Tina Cundari

1310 Gadsden Street

Post Office Box 11449

Columbia, South Carolina 29211

(803) 929-1400

Attorneys for Copper Lakes, LLC

Columbia, South Carolina
February 14, 2011

STATE OF SOUTH CAROLINA)
)
COUNTY OF GREENVILLE)

IN THE COURT OF COMMON PLEAS

TD BANK NATIONAL ASSOCIATION,)
SUCCESSOR BY MERGER TO)
CAROLINA FIRST BANK,)

Plaintiff.)

**DEFENDANT GRANDE
DUNES DEVELOPMENT
COMPANY, LLC'S ANSWER
(JURY TRIAL DEMANDED)**

v.)

COPPER LAKES, LLC F/K/A TALL)
PINES INVESTMENTS, LLC, GRANDE)
DUNES DEVELOPMENT COMPANY,)
LLC AND SILVER REAL ESTATE)
FUND I, LP)

C.A. No.: 2010-CP-23-10047

Defendant Grande Dunes Development Company, LLC ("Grande Dunes"), answering the Complaint of Plaintiff, would respectfully allege and show unto the Court as follows:

FIRST DEFENSE

1. The allegations in paragraph 1 of the Complaint are admitted.
2. Grande Dunes is without information sufficient to form a belief as to the truth or falsity of the allegations in paragraph 2 of the Complaint and the same are therefore denied.
3. The allegations in paragraph 3 of the Complaint are admitted.
4. The allegations in paragraph 4 of the Complaint are admitted.
5. The allegations in paragraph 5 of the Complaint are admitted upon information and belief.
6. The allegations in paragraph 6 of the Complaint are admitted.
7. In response to the allegations in paragraph 7 of the Complaint, Grande Dunes admits that Tall Pines Investments, LLC executed the Promissory Note attached to Plaintiff's Complaint as Exhibit A. It is further admitted that the original principal amount of the Note is \$12,024,124.00, and the Note is dated July 24, 2007. The Note is incorporated herein by

Handwritten initials/signature
Pg 1

15. In response to the allegations in paragraph 15 of the Complaint, Grande Dunes admits that as of August 27, 2010, the Note had not been paid in full and the Demand Letter attached to Plaintiff's Complaint as Exhibit I was mailed to Copper Lakes. The Demand Letter is incorporated herein by reference for its terms and provisions. Grande Dunes denies the remaining allegations of paragraph 15 of the Plaintiff's Complaint.

16. The allegations in paragraph 16 of the Complaint contain a legal conclusion to which no response is required. To the extent a response is required, the Note, the Loan Agreement, the Mortgage, the Grande Dunes Guaranty, the Silver Guaranty, and the Contract Assignment are incorporated herein by reference for their terms and provisions. Grande Dunes is without knowledge or information sufficient to form a belief as to the remaining allegations of paragraph 16 of the Plaintiff's Complaint, and the same are therefore denied.

17. Grande Dunes is without knowledge or information sufficient to form a belief as to the truth of the allegations in paragraph 17 of the Complaint, and the same are therefore denied.

18. Grande Dunes denies each and every allegation contained in Plaintiff's Complaint not hereinabove admitted, explained, or modified.

SECOND DEFENSE
(ACCOUNTING)

19. Grande Dunes reiterates each and every allegation of the First Defense, not inconsistent herewith as fully as if repeated herein.

20. Grande Dunes demands a complete accounting of all moneys, payments and credits that have been made to Plaintiff, or which were claimed or received by Plaintiff, related in any way to the amounts claimed as owed and demands that the Plaintiff itemize the charges associated with the alleged debt on which Plaintiff's Complaint is based.

Handwritten initials and number:
JTB
Pg 4

THIRD DEFENSE
(PUBLIC POLICY)

21. Grande Dunes reiterates each and every allegation of the First through Second Defenses, not inconsistent herewith as fully as if repeated herein.

22. Grande Dunes is informed and believes that the purported waivers set forth in the loan documents, including the waiver of appraisal, are unconscionable and are against the public policy of South Carolina.

23. Grande Dunes therefore seeks an Order modifying the loan documents so as to avoid all terms and conditions thereof that are unconscionable or against the public policy of the State of South Carolina, and that Grande Dunes be permitted to assert any such defenses or legal positions that may be applicable to the facts of this case.

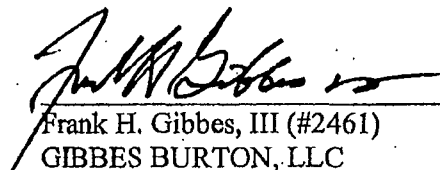
WHEREFORE, Grande Dunes Development Company, LLC prays:

JAB
Pg 5
A. That Plaintiff's claims against Grande Dunes be dismissed with prejudice and forever barred;

B. That the costs of this action be taxed against the Plaintiff;

C. For a trial by jury on all issues so triable; and,

D. For such other and further relief in favor of Grande Dunes as the Court may deem just and proper.



Frank H. Gibbes, III (#2461)
GIBBES BURTON, LLC
308 East Saint John Street
Spartanburg, South Carolina 29302
fgibbes@gibbesburton.com
Telephone: 864-327-5000
Facsimile: 864-327-5001

G. Kirkland Hardymon (#80053)
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*Attorneys for Defendant Grande Dunes
Development Company, LLC*

February 14, 2011
Spartanburg, South Carolina

*JHG
Pg 6*

| | | |
|---|---|---|
| STATE OF SOUTH CAROLINA |) | IN THE COURT OF COMMON PLEAS |
| |) | |
| COUNTY OF GREENVILLE |) | FOR THE THIRTEENTH CIRCUIT |
| |) | |
| TD Bank, National Association, successor by merger to Carolina First Bank, |) | C/A NO. 2010-CP-23-10047 |
| |) | |
| Plaintiff, |) | |
| |) | |
| vs. |) | <u>AMENDED ANSWER OF DEFENDANT</u> |
| |) | <u>SILVER REAL ESTATE FUND I, L.P.</u> |
| Copper Lakes, LLC, f/k/a Tall Pines Investments, LLC, Grande Dunes Development Company, LLC and Silver Real Estate Fund I, L.P., |) | |
| |) | (Jury Trial Demanded) |
| Defendants. |) | |
| |) | |

The Defendant, Silver Real Estate Fund I, and L.P., (hereinafter referred to "Silver") answering the Complaint to the Plaintiff, hereby states and alleges as follows:

FOR A FIRST DEFENSE

1. Each and every allegation contained in the Complaint not hereinafter specifically admitted, qualified or explained is denied.

FOR A SECOND DEFENSE

2. Silver, on information and belief, admits the allegations contained in Paragraphs 1, 2, 3 and 4 of the Complaint.

3. Silver admits the allegations contained in Paragraphs 5 and 6 of the Complaint.

4. As to the allegations contained in Paragraphs 7 and 8 of the Complaint, Silver admits that Copper Lakes, LLC and Plaintiff entered into a loan transaction as set forth in said allegations, which loan transaction is, in part, evidenced by a Promissory

Note ("Note") and other loan documents, including, a loan agreement. Further answering, Silver craves reference to the Note and other loan documents for their particular terms and import. To the extent any allegations contained in said Paragraphs 7 and 8 remain unanswered, they are denied.

5. As to the allegations contained Paragraph 9 of the Complaint, Silver admits so much of said Paragraph that alleges that Defendant Grande Dunes Development Company, LLC executed a Guaranty Agreement in favor of Plaintiff. Further answering, Silver craves reference to said Guaranty Agreement for its particular terms and import. To the extent any allegations contained in said Paragraph 9 remain unanswered, they are denied.

6. As to the allegations contained in Paragraph 10, Silver admits so much of said Paragraph that alleges it executed a Guaranty Agreement in favor of the Plaintiff. Further answering, Silver craves reference to said Guaranty Agreement for its particular terms and import. To the extent any allegations contained in said Paragraph 10 remain unanswered, they are denied.

7. As to the allegations contained in Paragraph 11, Silver admits so much of said Paragraph that alleges the documents referenced therein were executed and delivered in connection with the loan transaction that is the subject of this action. Further answering, Silver craves reference to the referenced documents themselves for their particular terms and import. To the extent any allegations contained in said Paragraph 11 remain unanswered, they are denied.

8. Silver lacks sufficient information or knowledge to admit or deny the allegations contained in Paragraph 12 of the Complaint, and, therefore, denies the same.

9. As to the allegations contained in Paragraph 13 of the Complaint, Silver admits so much thereof that allege that Copper Lakes, LLC executed an assignment of contracts in favor of Plaintiff. Further answering, Silver craves reference to said assignment of contracts for its particular terms and import. To the extent any allegations contained in said Paragraph 13 remain unanswered, they are denied.

10. As to the allegations contained in Paragraph 14 of the Complaint, Silver craves reference to the terms, provisions and conditions of the documents evidencing and securing the loan transaction that is the subject of this action (including, without limitation, the Note), for their particular terms and import with respect to the maturity date of the Note. To the extent any allegations contained in said Paragraph 14 remain unanswered, they are denied and strict proof thereof is demanded.

11. As to the allegations contained in Paragraphs 15, 16 and 17 of the Complaint, Silver admits so much thereof that allege that certain monies may be owed to Plaintiff by Copper Lakes, LLC under the terms of the Note. The remaining allegations contained therein are denied, upon information and belief, and strict proof thereof is demanded.

FOR A THIRD DEFENSE
(Accounting)

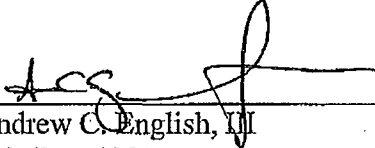
12. Silver hereby demands an accounting of the loan that is the subject of this action, to include, without limitation, all payments made thereon, all interest accrued and all late charges and other costs of whatever nature, which Plaintiff prays for in the Complaint.

FOR A FOURTH DEFENSE
(Limited Guaranty)

13. Silver hereby craves reference to the Guaranty Agreement executed and delivered to Plaintiff in connection with the loan that is the subject of this action and hereby alleges and states that, as set forth in said Guaranty Agreement, Silver is liable, if at all, only to the extent of fifty (50%) percent of any deficiency judgment entered against Silver.

WHEREFORE, having fully answered the Complaint, Defendant Silver Real Estate Fund I, L.P. hereby prays that (i) the Complaint be dismissed, with prejudice, as to it; (ii) that its interest herein be protected; (iii) that, in the event Plaintiff obtains a deficiency judgment against Silver, Silver's liability be limited to fifty (50%) percent thereof; and (iv) for such other and further relief as may be deemed just and proper.

CALLISON TIGHE & ROBINSON, LLC



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ATTORNEYS FOR DEFENDANT
SILVER REAL ESTATE FUND I, L.P.

February 23, 2011
Columbia, South Carolina

1 STATE OF SOUTH CAROLINA)
) COURT OF COMMON PLEAS
2 COUNTY OF GREENVILLE)

3
4 TD Bank National Association,) Case No.: 10-CP-23-10047
Successor by Merger to Carolina)
5 First Bank,) **TRANSCRIPT OF TESTIMONY**
Plaintiff,)
6 vs.) January 11th, 2012
7 Copper Lakes, LLC f/k/a Tall) Greenville, South Carolina
Pines Investments, LLC; and)
8 Silver Real Estate Fund I,)
L.P.,)
9 Defendants,)

10
11 **B E F O R E:**

12 The Honorable Charles B. Simmons, Jr.
13 Master in Equity for Greenville County

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

15 Michael J. Bogle, Esquire
16 Womble Carlyle Sandridge & Rice
17 Attorney for Plaintiff

18 Keith M. Babcock, Esquire
19 Lewis, Babcock & Griffin
Attorney for Defendant Silver Real Estate Fund I, L.P.

20 Frank H. Gibbes, III, Esquire
21 Gibbes Burton, LLC
Attorney in attendance for
22 Grande Dunes Development Company, LLC

23
24 **Ann Dickey Campbell, CVR**
Court Reporter
25

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1 BY THE COURT: All right, on the record then, this is
2 2010-10047, TD Bank versus Copper Lakes and others. We are here
3 today on several motions by Silver Real Estate Fund I, L.P.

4 And let's deal with the issue about the reference first,
5 and I have reviewed the file, reviewed the Motion and the
6 Memorandum. And to summarize, and I will allow you to expound
7 upon this, Silver's position is that, under Rule 53, if it was
8 just a pure mortgage foreclosure action it could be referred,
9 but since this involves Plaintiff's seeking to recover under a
10 guaranty agreement, it should not have been an automatic
11 referral. Is that, in substance, what the argument is?

12 MR. BABCOCK: Your Honor, with some degree of
13 amplification, but in summary, that's pretty close, Your Honor.

14 BY THE COURT: All right, let me hear from you.
15 Anything else you want to add in at this point?

16 MR. BABCOCK: All right, thank you, Your Honor.

17 As Your Honor noted, this is a mortgage foreclosure, but
18 mortgage foreclosure with deficiency action which TD Bank has
19 filed. Copper Lakes is the borrower, and the two guarantors were
20 Grande Dunes Development and Silver Real Estate Fund, and I am
21 here on behalf of Silver.

22 Now, procedurally, there was an Order of Reference filed by
23 the Clerk. There was a Motion and Order, actually a proposed
24 Order, submitted by TD Bank to the Clerk on October 13th of last
25 year, Your Honor. On October 17th, before counsel for Silver

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1 received either the Motion or the proposed Order, the Clerk
2 signed the Order. So what happened was, there was no opportunity
3 to be heard. A proposed Order was signed, and the Motion and the
4 Order was not even received until later that month, October 28th.

5 So in early November, a Motion was filed on behalf of
6 Silver to vacate that Order as being void. Now, when we look at
7 the proposed Order itself, the proposed Order only talks about a
8 foreclosure action. It doesn't say anything about deficiency,
9 and it certainly doesn't say anything about deficiency against
10 the guarantors. Looking at Rule 53(b), Your Honor, and I know
11 Your Honor is well familiar with that, but the first sentence of
12 that says, "In an action where the parties consent in a default
13 case or an action for foreclosure, some or all the causes of
14 action in the case may be referred to a Master or Special
15 Referee by Order of a Circuit Court Judge or the Clerk of
16 Court."

17 Now, the rule itself doesn't talk anything about an *ex*
18 *parte* type of application, so there's that issue in and of
19 itself, but assuming for our purposes today, that you can have
20 an *ex parte* application, we submitted it would only be for a
21 pure foreclosure, because that's what the rule says. It says,
22 "Foreclosure." The case law talks, when you've got that kind of
23 automatic reference or *ex parte* reference, there's case law
24 talking about strictly constructing, or strictly construing,
25 that type of rule. And there is good reason for that, because if

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1 you're going to have something which automatically goes or
2 quickly goes somewhere, you've got to be very careful about what
3 actions are handled by that kind of procedure.

4 So it's our position that, because there was no opportunity
5 to be heard, and because there's no provision for, in the rule,
6 for a foreclosure with deficiency against a guarantor, which is
7 what we have here, that that Order of Reference signed by the
8 Greenville Clerk of Court's Office is void. And of course, the
9 next step after, if the Court agrees with that position, then it
10 never got to Your Honor for the second Order that you issued
11 because the reference itself would have been void and the
12 subject matter never would have been transferred from Circuit
13 Court to the Master.

14 BY THE COURT: All right, let me hear, on the first
15 issue, what's the Plaintiff's position? Under Rule 53, my
16 understanding Rule 53 was amended to allow historically what had
17 always occurred, if it's a foreclosure it's referred to the
18 Master or the Special Referee, and this just allowed a more
19 streamlined procedure.

20 MR. BOGLE: Yes, Your Honor, and then Rule 71 also
21 tacks onto that that provides actions to foreclosure liens or to
22 obtain partition of real property shall be tried by the Court
23 and shall ordinarily be referred to a Master pursuant to Rule
24 53.

25 Now, Rule 29-3-660 recognizes that a deficiency judgment is

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1 part of a foreclosure suit, and in our brief we cited two cases,
 2 Federal Land Bank of Columbia v Davant and Perpetual Building &
 3 Loan Association of Anderson, which have held --- the first one
 4 is a Court of Appeals decision, and the Perpetual Building
 5 decision is a Supreme Court decision. Both have held that a
 6 judgment for deficiency is incidental to the relief sought in a
 7 foreclosure action. And I will quote our Supreme Court here: A
 8 Defendant in a mortgage foreclosure suit has no absolute right
 9 to a jury trial of the issues of fact bearing upon the
 10 Plaintiff's right to recover a deficiency judgment against him
 11 or her.

12 So I think that the law is clear that a deficiency judgment
 13 is just an incidental part of a foreclosure action which can
 14 properly refer to the Master.

15 Now, as to the second point, that there is a right to a
 16 jury trial here because ---

17 BY THE COURT: All right, let me back up before we get
 18 to that. Because historically those cases, as I recall, deal
 19 with a situation where the debtor/obligor, the deficiency is
 20 sought against that person or that individual or that LLC, or
 21 whatever it is, and I have no qualm with your argument and
 22 obviously what 29-3-660 states, that it's incidental. Does a
 23 different analysis become involved if you have an independent
 24 third party guarantor as you have here, which is basically what
 25 Silver is arguing?

1 MR. BOGLE: I think that if the guarantor, if this
 2 third party, is making some allegation where there's a question
 3 or an issue of fact at stake, then possibly. But here, there is
 4 no issues of fact at stake. And if I can hand up the Answer of
 5 Silver here to the Court. Silver has not pled any legal
 6 counterclaims against TD Bank, has pled no legal crossclaims
 7 against the co-Defendants. There is nothing in there that would
 8 necessitate a jury trial. There is only one factual issue at
 9 stake here, which is whether Silver executed the guaranty
 10 agreement in question, and on paragraph 6 of their Answer, they
 11 clearly admit, "As to the allegations contained in paragraph 10
 12 of the Complaint, Silver admits so much of the paragraph that it
 13 alleges it executed a guaranty agreement in favor of the
 14 Plaintiff." So there are no questions of fact here. I mean, they
 15 admit that they signed the guaranty. This is really just an
 16 incidental part of the foreclosure. If the Court finds --- if
 17 the Court allows the sale of the property and the sale of the
 18 property doesn't satisfy the amount of the outstanding debt,
 19 then it's going to go to the guarantors, because the deficiency
 20 judgment is against the guarantors, and there are no questions
 21 of fact for a jury to hear.

22 BY THE COURT: All right, let me hear from Silver's
 23 standpoint. What are the jury issues here?

24 MR. BABCOCK: Your Honor, I think, stepping back, Your
 25 Honor, you've got to separate the procedural from substance,

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1 because what we're hearing now is the substantive argument that
2 would be made before the Circuit Court Judge to transfer the
3 matter including Silver as an independent third-party guarantor
4 to the Master's Office. But we never got there. Procedurally, we
5 never had that opportunity for that argument. Now, we think,
6 Your Honor, on that point, and let me hand up the Complaint,
7 because it does all go hand-in-glove with our Motion to Dismiss.
8 We think there are problems with the Complaint, which we have
9 addressed in our Motion to Dismiss, which the Motion is not
10 before the Court today, but certainly the pleading is. And way
11 back when, this was a Complaint that would be called a jumbled
12 Complaint. Rule 10 requires separate causes of action, and
13 clearly here there should have been at least two causes of
14 action, one against the borrower for whom the foreclosure action
15 was sought, and a second, perhaps against both guarantors, or
16 separately against the guarantors, but a separate cause of
17 action setting forth the proper elements of the cause of action,
18 so what we've got is a jumbled Complaint, which we say is
19 deficient, and the answer may be to allow them to re-plead
20 properly, at which point we could then address the issues in the
21 Complaint and then determine whether the reference would be
22 appropriate under that Complaint as we pled. But what we've got
23 right now is a jumbled Complaint where we only could respond to
24 the allegations as they were presented in jumbled fashion, and
25 again, from a procedural standpoint, we never had the

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1 opportunity to make the argument. We submit that when you get
 2 into an analysis for the independent guarantor who signed a
 3 contract with the bank, you've got a separate analysis,
 4 depending upon exactly what is pled and what defenses may be
 5 available there. And that's where we think it should be, Your
 6 Honor. It should be sent back to Circuit Court. If they want to
 7 move to amend, I know that's normally granted, so they can amend
 8 and re-plead and then we could address that, and we can also
 9 address where Mr. Gibbes' client stands at that point in time,
 10 but procedurally, that's where we need to go back. It was
 11 improper procedurally to just jam it over to the Master's
 12 Office.

13 BY THE COURT: All right, let me go back. Assuming
 14 where we are procedurally at this point, what are the jury
 15 issues raised by Silver?

16 MR. BABCOCK: Your Honor, we think we've got, again,
 17 we've got, from our standpoint, an improperly pled Complaint,
 18 but what we've got at the heart is a contract, and based upon
 19 what we've got, we say we have a jury right, because they're
 20 seeking money damages and under the case law that allow money
 21 damages, we would have a jury trial right on the contract that
 22 we signed with the bank.

23 BY THE COURT: All right, but if Plaintiff is correct
 24 and there are no allegations or claims raised, what is there to
 25 be litigated under that, under the guaranty agreement?

1 MR. BABCOCK: Well, Your Honor, right now we haven't
2 had the full allegations alleged in the Complaint. Once we get
3 that, we can address that, and there may be, or there may not
4 be, when it's properly alleged, but what I've got now to respond
5 to is a jumbled Complaint. It doesn't set forth an appropriate
6 cause of action. We've got to address it once we've got those
7 facts. It just needs to be put back in place procedurally to
8 allow the proper review and argument for it to then occur. It
9 may be they've got arguments to come to the Master's Office or
10 not, but we've got to go back to that point in time, and until
11 it's properly pled we can't do that.

12 BY THE COURT: All right, Mr. Bogle?

13 MR. BOGLE: Just briefly, Your Honor, I mean, this is
14 just in a nutshell what we've been going through in this case.
15 We have a borrower here who says he has --- a guarantor who says
16 he has no money, he shows up at the bank's office and says he
17 has no money and he has two law firms representing him. This
18 case is over a year old, and suddenly a couple of months ago, we
19 get these two motions challenging the reference to the Master,
20 and then, conveniently, four or five days before this hearing --
21 - this case has been pending for thirteen or fourteen months,
22 and we get a Motion to Dismiss. Now, the substance, I hate to
23 get into the substance of the Motion to Dismiss because it's not
24 before the Court, but I would love for the Court to look at the
25 Complaint, and I don't know what counsel is talking about with

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1 this being a jumbled Complaint. It's a six-page Complaint that
2 really couldn't be any more clear, and Silver has adequately
3 alleged throughout the Complaint --- I mean, this is the same or
4 a similar Complaint that we see every single day, and on the
5 merits, I think the Motion to Dismiss is --- I mean, it has no
6 merit whatsoever, and all we have here is just a delay tactic. I
7 think when we had a conference call with Your Honor, Your Honor
8 said that he would sit both as a Master and as a Circuit Court
9 Judge to consider this Motion. What they're asking us to do is
10 for this to be kicked back to the Circuit Court to then make
11 another motion to refer it back to the Master, and I don't think
12 we need to do that extra step because Your Honor can wear both
13 hats at this hearing. And there's the simple fact that there are
14 no questions of fact here. They've admitted that they signed the
15 guaranty, that there are no questions of fact. All that's at
16 issue here is how much money the property is going to bring and
17 then how much the debt is, subtract the two and that's it.
18 They've admitted they signed the guaranty. There are no issues
19 of fact here.

20 BY THE COURT: All right, and at this point, Plaintiff
21 is asking, and correct me if I'm wrong, for the property secured
22 by the mortgage to proceed to the foreclosure sale. Then, at the
23 conclusion of that sale, if there is a deficiency, to proceed
24 against the guarantors to establish the amount of the deficiency
25 at that point?

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1 MR. BOGLE: Yes, Your Honor, that's correct.

2 BY THE COURT: Now, let me ask you, as far as on the
3 Motion to Strike or Dismiss that Silver has filed, how long
4 before that's ready to be heard?

5 MR. BOGLE: I mean, it should be able to be resolved.
6 From best I could tell, their only argument is to why Grande
7 Dunes should not be dismissed from the case. Is that what you're
8 asking?

9 BY THE COURT: No, sir, they, as I recall, one of the
10 Motions alleged that Silver should be dismissed because there
11 was no relief sought against them except in the prayer.

12 MR. BOGLE: Oh, yes, Your Honor, we're ready to hear
13 that whenever Your Honor would like to hear it. I don't know if
14 we can waive the ten-day notice, but I mean, I'd be glad to go
15 into that today. I mean, I think it's ---

16 BY THE COURT: Can that be heard?

17 MR. BABCOCK: I don't have any problem with that, Your
18 Honor.

19 BY THE COURT: All right, well, let's go ahead, because
20 I think all of these Motions are so intertwined that it just
21 makes sense to have them all on the record at this point, so let
22 me hear from you on the Motion to Dismiss.

23 MR. BABCOCK: Your Honor, the Motion to Dismiss is very
24 straightforward. Looking at --- and, Your Honor, I think we
25 can't just look at expedience. We have to look at what the rules

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1 say. That's how we practice law, based upon the rules. And what
2 Rule 10(b) says is that, under your form of pleadings, paragraph
3 and separate statements, and very clearly, the last sentence in
4 10(b) says, "Each cause of action and each defense shall be
5 stated in a separate cause of action or defense." That's
6 required. And it's clearly separate causes of action between the
7 borrower and the foreclosure relief that is sought there and the
8 guarantor or guarantors and relief under deficiency judgment.
9 There is a separate contractual argument cause of action where
10 they've got to plead the appropriate elements and you can't just
11 throw something in the prayer for relief. You've got to have a
12 proper cause of action for us to respond to, and again,
13 procedurally, Your Honor, and as I understand from Your Honor's
14 standpoint, obviously when you're hearing the Circuit Court
15 arguments you're sitting as Special Circuit Court Judge, and we
16 understand you've got --- that's how you're doing it, but it is
17 in that capacity. It needs to go back and come back before you
18 as Special Circuit Court Judge, but they need to re-plead this
19 properly, let us respond, and at that point, determine on the
20 Motion for Reference where things stand. One of our problems,
21 Your Honor, as we indicated in the dismissal of Mr. Gibbes'
22 client, when it got to Your Honor is we don't have the specifics
23 of the deal that's being cut between the bank and the other
24 guarantor, and we've asked for that. They've offered us some
25 redacted something with special requirements. We think we're

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1 entitled to the whole thing, I don't mind with some kind of
2 confidentiality Order that it can only be used in this case. I
3 don't have a problem with that. But we should get that whole
4 document, and then we can be in a position to determine where
5 things stand on the Order of Reference and where things stands
6 with Mr. Gibbes' client, because it may be that we won't have a
7 problem. We've got to have all the information, though. So
8 that's why we think it needs to go back to Circuit Court, for
9 the Circuit Court hat, go back to Circuit Court. Let them, if
10 they want to re-plead, fine. If they don't, we think we should
11 be dismissed because that Complaint's deficient under Rule 10.

12 BY THE COURT: All right, let me hear from Plaintiff.

13 MR. BOGLE: Briefly, Your Honor, I think we're blurring
14 issues here. We are not disputing that the settlement agreement
15 with Grande Dunes is relevant to their case in the determination
16 of what the deficiency is, and that's clearly relevant because
17 the amount of the deficiency will be lessened by any amount of
18 the settlement that was received from Grande Dunes. And Frank
19 can weigh in here, but we have offered from the get-go, since we
20 settled with Grande Dunes, to disclose that settlement agreement
21 and the amount in there, but there is a confidentiality clause
22 in that settlement with Grande Dunes, and TD Bank cannot
23 unilaterally waive that confidentiality, so we had to enter into
24 a confidentiality agreement with Silver in order to release
25 that. We drafted, or Frank --- I'm not sure whether Frank

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1 drafted it or we drafted it, but we drafted a confidentiality
2 agreement. We sent it to Frank Gibbes back in October. Frank had
3 one change to it. And then we forwarded that over to Drew
4 English over at Silver's law firm. I'm going to hand this up. We
5 asked at that time if that change was fine in the
6 confidentiality agreement, and never heard anything back. As
7 soon as they let us know, as soon as they sign the
8 confidentiality agreement that we sent to them on October 28th,
9 we'll give them the settlement agreement. I mean, that's not an
10 issue here. I mean, nobody's trying to hide the ball or
11 anything. We've offered to give it to them. All they've got to
12 do is sign the confidentiality agreement. We just see that as
13 just a non-issue.

14 In going to the Motion to Dismiss, if the Court goes
15 through the Complaint, which I understand a copy's been provided
16 ---

17 BY THE COURT: I've got it in front of me.

18 MR. BOGLE: We identified the Defendant, Mr. Silver,
19 Silver Real Estate Funds, in paragraph 5. We go into, we
20 properly reference the loan agreement with the borrower in the
21 paragraph 8. Paragraph 10, we allege that the Plaintiff entered
22 into a guaranty agreement or that Silver gave a guaranty
23 agreement to TD Bank. That's the paragraph that they admitted in
24 their Answer. Paragraph 11, we walked through the note and the
25 mortgage and the loan documents with the borrower. Paragraphs 14

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1 and 15, we alleged the maturity of the note and the defaults,
2 and paragraph 16, we allege the default under the note and the
3 guaranty agreement with Silver, and then allege what the amount
4 owed is. And then, in paragraph (f) on the final page of the
5 Complaint, we have a separate paragraph which clearly requests
6 that if there is a deficiency after the sale of the property,
7 that the deficiency be assessed against Grande Dunes and Silver
8 pursuant to those guaranty agreements. It's very
9 straightforward. It's separate paragraphs. Everything's in
10 there. And contrary, I believe in the Motion to Dismiss, they
11 say the only manner in which Silver Real Estate is addressed is
12 in the prayer for relief. I went through and counted, and
13 there's no less than seven paragraphs in the body of the
14 Complaint where Silver and Silver's actions and what Silver did
15 and didn't do and breaches of the guaranties. All that stuff is
16 alleged throughout the Complaint, so I think that there is no
17 merit to the Motion to Dismiss, and we would ask that that be
18 denied.

19 BY THE COURT: All right, and how about on the Motion
20 relative to Grande Dunes? Is there a Motion relative to Grande
21 Dunes, to bring them back in, effectively?

22 MR. BABCOCK: Well, yes, Your Honor, and procedurally
23 it was a Motion we had to make because it was our position that
24 the Order of Reference itself was void. Therefore, we would have
25 to take the position that anything that happened after that

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1 Order, when it came to the Master's Office, would be void.

2 Again, if we can go get it back to Circuit Court, get the
3 settlement document, and they had all kinds of bells and
4 whistles on the confidentiality, but we understood we weren't
5 getting the whole document. We can get the whole document, have
6 it only be used in this action. It may well be that we can let
7 Mr. Gibbes' client out. But procedurally, it was our position
8 and is our position that that Order of Reference was void;
9 therefore, anything else that was done after that would be void.
10 We've got to go back to Circuit Court.

11 We're not trying to be obstructionists, Your Honor. If we
12 could get what we need, it may well be we can let them out and
13 we can see where we are, but in terms of this Complaint, Rule 10
14 means something. It means separate causes of action. It doesn't
15 have separate causes of action. We're entitled to that under
16 Rule 10.

17 BY THE COURT: All right, how about the fact that there
18 was an Answer filed by Silver Real Estate Fund, apparently, and
19 there's also an Amended Answer, and apparently the allegations
20 were clear enough to file an Answer and an Amended Answer?

21 MR. BABCOCK: Your Honor, they were clear enough to
22 have a response to the allegations. It doesn't mean that the
23 allegations were sufficient under the pleading requirements.
24 That's why --- otherwise, you could have what should be ten
25 causes of action, just throw all of that in one, and let people,

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1 you know, mull around with it. There are supposed to be separate
2 causes of action under the Rules. That's plain and simple. It's
3 a very different theory that they've got with the borrower and
4 their rights to foreclosure and what not with the borrower in
5 terms of the guaranty and the contractual rights they've got
6 against the guarantors. Those are separate analyses, separate
7 elements to causes of action. That's what needs to be pled for
8 us to then respond to.

9 MR. BOGLE: Briefly, Your Honor, it is in separate
10 paragraphs. It's very clear in the Complaint, and again, none of
11 these 12(b) defenses which are required to be raised in the
12 initial responsive pleadings, none of these were raised in their
13 initial Answer. None of these were raised in their Amended
14 Answer. It's thirteen months later, for the first time we're
15 getting anything having to do with a 12(b) motion or a motion
16 for any kind of improper pleadings. This should have been made
17 at the time of the Answer.

18 BY THE COURT: Yes, sir, Mr. Gibbes?

19 MR. GIBBES: Your Honor, I'm hesitant to say anything
20 since I'm dismissed at the current point, but I guess my concern
21 is simply this: my client chose to settle. They did settle. They
22 entered into a divided settlement agreement, and under it we are
23 entitled to an Order of Dismissal. The Court granted an Order of
24 Dismissal. And with all due respect to my friend Mr. Babcock, he
25 hasn't asserted a claim against us, nor does he have a claim

GREENVILLE COUNTY COURTHOUSE

1 against us that he can assert, and it's not a question of
2 whether he can, as I understand it, keep us in the case, so to
3 speak. If the Court, for whatever reason, requires the Plaintiff
4 bank to replead, they're not going to assert a claim against us
5 because we've settled. And I don't think, on the facts and
6 evidence as I know it, Mr. Babcock can assert a claim against us
7 currently either. He certainly hasn't done so today, so it's
8 unfair to my client, and I realize that doesn't get you a lot
9 sometime, but it's unfair to my client to be drug along in this
10 process incurring legal fees when we have done the right thing,
11 so to speak, settled, and the Court, in fact, has entered an
12 Order dismissing us.

13 BY THE COURT: All right, and is Grande Dunes willing,
14 with general confidentiality language, to produce the settlement
15 agreement?

16 MR. GIBBES: Your Honor, we have indicated our
17 willingness to have that produced. They made a proper discovery
18 request in the case and in an unrelated case, as I understand
19 it. They sent us a proposed confidentiality agreement to look
20 at. I offered one comment, promptly. And with all due respect to
21 Mr. Babcock, his co-counsel has drug his feet at every turn in
22 responding to things as this has gone along, and in fact, Mr.
23 English --- not this Mr. English, the other Mr. English --- told
24 me when this Motion to Vacate got filed, that he would have no
25 problem consenting to a Circuit Judge dismissing us if you chose

GREENVILLE COUNTY COURTHOUSE

1 to vacate the Order. So there's never been any thought, as far
2 as I can determine, on Silver's part that we should remain in
3 the case nor do they have a legal basis to do that.

4 MR. BABCOCK: And, Your Honor, so that we're clear, and
5 as I've told Mr. Gibbes, I think our problem is that
6 procedurally the fact that the Order of Reference was improper;
7 therefore, any Orders that would be issued were without
8 jurisdiction. Therefore, we've got to go back and do it again.
9 If I can get the full settlement agreement, not some redacted
10 settlement agreement, the full settlement agreement and review
11 that, it may well be that we can agree that Mr. Gibbes can
12 leave.

13 BY THE COURT: All right, here's what I'm going to do.
14 Wearing my hat as the Master and/or Special Circuit Judge,
15 initially I'm going to require that the agreement be produced,
16 the agreement with Grande Dunes, and I have no problem with
17 general confidentiality language. If that becomes relevant at
18 some point in the future that the confidentiality provisions
19 should be removed, that can be addressed by the Court at that
20 time. So that will need to be produced within twenty-one (21)
21 days.

22 I am going to deny the Motion to Dismiss filed by Silver.
23 First, and I understand your argument about Rule 10(b), and it,
24 perhaps, could have been better separated as far as different
25 causes of action, but I think when you read the Complaint as a

GREENVILLE COUNTY COURTHOUSE

1 whole, it sufficiently identifies what the issues are, the
2 allegations against the respective parties. Also, there have
3 been at least two Answers filed by Silver to the Complaint.

4 As relates to the issue on the reference, I am going to
5 take that under advisement. I just want to look at a couple of
6 other things before I rule on that. I hope to have a ruling out
7 on that within ten (10) days.

8 So are there any other Motions, then, at this point, any
9 other issues that need to be addressed?

10 MR. BOGLE: Are we going to hold the Motion on Grande
11 Dunes, I guess, open until the Court makes a decision on the
12 Order of Reference?

13 BY THE COURT: Yes, sir.

14 MR. BOGLE: Okay.

15 BY THE COURT: All right, anything else, Mr. Babcock?

16 MR. BABCOCK: Nothing for us, Your Honor.

17 BY THE COURT: Mr. Gibbes, anything else?

18 MR. GIBBES: No, sir.

19 BY THE COURT: All right, if you can just do a short
20 Order and just email it to my court reporter?

21 MR. BOGLE: On the Motion to Dismiss?

22 BY THE COURT: Yes, sir.

23 MR. BOGLE: Yes, Your Honor.

24 BY THE COURT: And also to produce the agreement.

25 MR. BOGLE: Yes, Your Honor.

GREENVILLE COUNTY COURTHOUSE

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BY THE COURT: All right, thank you, gentlemen.

MR. BABCOCK: Thank you, Your Honor.

----- END OF TRANSCRIPT -----

GREENVILLE COUNTY COURTHOUSE

1 I, the undersigned Ann D. Campbell, Court Reporter, Office
2 of Master in Equity for Greenville County, South Carolina, do
3 hereby certify that the foregoing is a true, accurate and
4 complete transcript of record of all the proceedings had and
5 evidence introduced in the hearing of the captioned case,
6 relative to appeal, before The Honorable Charles B. Simmons,
7 Jr., as Master in Equity for Greenville County, South Carolina,
8 on the 11th day of January, 2012.

9 I do further certify that I am neither of kin, counsel, nor
10 any interest to any parties hereto.

11 April 10th, 2012

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14 Ann Dickey Campbell, CVR
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GREENVILLE COUNTY COURTHOUSE

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
C.A. No.: 2010-CP-23-10047

TD BANK NATIONAL ASSOCIATION,
SUCCESSOR BY MERGER TO CAROLINA
FIRST BANK,

PLAINTIFF,

v.

Motion for Reference to Master-in-Equity

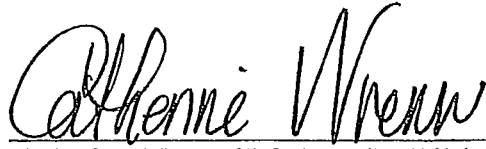
COPPER LAKES, LLC F/K/A TALL PINES
INVESTMENTS, LLC, GRANDE DUNES
DEVELOPMENT COMPANY, LLC AND
SILVER REAL ESTATE FUND I, L.P.

DEFENDANTS.

Plaintiff TD Bank National Association, Successor by Merger to Carolina First Bank, (“**Plaintiff**”), pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, moves the Court to refer all causes of action in the above-captioned lawsuit, in which Plaintiff seeks to foreclose upon a mortgage that Defendant Copper Lakes, LLC *f/k/a* Tall Pines Investment (“**Copper Lakes**”) executed in its favor, to the Honorable Charles B. Simmons, Jr., Master in Equity for Greenville County, for the purpose of taking testimony and evidence and entering a final judgment or decree, with any appeal being directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules. In support of this Motion, Plaintiff notes that it has settled its claims against Defendant Grande Dunes Development Company, LLC (“**Grande Dunes**”), and neither Copper Lakes nor Silver Real Estate Fund I, L.P. (“**Silver**”) have asserted any counterclaims against TD Bank.

WHEREFORE, Plaintiff moves the Court to refer the above-captioned lawsuit to Greenville County, South Carolina’s Master-in-Equity.

This 12th day of October 2011
Greenville, South Carolina



Catherine Wrenn (S.C. Bar No. 76042)

cwrenn@wcsr.com

J. Matthew Trent (S.C. Bar No. 74192)

mtrent@wcsr.com

D. Allen Grumbine (S.C. Bar No. 2343)

agrumbine@wcsr.com

Womble Carlyle Sandridge & Rice, PLLC

550 South Main Street, Suite 400

Greenville, South Carolina 29601

Telephone: (864) 255-5424

Attorneys for T.D. Bank, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on the 12th day of October, 2011, I served **Plaintiff's Motion for Reference to Master in Equity** by depositing same in United States Mail, first-class, proper postage affixed, addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which are the last known address(es):

Robert E. Stepp, Esq.
Tina Cundari, Esq.
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211

Attorneys for Copper Lakes, LLC f/k/a Tall Pines Investments, LLC

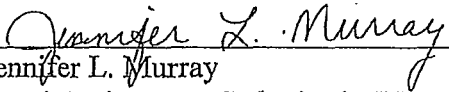
Andrew C. English, III, Esq.
Callison Tighe & Robinson, LLC
1812 Lincoln Street
Columbia, South Carolina 29201

Attorney for Defendant Silver Real Estate Fund, I, L.P.

Frank H. Gibbs, III, Esq.
Gibbes Burton, LLC
308 East Saint John Street
Spartanburg, South Carolina 29302

Attorney for Grand Dunes Development Company, LLC

October 12th, 2011
Greenville, South Carolina



Jennifer L. Murray
Legal Assistant to Catherine F. Wrenn

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TD BANK NATIONAL ASSOCIATION,
SUCCESSOR BY MERGER TO CAROLINA
FIRST BANK,

PLAINTIFF,

v.

COPPER LAKES, LLC F/K/A TALL PINES
INVESTMENTS, LLC, GRANDE DUNES
DEVELOPMENT COMPANY, LLC AND
SILVER REAL ESTATE FUND I, L.P.

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-10047

Proposed Order for
Reference to Master-in-Equity

This action seeks foreclosure of Plaintiff TD Bank National Association's ("**TD Bank**" or "**Plaintiff**") mortgage lien against certain property of Defendant Copper Lakes, LLC f/k/a Tall Pines Investments, LLC ("**Copper Lakes**"). On October 13, 2011, TD Bank, pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, filed a Motion to Refer this action to the Greenville County Master-in-Equity and alleged that: (1) this is a foreclosure action, and (2) it has settled its claims against Defendant Grande Dunes Development Company, LLC ("**Grande Dunes**"), and neither Copper Lakes nor Silver Real Estate Fund I, L.P. ("**Silver**") have asserted any counterclaims against TD Bank.

IT IS HEREBY ORDERED that, pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, the above-captioned foreclosure lawsuit and all of its causes of action are referred to the Honorable Charles B. Simmons, Jr., Master in Equity for Greenville County, for the purpose of taking testimony and evidence and entering a final judgment or decree, with any appeal being directly to the South Carolina Supreme Court or the Court of Appeals as provided by the South Carolina Appellate Court Rules.

This _____ day of _____ 2011

Presiding Judge or Clerk of the Court of Common Pleas

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-10047

COUNTY OF GREENVILLE

TD BANK NATIONAL ASSOCIATION,
SUCCESSOR BY MERGER TO CAROLINA
FIRST BANK,

PLAINTIFF,

v.

COPPER LAKES, LLC F/K/A TALL PINES
INVESTMENTS, LLC, GRANDE DUNES
DEVELOPMENT COMPANY, LLC AND
SILVER REAL ESTATE FUND I, L.P.

DEFENDANTS.

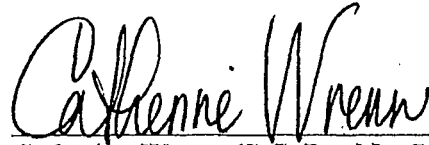
**MOTION FOR DISMISSAL OF
DEFENDANT GRANDE DUNES
DEVELOPMENT, LLC**

FILED
OCT 18 AM 9:33
CLERK OF COURT
GREENVILLE SC

Plaintiff TD Bank National Association Successor by Merger to Carolina First Bank (“**Plaintiff**” or “**TD Bank**”), pursuant to Rule 41(a)(2) of the South Carolina Rules of Civil Procedure, moves the Court to dismiss without prejudice its claims against Defendant Grande Dunes Development Company, LLC (“**Grande Dunes**”) and to dismiss Grande Dunes as a party to the above-captioned lawsuit. TD Bank makes this motion because it has entered into a settlement agreement with Grande Dunes whereby it agreed to dismiss Grande Dunes from this action. As a result of TD Bank’s settlement agreement with Grande Dunes, there are no pending claims against Grande Dunes in this action as none of Grande Dunes’ co-defendants, Copper Lakes, LLC f/k/a Tall Pines Investments, LLC (“**Copper Lakes**”) and Silver Real Estate Fund I, L.P. (“**Silver**”), have asserted cross-claims against it. Grande Dunes and Copper Lakes consent to this motion. Although Silver Lakes has not asserted any claims against Grande Dunes, see Silver Lakes’ Amended Answer, it has not consented to dismissal of Grande Dunes pursuant to a stipulation of dismissal.

WHEREFORE, TD Bank moves the Court to dismiss its claims against Grande Dunes without prejudice and to dismiss Grande Dunes as a party to this lawsuit because, following TD Bank's settlement agreement with Grande Dunes, there are no pending claims against Grande Dunes in this action.

This 14th day of October __, 2011



Catherine Wrenn (S.C. Bar No. 76042)

cwrenn@wcsr.com

J. Matthew Trent (S.C. Bar No. 74192)

mtrent@wcsr.com

D. Allen Grumbine (S.C. Bar No. 2343)

agrumbine@wcsr.com

Womble Carlyle Sandridge & Rice, PLLC

550 South Main Street, Suite 400

Greenville, South Carolina 29601

Telephone: (864) 255-5424

Attorneys for T.D. Bank, N.A.

WE CONSENT:

Frank Gibbes (w/ permission)

Frank H. Gibbes, III (S.C. Bar No. 2461)

GIBBES BURTON, LLC

308 East Saint John Street

Spartanburg, South Carolina 29302

voice: 864.327.5000

fax: 864.327.5001

e-mail: fgibbes@gibbesburton.com

Attorney for Defendant Grande Dunes Development Company, LLC

WE CONSENT:

Robert Stepp (w/ permission)

Robert E. Stepp (S.C. Bar No. 5335)

Tina Cundari (S.C. Bar No. 71951)

SOWELL GRAY STEPP & LAFFITTE, LLC

1310 Gadsden Street

P.O. Box 11449

Columbia, South Carolina 29211

voice: 803.929.1400

Attorneys for Defendant Copper Lakes, LLC

CERTIFICATE OF SERVICE

I hereby certify that on the 14th day of October, 2011, I served the **Motion for Dismissal of Defendant Grande Dunes Development, LLC** by depositing same in United States Mail, first-class, proper postage affixed, addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which are the last known address(es):

Robert E. Stepp, Esq.
Tina Cundari, Esq.
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211

Attorneys for Copper Lakes, LLC f/k/a Tall Pines Investments, LLC

Andrew C. English, III, Esq.
Callison Tighe & Robinson, LLC
1812 Lincoln Street
Columbia, South Carolina 29201

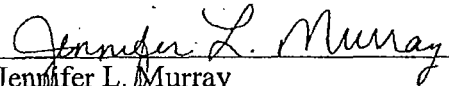
Attorney for Defendant Silver Real Estate Fund, I, L.P.

October 14th, 2011
Greenville, South Carolina

Frank H. Gibbs, III, Esq.
Gibbes Burton, LLC
308 East Saint John Street
Spartanburg, South Carolina 29302

Attorney for Grand Dunes Development Company, LLC

FILED-CLERK OF COURT
GREENVILLE CO. S.C.
PAUL D. WICKHAM
2011 OCT 18 AM 9:33



Jennifer L. Murray
Legal Assistant to Catherine F. Wrenn

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

FOR THE THIRTEENTH CIRCUIT

TD Bank, National Association,)
successor by merger to Carolina)
First Bank,)

CASE NO. 2010-CP-23-10047

Plaintiff,)

**NOTICE OF MOTION AND MOTION
TO VACATE AS VOID, OR, IN THE
ALTERNATIVE, TO ALTER OR AMEND
ORDER OF REFERENCE**

vs.)

Copper Lakes, LLC, f/k/a Tall Pines)
Investments, LLC, Grande Dunes)
Development Company, LLC and)
Silver Real Estate Fund I, L.P.,)

Defendants.)

YOU WILL PLEASE TAKE NOTICE that the Defendant, Silver Real Estate Fund I, L.P. ("SREF"), by and through its undersigned counsel, hereby moves the Court, pursuant to Rules 52(b), 59(e) and 60(b)(4), SCRCP, for an Order vacating as void, or, in the alternative, altering or amending, the Order of Reference signed by the Honorable Paul B. Wickensimer, Clerk of Court for Greenville County, on October 17, 2011, filed on October 17, 2011, and received by counsel for SREF on October 28, 2011.

This motion is based upon the fact that the Order of Reference executed by the Clerk of Court is void as a matter of law and should be vacated. In the alternative, it also deprives SREF of a mode of trial to which it entitled as a matter of law.

This is an action to foreclose a mortgage given to Plaintiff by Tall Pines Investments, LLC, predecessor to Defendant Copper Lakes, LLC. In its Complaint, Plaintiff makes various vague allegations against SREF and the other Defendant, Grande Dunes Development Company, LLC ("Grande Dunes") in respect of the guaranty agreements executed by SREF and Grande

Dunes in connection with the loan secured by the mortgage upon which foreclosure is being sought. In its Amended Answer, SREF demanded a jury trial as to the issues related to the guaranty agreement. Because an action on a guaranty is an action at law, the Order of Reference is depriving SREF of its right to a jury trial, which right is preserved in legal actions by our Constitution. See e.g., So. Bank & Trust Co. v. Harley, 295 S.C. 423, 424, 368 S.E.2d 908 (1988); S.C. Const. Art. I, § 14.

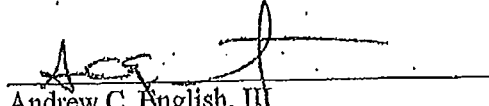
Notwithstanding SREF's jury demand, the Clerk of Court signed an order referring the matter, in its entirety, to the Master-in-Equity. In the interest of expediency, Rule 53, SCRPC, does allow a Clerk of Court to refer matters to the Master under certain circumstances. However, in this matter, SREF had not consented to the reference and did in fact demand a jury trial as to Plaintiff's claims relating to the guaranty. As such, it was improvidently issued and is therefore void. Also, under the Order of Reference, a judge, not a jury, will determine the facts relative to any of Plaintiff's claims made in respect of the guaranty, which not only deprives SREF of its right to a jury trial on those facts but also deprives it of the benefit of the jury having determined those facts with regard to the mortgage foreclosure claim when it is tried.

For the reasons set forth above, the Order of Reference should be vacated as void, or in the alternative, altered or amended.

SIGNATURE ON NEXT PAGE

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC



Andrew C. English, III
P.O. Box 1390
Columbia, South Carolina 29202
Telephone: (803) 404-6900
Fax: (803) 404-6902

ATTORNEYS FOR DEFENDANT SILVER REAL
ESTATE FUND I, L.P.

November 4, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

IN THE COURT OF COMMON PLEAS

COUNTY OF GREENVILLE)

FOR THE THIRTEENTH CIRCUIT

TD Bank, National Association,)
successor by merger to Carolina)
First Bank,)

CASE NO. 2010-CP-23-10047

Plaintiff,)

vs.)

CERTIFICATE OF SERVICE

Copper Lakes, LLC, f/k/a Tall Pines)
Investments, LLC, Grande Dunes)
Development Company, LLC and)
Silver Real Estate Fund I, L.P.,)

Defendants.)

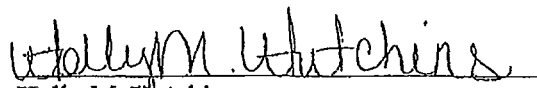
I, Holly M. Hutchins, an employee of Callison Tighe & Robinson, LLC, Attorneys for the Defendant, do hereby certify that I have served a copy of the **Notice of Motion and Motion to Reconsider, Alter or Amend** in this matter on all parties by causing a copy to be placed in the United States Mail, first-class postage affixed, addressed as follows, on November 4, 2011:

J. Matthew Trent, Esq.
Womble Carlyle Sandridge & Rice, PLLC
550 S. Main Street, Suite 400
Greenville, SC 29601

Robert E. Stepp, Esq.
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, SC 29211

Catherine F. Wrenn, Esq.
Womble Carlyle Sandridge & Rice, PLLC
550 S. Main Street, Suite 400
Greenville, SC 29601

Frank H. Gibbs, III, Esq.
Gibbs Burton, LLC
308 East Saint John Street
Spartanburg, SC 29302


Holly M. Hutchins

November 4, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA)
)
 COUNTY OF GREENVILLE)
)
 TD Bank, National Association,)
 successor by merger to Carolina)
 First Bank,)
)
 Plaintiff,)
)
 vs.)
)
 Copper Lakes, LLC, f/k/a Tall Pines)
 Investments, LLC, Grande Dunes)
 Development Company, LLC and)
 Silver Real Estate Fund I, L.P.,)
)
 Defendants.)

IN THE COURT OF COMMON PLEAS
 FOR THE THIRTEENTH CIRCUIT
 CASE NO. 2010-CP-23-10047

**NOTICE OF MOTION AND
 MOTION TO RECONSIDER,
 ALTER OR AMEND**

YOU WILL PLEASE TAKE NOTICE that the Defendant, Silver Real Estate Fund I, L.P. ("SREF"), by and through its undersigned counsel, subject to its Motion to Vacate as Void, or, in the Alternative, to Alter or Amend Order of Reference, hereby moves this Honorable Court, pursuant to Rules 52(b) and 59(e), SCRCPP, for an order reconsidering and/or altering and amending this Honorable Court's Order Dismissing Defendant Grande Dunes Development Company, LLC Without Prejudice, dated October 20, 2011, filed October 25, 2011, and received by counsel for the Defendant on October 28, 2011.

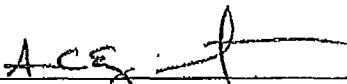
This motion is based upon the fact that the Order of Reference executed by the Honorable Paul B. Wickensimer, Clerk of Court for Greenville County and filed in this action is void as a matter of law and, as such, this Honorable Court lacked subject matter jurisdiction to enter the instant Order. The bases for SREF's position of lack of subject matter jurisdiction are more fully set forth in its Motion to Vacate the Order of Reference filed in this action, a copy of which is attached hereto as Exhibit A. As the Order of Reference is void, this Honorable Court has no

jurisdiction over this action. Accordingly, the Order dismissing Grande Dunes Development Company, LLC as a party was improvidently granted.

For the reasons set forth above, the Court should reconsider, alter, or amend its Order.

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC



Andrew C. English, III
P.O. Box 1390
Columbia, South Carolina 29202
Telephone: (803) 404-6900
Fax: (803) 404-6902

ATTORNEYS FOR DEFENDANT SILVER REAL
ESTATE FUND I, L.P.

November 4, 2011
Columbia, South Carolina

EXHIBIT A

| | |
|---------------------------------------|---------------------------------------|
| STATE OF SOUTH CAROLINA) | IN THE COURT OF COMMON PLEAS |
| COUNTY OF GREENVILLE) | FOR THE THIRTEENTH CIRCUIT |
| TD Bank, National Association,) | CASE NO. 2010-CP-23-10047 |
| successor by merger to Carolina) | |
| First Bank,) | |
| Plaintiff,) | <u>NOTICE OF MOTION AND MOTION</u> |
| vs.) | <u>TO VACATE AS VOID, OR, IN THE</u> |
| Copper Lakes, LLC, f/k/a Tall Pines) | <u>ALTERNATIVE, TO ALTER OR AMEND</u> |
| Investments, LLC, Grande Dunes) | <u>ORDER OF REFERENCE</u> |
| Development Company, LLC and) | |
| Silver Real Estate Fund I, L.P.,) | |
| Defendants.) | |

YOU WILL PLEASE TAKE NOTICE that the Defendant, Silver Real Estate Fund I, L.P. ("SREF"), by and through its undersigned counsel, hereby moves the Court, pursuant to Rules 52(b), 59(e) and 60(b)(4), SCRPC, for an Order vacating as void, or, in the alternative, altering or amending, the Order of Reference signed by the Honorable Paul B. Wickensimer, Clerk of Court for Greenville County, on October 17, 2011, filed on October 17, 2011; and received by counsel for SREF on October 28, 2011.

This motion is based upon the fact that the Order of Reference executed by the Clerk of Court is void as a matter of law and should be vacated. In the alternative, it also deprives SREF of a mode of trial to which it entitled as a matter of law.

This is an action to foreclose a mortgage given to Plaintiff by Tall Pines Investments, LLC, predecessor to Defendant Copper Lakes, LLC. In its Complaint, Plaintiff makes various vague allegations against SREF and the other Defendant, Grande Dunes Development Company, LLC ("Grande Dunes") in respect of the guaranty agreements executed by SREF and Grande

Dunes in connection with the loan secured by the mortgage upon which foreclosure is being sought. In its Amended Answer, SREF demanded a jury trial as to the issues related to the guaranty agreement. Because an action on a guaranty is an action at law, the Order of Reference is depriving SREF of its right to a jury trial, which right is preserved in legal actions by our Constitution. See e.g., So. Bank & Trust Co. v. Harley, 295 S.C. 423, 424, 368 S.E.2d 908 (1988); S.C. Const. Art. I, § 14.

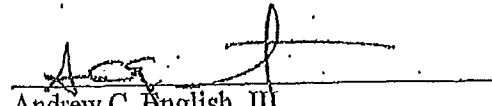
Notwithstanding SREF's jury demand, the Clerk of Court signed an order referring the matter, in its entirety, to the Master-in-Equity. In the interest of expediency, Rule 53, SCRPC, does allow a Clerk of Court to refer matters to the Master under certain circumstances. However, in this matter, SREF had not consented to the reference and did in fact demand a jury trial as to Plaintiff's claims relating to the guaranty. As such, it was improvidently issued and is therefore void. Also, under the Order of Reference, a judge, not a jury, will determine the facts relative to any of Plaintiff's claims made in respect of the guaranty, which not only deprives SREF of its right to a jury trial on those facts but also deprives it of the benefit of the jury having determined those facts with regard to the mortgage foreclosure claim when it is tried.

For the reasons set forth above, the Order of Reference should be vacated as void, or in the alternative, altered or amended.

SIGNATURE ON NEXT PAGE

Respectfully submitted,

CALLISON TIGHE & ROBINSON, LLC



Andrew C. English, III
P.O. Box 1390
Columbia, South Carolina 29202
Telephone: (803) 404-6900
Fax: (803) 404-6902

ATTORNEYS FOR DEFENDANT SILVER REAL
ESTATE FUND I, L.P.

November 4, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA)

COUNTY OF GREENVILLE)

TD Bank, National Association,)
successor by merger to Carolina)
First Bank,)

Plaintiff,)

vs.)

Copper Lakes, LLC, f/k/a Tall Pines)
Investments, LLC, Grande Dunes)
Development Company, LLC and)
Silver Real Estate Fund I, L.P.,)

Defendants.)

IN THE COURT OF COMMON PLEAS

FOR THE THIRTEENTH CIRCUIT

CASE NO. 2010-CP-23-10047

CERTIFICATE OF SERVICE

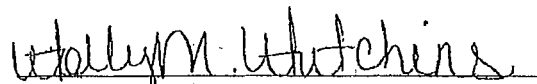
I, Holly M. Hutchins, an employee of Callison Tighe & Robinson, LLC, Attorneys for the Defendant, do hereby certify that I have served a copy of the **Notice of Motion and Motion to Reconsider, Alter or Amend** in this matter on all parties by causing a copy to be placed in the United States Mail, first-class postage affixed, addressed as follows, on November 4, 2011:

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Holly M. Hutchins

November 4, 2011
Columbia, South Carolina

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TD BANK NATIONAL ASSOCIATION,
SUCCESSOR BY MERGER TO CAROLINA
FIRST BANK,

PLAINTIFF,

v.

COPPER LAKES, LLC F/K/A TALL PINES
INVESTMENTS, LLC, GRANDE DUNES
DEVELOPMENT COMPANY, LLC AND
SILVER REAL ESTATE FUND I, L.P.

DEFENDANTS.

IN THE COURT OF COMMON PLEAS
C.A. No.: 2010-CP-23-10047

**TD BANK'S MEMORANDUM IN
OPPOSITION TO SILVER REAL
ESTATE FUND I, L.P.'S MOTION TO
VACATE AND/OR ALTER OR AMEND
THE ORDER OF REFERENCE**

TD Bank, National Association, Successor by Merger to Carolina First Bank, ("Plaintiff" or "TD Bank") submits this memorandum in opposition to Defendant Silver Real Estate Fund I, L.P.'s ("Silver") Motion to Vacate and/or Alter or Amend the Order of Reference, which the Greenville County Clerk of Court granted and which referred the above-captioned foreclosure action to the Master-in-Equity. As explained below, the Court should deny Silver's Motion because the Master-in-Equity has jurisdiction over this foreclosure action and Silver is not entitled to a jury trial on TD Bank's request for a deficiency judgment against it.

Pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, the Greenville County Clerk of Court had the authority to refer and properly did refer the above-captioned foreclosure lawsuit to the Master-in-Equity. Rule 53(b) states that "[i]n . . . an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. Rule 71(a) further provides that "[a]ctions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53." As noted above, the above-

captioned lawsuit is a foreclosure action, which is equitable in nature and in which TD Bank seeks to (1) foreclose on the mortgage that Defendant Copper Lakes, LLC, f/k/a Tall Pines Investments, LLC (“Copper Lakes”) executed in its favor and (2) recover any deficiency after the foreclosure sale from Silver, who guaranteed Copper Lakes’ debts to the bank. See Compl.; see also, e.g., 23 S.C. Jur. Jury § 44 Foreclosure (Aug. 2011) (“[T]he essential nature of the foreclosure action remains equitable”). Thus, under Rules 53 and 71, the Clerk of Court had the authority to refer this foreclosure action to the Master-in-Equity.

Nonetheless, Silver contends that the Court should vacate the Order of Reference because it allegedly is entitled to a jury trial. Significantly, Silver has not pled any legal counterclaims against TD Bank or legal cross-claims against its co-defendants that would necessitate a jury trial. Silver’s Amended Answer. Additionally, no factual issues exist regarding Silver’s execution of the Guaranty Agreement in question, which Silver, in its Amended Answer, admits that it executed.¹ Id., at ¶ 6. As a result, it apparently bases its Motion on the argument that it is entitled to a jury trial because TD Bank is seeking a deficiency judgment against it.² However, this argument fails because, under South Carolina law, deficiency judgments are merely part of foreclosure actions, which are equitable in nature and over which the Master-in-Equity has jurisdiction.

¹ In its defenses, Silver seeks an accounting (which is equitable in nature) and it contends that the Guaranty Agreement only renders Silver liable for half of Copper Lake’s debt to the bank; however, neither of these defenses raises jury issues.

² TD Bank did not plead a separate, legal breach of contract / guaranty cause of action against Silver. Instead, TD Bank simply pled a foreclosure action, and, in its prayer for relief, it seeks a deficiency judgment (to the extent a deficiency exists after the foreclosure sale) from Silver. See Compl. See also Perpetual Building and Loan Assoc. of Anderson v. Braun, 270 S.C. 338, 242 S.E.2d 407 (1978) (“We hold a deficiency judgment to be such an incident of mortgage foreclosure that it may be supported by a general prayer for relief”).

S.C. Code Ann. § 29-3-660 recognizes that a deficiency judgment is “incidental to the main relief sought,” 55 Am. Jur. 2d Mortgages § 682 *Right to Jury Trial* (Aug. 2011), in a foreclosure suit (foreclosure of the mortgage), and, as a result, it specifically permits the Court, in a foreclosure action, to award a deficiency judgment against a guarantor. In particular, the statute provides:

In actions to foreclose mortgages[,] . . . if the mortgage debt be secured by the covenant or obligation of any person other than the mortgagor the plaintiff may make such person a party to the action and the court may adjudge payment of the residue of such debt remaining unsatisfied after a sale of the mortgaged premises against such other person and may enforce such judgment as in other cases.


S.C. Code Ann. § 29-3-660. See Fed'l Land Bank of Columbia v. Davant, 292 S.C. 172, 178, 355 S.E.2d 293, 296 (Ct. App. 1987) (“Section 29-3-660 specifically authorizes the entry of a deficiency judgment when the mortgage debt remains unsatisfied after sale of the mortgaged premises”). As reflected by S.C. Code Ann. § 29-3-660, “a foreclosure suit is a suit in equity and [it is well-established] that, by the rule applicable to equity suits generally, there is no right to a jury trial, even though the court, ‘as incidental to the main relief sought,’ determines an issue which might have been litigated in a separate action at law;” such as a guarantor’s liability for a deficiency. 55 Am. Jur. 2d Mortgages § 682 *Right to Jury Trial* (Aug. 2011); see also Fed'l Land Bank, at 178, 355 S.E.2d at 296 (recognizing that “a judgment for deficiency is merely incidental to the relief sought in a foreclosure action”) (internal citation omitted), and Perpetual Building and Loan, at 341, 242 S.E.2d at 408 (“The United States Supreme Court in Shepherd v. Pepper, 133 U.S. 626, 10 S.Ct. 438, 33 L.Ed. 706 (1890), held a decree for a deficiency to be a necessary incident of a foreclosure suit in equity”). Thus, “in the absence of a statute construed as providing otherwise, a defendant in a mortgage-foreclosure suit has no absolute right to a jury

trial of the issues of fact bearing upon the plaintiff's right to recover a deficiency judgment against him or her." Id. No statute guarantees Silver to a jury trial regarding TD Bank's request for a deficiency judgment against it in this foreclosure action, and, the Master-in-Equity consequently has the ability to enter a deficiency judgment against a guarantor, like Silver, in a foreclosure action. As a result, the Court should deny Silver's Motion to Vacate the Order of Reference, which is nothing more than a disguised attempt to delay the progression of this foreclosure action.

CONCLUSION:

Because the Master-in-Equity has jurisdiction over this foreclosure action and Silver is not entitled to a jury trial regarding TD Bank's request for a deficiency judgment against it, the Court should deny Silver's Motion and permit the lawsuit to remain before the Master-in-Equity. However, in the alternative and in the event that the Court determines that Silver is entitled to a jury trial, TD Bank respectfully requests that the Court "direct a reference of" TD Bank's foreclosure claim against Copper Lakes to the Master-in-Equity, S.C.R.C.P. 53(b), as "[a]ctions to foreclosure . . . ordinarily [are] referred to a master."

This 7th day of November 2011
Greenville, South Carolina



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Telephone: (864) 255-5424

Attorneys for T.D. Bank, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on the 7th day of November, 2011, I served TD Bank's Memorandum in Opposition to Silver Real Estate Fund I, L.P.'s Motion to Vacate and/or Alter or Amend the Order of Reference by depositing same in United States Mail, first-class, proper postage affixed, addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which are the last known address(es):

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Attorneys for Copper Lakes, LLC f/k/a Tall Pines Investments, LLC

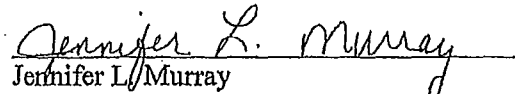
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Attorney for Grand Dunes Development Company, LLC

November 7th, 2011
Greenville, South Carolina


Jennifer L. Murray
Legal Assistant to Catherine F. Wrenn

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TD BANK NATIONAL ASSOCIATION,
SUCCESSOR BY MERGER TO CAROLINA
FIRST BANK,

PLAINTIFF,

v.

COPPER LAKES, LLC F/K/A TALL PINES
INVESTMENTS, LLC, GRANDE DUNES
DEVELOPMENT COMPANY, LLC AND
SILVER REAL ESTATE FUND I, L.P.

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-10047

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**TD BANK'S MEMORANDUM IN
OPPOSITION TO SILVER REAL
ESTATE FUND I, L.P.'S MOTION TO
RECONSIDER, ALTER, OR AMEND THE
COURT'S ORDER DISMISSING
GRANDE DUNES WITHOUT
PREJUDICE**

TD Bank, National Association, Successor by Merger to Carolina First Bank, (“**Plaintiff**” or “**TD Bank**”) submits the following Memorandum in Opposition to Defendant Silver Real Estate Fund I, L.P.’s (“**Silver**”) Motion to Reconsider, Alter, or Amend the Master-in-Equity’s Order dismissing Defendant Grande Dunes Development Company, LLC (“**Grande Dunes**”) without prejudice.

By way of brief background, TD Bank, with the consent of Grande Dunes and Defendant Copper Lakes, LLC f/k/a Tall Pines Investments, LLC (“**Copper Lakes**”), moved the Court to dismiss Grande Dunes without prejudice from this lawsuit because it has entered into a settlement agreement with Grande Dunes, whereby it agreed to so dismiss this defendant. As a result of TD Bank’s settlement agreement with Grande Dunes, there are no pending claims against Grande Dunes in this action as neither Copper Lakes nor Silver asserted cross-claims against it. Inexplicably, although Silver did not assert any cross-claims against Grande Dunes, see Silver Lakes’ Amended Answer, it refused to consent to the dismissal without prejudice of Grande Dunes pursuant to a stipulation of dismissal. Before the Court ruled on TD Bank’s

Motion to dismiss Grande Dunes, the Greenville County Clerk of Court, pursuant to TD Bank's request, referred this foreclosure lawsuit to the Master-in-Equity, who subsequently granted TD Bank's Motion and dismissed Grande Dunes without prejudice.

Following the Order of Referral to the Master-in-Equity and the Master-in-Equity's Order Dismissing Grande Dunes, Silver filed (1) a Motion to Vacate the Order of Referral and (2) a Motion to Reconsider, Alter, or Amend the Order Dismissing Grande Dunes.

Silver bases its Motion to Reconsider, Alter, or Amend the Order Dismissing Grande Dunes on the argument that the Greenville County Clerk of Court improperly referred the above-captioned action to the Master-in-Equity because it supposedly is entitled to a jury trial on TD Bank's request for a deficiency judgment against it. Consequently, according to Silver, the Master-in-Equity lacked jurisdiction to subsequently grant TD Bank's motion to dismiss Grande Dunes without prejudice. As set forth in Exhibit A, Silver's argument that the Master-in-Equity lacked the ability to dismiss Grande Dunes from this lawsuit without prejudice is without merit. Specifically, this argument fails because:

- (1) the Master-in-Equity has jurisdiction over this foreclosure action pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, and,
- (2) Silver, despite its contention otherwise, is not entitled to a jury trial on TD Bank's request for a deficiency judgment against it (in the event the foreclosure sale results in such a deficiency).

In particular, Silver is not entitled to a jury trial because S.C. Code Ann. § 29-3-660 permits the Master-in-Equity, in a foreclosure action such as this, to award a deficiency judgment against a guarantor, like Silver. See Fed'l Land Bank of Columbia v. Davant, 292 S.C. 172, 178, 355 S.E.2d 293, 296 (Ct. App. 1987) (explaining that the statute permits the court to enter a deficiency judgment in a foreclosure action). Furthermore, as South Carolina courts have recognized, a deficiency judgment is merely "incidental to the relief sought in a foreclosure

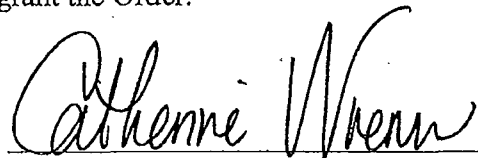
action,” Fed’l Land Bank, at 178, 355 S.E.2d at 296, which is equitable in nature and does not warrant a jury trial. 55 Am. Jur. 2d Mortgages § 682 *Right to Jury Trial* (Aug. 2011).

Therefore, because Rules 53 and 71 provide for the referral of a foreclosure suit to a master-in-equity and Silver is not entitled to a jury trial on TD Bank’s request for a deficiency judgment, the Clerk of Court properly referred this action to the Master-in-Equity. As a result, the Master-in-Equity had jurisdiction to issue the Order that dismisses Grande Dunes without prejudice from this lawsuit because, once a case is referred to a master-in-equity, he has “all power and authority which a circuit judge sitting without a jury would have in a similar matter.” S.C.R.C.P. 53(c).

CONCLUSION:

As explained above, the Court should deny Plaintiff’s motion to reconsider, alter, or amend the Order dismissing Grande Dunes from this lawsuit without prejudice because the Master-in-Equity had the jurisdiction and ability to grant the Order.

This 8th day of November 2011
Greenville, South Carolina



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D. Allen Grumbine (S.C. Bar No. 2343)

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Greenville, South Carolina 29601

Telephone: (864) 255-5424

Attorneys for T.D. Bank, N.A.

CERTIFICATE OF SERVICE

I hereby certify that on the 8th day of November, 2011, I served **TD Bank's Memorandum in Opposition to Silver Real Estate Fund I, L.P.'s Motion to Reconsider, Alter, or Amend the Court's Order Dismissing Grande Dunes Without Prejudice** by depositing same in United States Mail, first-class, proper postage affixed, addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which are the last known address(es):

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NOV 10 2011 9 57 AM

November 8th, 2011
Greenville, South Carolina

Jennifer L. Murray
Jennifer L. Murray
Legal Assistant to Catherine F. Wrenn

EXHIBIT A

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TD BANK NATIONAL ASSOCIATION,
SUCCESSOR BY MERGER TO CAROLINA
FIRST BANK,

PLAINTIFF,

v.

COPPER LAKES, LLC F/K/A TALL PINES
INVESTMENTS, LLC, GRANDE DUNES
DEVELOPMENT COMPANY, LLC AND
SILVER REAL ESTATE FUND I, L.P.

DEFENDANTS.

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-10047

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TD BANK'S MEMORANDUM IN
OPPOSITION TO SILVER REAL
ESTATE FUND I, L.P.'S MOTION TO
VACATE AND/OR ALTER OR AMEND
THE ORDER OF REFERENCE

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Pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure, the Greenville County Clerk of Court had the authority to refer and properly did refer the above-captioned foreclosure lawsuit to the Master-in-Equity. Rule 53(b) states that "[i]n . . . an action for foreclosure, some or all of the causes of action in a case may be referred to a master or special referee by order of a circuit judge or the clerk of court. Rule 71(a) further provides that "[a]ctions to foreclose liens or obtain partition of real property shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53." As noted above, the above-

captioned lawsuit is a foreclosure action, which is equitable in nature and in which TD Bank seeks to (1) foreclose on the mortgage that Defendant Copper Lakes, LLC, f/k/a Tall Pines Investments, LLC (“Copper Lakes”) executed in its favor and (2) recover any deficiency after the foreclosure sale from Silver, who guaranteed Copper Lakes’ debts to the bank. See Compl.; see also, e.g., 23 S.C. Jur. Jury § 44 Foreclosure (Aug. 2011) (“[T]he essential nature of the foreclosure action remains equitable”). Thus, under Rules 53 and 71, the Clerk of Court had the authority to refer this foreclosure action to the Master-in-Equity.

Nonetheless, Silver contends that the Court should vacate the Order of Reference because it allegedly is entitled to a jury trial. Significantly, Silver has not pled any legal counterclaims against TD Bank or legal cross-claims against its co-defendants that would necessitate a jury trial. Silver’s Amended Answer. Additionally, no factual issues exist regarding Silver’s execution of the Guaranty Agreement in question, which Silver, in its Amended Answer, admits that it executed.¹ Id., at ¶ 6. As a result, it apparently bases its Motion on the argument that it is entitled to a jury trial because TD Bank is seeking a deficiency judgment against it.² However, this argument fails because, under South Carolina law, deficiency judgments are merely part of foreclosure actions, which are equitable in nature and over which the Master-in-Equity has jurisdiction.

¹ In its defenses, Silver seeks an accounting (which is equitable in nature) and it contends that the Guaranty Agreement only renders Silver liable for half of Copper Lake’s debt to the bank; however, neither of these defenses raises jury issues.

² TD Bank did not plead a separate, legal breach of contract / guaranty cause of action against Silver. Instead, TD Bank simply pled a foreclosure action, and, in its prayer for relief, it seeks a deficiency judgment (to the extent a deficiency exists after the foreclosure sale) from Silver. See Compl. See also Perpetual Building and Loan Assoc. of Anderson v. Braun, 270 S.C. 338, 242 S.E.2d 407 (1978) (“We hold a deficiency judgment to be such an incident of mortgage foreclosure that it may be supported by a general prayer for relief”).

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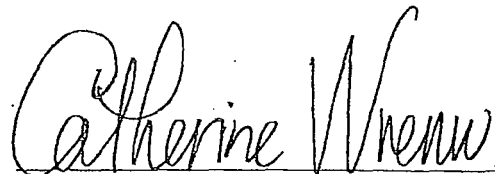
S.C. Code Ann. § 29-3-660. See Fed’l Land Bank of Columbia v. Davant, 292 S.C. 172, 178, 355 S.E.2d 293, 296 (Ct. App. 1987) (“Section 29-3-660 specifically authorizes the entry of a deficiency judgment when the mortgage debt remains unsatisfied after sale of the mortgaged premises”). As reflected by S.C. Code Ann. § 29-3-660, “a foreclosure suit is a suit in equity and [it is well-established] that, by the rule applicable to equity suits generally, there is no right to a jury trial, even though the court, ‘as incidental to the main relief sought,’ determines an issue which might have been litigated in a separate action at law,” such as a guarantor’s liability for a deficiency. 55 Am. Jur. 2d Mortgages § 682 *Right to Jury Trial* (Aug. 2011); see also Fed’l Land Bank, at 178, 355 S.E.2d at 296 (recognizing that “‘a judgment for deficiency is merely incidental to the relief sought in a foreclosure action’”) (internal citation omitted), and Perpetual Building and Loan, at 341, 242 S.E.2d at 408 (“The United States Supreme Court in Shepherd v. Pepper, 133 U.S. 626, 10 S.Ct. 438, 33 L.Ed. 706 (1890), held a decree for a deficiency to be a necessary incident of a foreclosure suit in equity”). Thus, “in the absence of a statute construed as providing otherwise, a defendant in a mortgage-foreclosure suit has no absolute right to a jury

trial of the issues of fact bearing upon the plaintiff's right to recover a deficiency judgment against him or her." Id. No statute guarantees Silver to a jury trial regarding TD Bank's request for a deficiency judgment against it in this foreclosure action, and, the Master-in-Equity consequently has the ability to enter a deficiency judgment against a guarantor, like Silver, in a foreclosure action. As a result, the Court should deny Silver's Motion to Vacate the Order of Reference, which is nothing more than a disguised attempt to delay the progression of this foreclosure action.

CONCLUSION:

Because the Master-in-Equity has jurisdiction over this foreclosure action and Silver is not entitled to a jury trial regarding TD Bank's request for a deficiency judgment against it, the Court should deny Silver's Motion and permit the lawsuit to remain before the Master-in-Equity. However, in the alternative and in the event that the Court determines that Silver is entitled to a jury trial, TD Bank respectfully requests that the Court "direct a reference of" TD Bank's foreclosure claim against Copper Lakes to the Master-in-Equity, S.C.R.C.P. 53(b), as "[a]ctions to foreclosure . . . ordinarily [are] referred to a master."

This 7th day of November 2011
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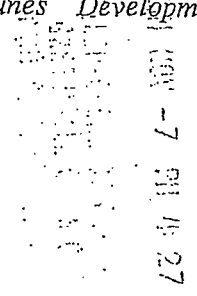
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*Attorney for Defendant Silver Real Estate
Fund, I, L.P.*

November 7th, 2011
Greenville, South Carolina

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*Attorney for Grand Dunes Development
Company, LLC*


Jennifer L. Murray
Jennifer L. Murray
Legal Assistant to Catherine F. Wrenn

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-23-10047

TD Bank National Association, Successor by
Merger to Carolina First Bank,

Plaintiff,

v.

Copper Lakes, LLC f/k/a Tall Pines Investments,
LLC, Grande Dunes Development Company,
LLC and Silver Real Estate Fund I, L.P.,

Defendants.

**Memorandum in Support of Defendant
Silver Real Estate Fund I, L.P.'s Motion
to Vacate or Alter or Amend the Order
of Reference**

Defendant Silver Real Estate Fund I, L.P. ("Silver Real Estate"), submits this Memorandum in support of its Motion to Vacate or Alter or Amend the Order of Reference. For the reasons set forth below, the Order of reference should be vacated and the matter returned to Circuit Court.

Background

This case involves a loan from Plaintiff to Defendant Copper Lakes on July 24, 2007. Defendants Grande Dunes Development Company and Silver Real Estate were guarantors of the Note. In 2008, Plaintiff and Copper Lakes entered into a Loan Modification Agreement. On August 27, 2010, Plaintiff sent a demand letter to Defendant Copper Lakes, LLC ("Copper Lakes") (but not the other Defendants), asserting that the Note had matured and that the outstanding principal and interest was due. This lawsuit was filed in December 2010.

The Complaint seeks foreclosure as to Defendant Copper Lakes. As to Defendant Silver

Real Estate (one of the guarantors), Plaintiff purportedly seeks a deficiency judgment.¹ The Complaint also purportedly seeks a deficiency judgment against Grande Dunes, the other guarantor.

On October 13, 2011 Plaintiff filed a Motion to Refer the action to the Greenville County Master-in-Equity. The proposed Order submitted by Plaintiff stated that Plaintiff had alleged that “this was a foreclosure action.” The Plaintiff did not, apparently, indicate that it also sought a deficiency judgment from the guarantors. The proposed Order was signed by the Clerk of Court and filed on October 17, 2011. The matter was then transferred to the Master-in-Equity.

Argument

I. Impropriety of the Order of Reference

Rule 53(b), SCRPC, states: “In an action where the parties consent, in a default case, or an action for foreclosure, some of all of the causes of action may be referred to a master or special referee by order of a circuit court judge or the clerk of court.” A master has no power or authority except that which is granted by the order of reference. *Wachovia Bank of South Carolina, N.A. v. Player*, 334 S.C. 200, 512 S.E.2d 129 (Ct. App. 1999), reh'g denied, (Mar. 27, 1999) and cert. granted, (Sept. 22, 1999) and rev'd, 2000 WL 959481 (S.C. 2000).

Where an order of reference is sought *ex parte*, the court must narrowly construe the rule allowing an *ex parte* order. *See also, e.g., Granny Goose Foods, Inc. v. Teamsters*, 415 U.S. 423, 94 S.Ct. 1113, 39 L.Ed.2d 435 (1974)(circumstances justifying the issuance of an *ex parte* order are extremely limited).² “Strict construction of reference statutes is supported by the

¹The Complaint does not actually set forth a cause of action against Silver Real Estate. Silver Real Estate is filing a Motion to Dismiss pursuant to Rule 12(b)(6).

²The Court in that case noted that the restrictions on *ex parte* orders (in that case, a TRO) reflected “the fact that our entire jurisprudence runs counter to the notion of court action taken

rationale that the validity of the referee system depends upon strict compliance with the statute, so that a trial referee does not encroach upon, or unconstitutionally compete with other constitution courts.” 66 Am.Jur.2d References § 6, citing *Great Country Bank v. Pastore*, 241 Conn. 423, 696 A.2d 1254 (1997). Here, the rule only provides that “an action for foreclosure” can be referred, not an action for foreclosure and deficiency judgment. See Rule 53(b), SCRPC. Under the required standard of narrow construction, only a “pure” foreclosure -- i.e., one without request for deficiency judgment or other relief-- can be unilaterally or *ex parte* referred to a master.

In this case, the claims go beyond a “pure” foreclosure and seek a deficiency judgment against the guarantor, Defendant Silver Real Estate; thus, the matter cannot be unilaterally sent to the Master without Defendant’s consent. Therefore, the matter was improperly transferred to the Master-in-Equity.

II. Right to Jury Trial

The Order of Reference must also be vacated because Defendant Silver Real Estate is entitled to a jury trial. South Carolina Constitution art. I, § 14 provides “[t]he right to a trial by jury shall be preserved inviolate.” This guarantee preserves the right to a jury trial in those cases where jury trials were allowed at the time of the adoption of the Constitution in 1868. *Medlock v. 1985 Ford F-150 Pick Up*, 308 S.C. 68, 417 S.E.2d 85 (1992). Under the common law, legal actions for the recovery of money were triable by a jury. *Collier v. Green*, 244 S.C. 367, 137

before reasonable notice and an opportunity to be heard has been granted both sides of a dispute.” *Id.* at 438-39, 94 S.Ct. 1113 (internal citation omitted). See also, *Martin's Herend Imports, Inc. v. Diamond & Gem Trading USA, Co.*, 112 F.3d 1296, 1306 (5th Cir. 1997)(“Given the draconian nature of this *ex parte* remedy, providing for the seizure of defendant's wares and records without prior notice to the defendant and with the assistance of law enforcement officers, we believe that it should be narrowly construed.”)

S.E.2d 277 (1964); *Bell v. Atlantic Coast Line R. Co.*, 202 S.C. 160, 24 S.E.2d 177 (1943). “To the Court belongs all issues of law and chancery, and to the jury all questions of fact in cases at law for the recovery of money or any specific real or personal property.” *Collier v. Green*, 244 S.C. 367 (1964); Cf., *Cooper v. Poston*, 326 S.C. 46, 483 S.E.2d 750, 751 (1997)(jury trial for money damages pursuant to auto accident was constitutionally protected right). In addition, Rule 38, SCRPC states that issues of fact for the recovery of money must be tried by a jury.

In this case, Silver Real Estate is not the mortgagor; thus, it is not the party being foreclosed upon. The only claim against Defendant Silver Real Estate is for the recovery of money based on the contractual obligation of the guaranty. In other words, while both equitable and legal claims are asserted against the mortgagor (Copper Lakes), there is only a legal claim asserted against Silver Real Estate, the guarantor. Although it may be proper for Copper Lakes to proceed before the master, the guarantor is entitled to a trial by jury. “A right to a jury trial exists where it is sought to obtain a personal judgment against one other than the mortgagor.” 1450A C.J.S. Juries § 83. A party in a foreclosure action is entitled to a jury trial on legal issues that are independent of the foreclosure suit. *State ex rel. McAdams v. District Court*, 105 N.M. 95, 96, 728 P.2d 1364, 1365 (1986). Whether a party is liable as a guarantor is a legal issue independent of the foreclosure action that entitles the party to a jury trial. *Id.* at 97, 728 P.2d at 1366. *Sunwest Bank of Clovis, N.A. v. Garrett*, 113 N.M. 112, 115, 823 P.2d 912, 915 (1992).

Conclusion

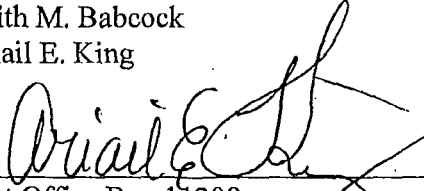
For the reasons set forth herein, the order must be vacated and the matter returned to Circuit Court.

LEWIS, BABCOCK & GRIFFIN, L.L.P.

A. Camden Lewis

Keith M. Babcock

Ariail E. King



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Attorneys for Silver Real Estate Fund I, L.L.P.

Columbia, South Carolina

January 6, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-23-10047

TD Bank National Association, Successor by
Merger to Carolina First Bank,

Plaintiff,

v.

Copper Lakes, LLC f/k/a Tall Pines Investments,
LLC, Grande Dunes Development Company,
LLC and Silver Real Estate Fund I, L.P.,

Defendants.

CERTIFICATE OF SERVICE

I, Connie W. Grugan, secretary for the law firm of Lewis, Babcock & Griffin, L.L.P., hereby
certify that I have served:

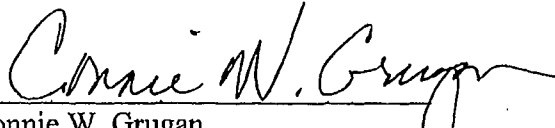
1. Memorandum in Support of Defendant Silver Real Estate Fund I, L.P.'s Motion to Vacate or Alter or Amend the Order of Reference;
2. Defendant Silver Real Estate Fund I, L.P.'s Memorandum in Support of its Motion to Reconsider, Alter or Amend; and
3. Defendant Silver Real Estate Fund I, L.P.'s Motion to Dismiss.

upon opposing counsel, by mailing copies of same, postage prepaid and return address clearly
indicated on said envelope, to said opposing counsel as follows:

J. Matthew Trent, Esquire
Womble Carlyle Sandridge & Rice, PLLC
550 S. Main Street, Suite 400
Greenville, South Carolina 29601

Robert E. Stepp, Esquire
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, South Carolina 29211

Frank H. Gibbes, III, Esquire
Gibbes Burton, LLC
308 East Saint John Street
Spartanburg, South Carolina 29302



Connie W. Grugan

This 6th day of January, 2012.

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-23-10047

TD Bank National Association, Successor by
Merger to Carolina First Bank,

Plaintiff,

v.

Copper Lakes, LLC f/k/a Tall Pines Investments,
LLC, Grande Dunes Development Company,
LLC and Silver Real Estate Fund I, L.P.,

Defendants.

**Supplemental Memorandum in Support
of Defendant Silver Real Estate Fund I,
L.P.'s Motion to Vacate or Alter or
Amend the Order of Reference**

Defendant Silver Real Estate Fund I, L.P. ("Silver"), submits this Supplemental Memorandum in support of its Motion to Vacate or Alter or Amend the Order of Reference. For the reasons set forth below, the Order of reference should be vacated and the matter returned to Circuit Court.

Rule 53(b), SCRCF, states: "In an action where the parties consent, in a default case, or an action for foreclosure, some of all of the causes of action may be referred to a master or special referee by order of a circuit court judge or the clerk of court." However, as Defendant Silver noted at the hearing on this matter, where an order of reference is sought *ex parte*, the court must narrowly construe the rule: "Strict construction of reference statutes is supported by the rationale that the validity of the referee system depends upon strict compliance with the statute, so that a trial referee does not encroach upon, or unconstitutionally compete with other constitution courts." 66 Am.Jur.2d References § 6, citing *Great Country Bank v. Pastore*, 241 Conn. 423, 696 A.2d 1254 (1997).

Plaintiff has argued that the action for deficiency judgment is equitable and merely incidental to foreclosure and that a guarantor against who, a deficiency judgment is sought is not entitled to a jury trial. However, the cases upon which Plaintiffs rely for this argument are not applicable here. Plaintiff first cites *Fed'l Land Bank of Columbia, v. Davant*, 292 S.C. 172, 355 S.E.2d 293 (Ct. App. 1987). That case held that a the court can enter a deficiency judgment claim against the mortgagor when the debt remains unsatisfied after a foreclosure sale. That case does not consider the issue of a deficiency judgment against a guarantor. Likewise, Plaintiff's other case, *Perpetual Bldg. and Loan of Anderson v. Braun*, 270 S.C. 238, 242 S.E.2 407 (1978), merely allowed a plaintiff to recover a deficiency judgment against a mortgagor, despite that it was not specifically demanded in the complaint, because a deficiency was incidental to the foreclosure against the mortgagor. That case also did not address any claims against a guarantor.

Here, Plaintiff's only claim against Defendant Silver is a claim at law, not equity, for the recovery of money. "To the Court belongs all issues of law and chancery, and to the jury all questions of fact in cases at law for the recovery of money or any specific real or personal property." *Collier v. Green*, 244 S.C. 367 (1964). As such, Defendant Silver is entitled to have the case tried in Circuit Court before a jury.

Conclusion

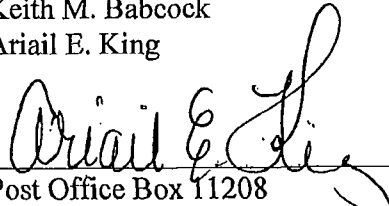
For the reasons set forth herein in Defendants' original Memorandum in Support of the Motion to Vacate, the order must be vacated and the matter returned to Circuit Court.

LEWIS, BABCOCK & GRIFFIN, L.L.P.

A. Camden Lewis

Keith M. Babcock

Ariail E. King

A handwritten signature in cursive script, appearing to read "Ariail E. King", written over a horizontal line.

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Attorneys for Silver Real Estate Fund I, L.L.P.

Columbia, South Carolina

January 12, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-23-10047

TD Bank National Association, Successor by
Merger to Carolina First Bank,

Plaintiff,

v.

Copper Lakes, LLC f/k/a Tall Pines Investments,
LLC, Grande Dunes Development Company,
LLC and Silver Real Estate Fund I, L.P.,

Defendants.

CERTIFICATE OF SERVICE

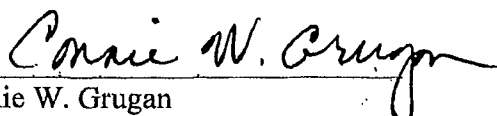
I, Connie W. Grugan, secretary for the law firm of Lewis, Babcock & Griffin, L.L.P., hereby certify that I have served a Supplemental Memorandum in Support of Defendant Silver Real Estate Fund I, L.P.'s Motion to Vacate or Alter or Amend the Order of Reference upon opposing counsel, by mailing a copy of same, postage prepaid and return address clearly indicated, to said opposing counsel as follows:

J. Matthew Trent, Esquire
Womble Carlyle Sandridge & Rice, PLLC
550 S. Main Street, Suite 400
Greenville, South Carolina 29601

Robert E. Stepp, Esquire
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
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Frank H. Gibbes, III, Esquire
Gibbes Burton, LLC
308 East Saint John Street
Spartanburg, South Carolina 29302

This 12th day of January, 2012.



Connie W. Grugan

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TD Bank National Association, Successor by
Merger to Carolina First Bank,

Plaintiff,

v.

Copper Lakes, LLC f/k/a Tall Pines
Investments, LLC; Grande Dunes
Development Company, LLC; and Silver Real
Estate Fund I, L.P.,

Defendants.

IN THE COURT OF COMMON PLEAS
C.A. No.: 2010-CP-23-10047

**RESPONSE TO DEFENDANT SILVER
REAL ESTATE FUND'S
SUPPLEMENTAL MEMORANDUM IN
SUPPORT OF MOTION TO VACATE OR
ALTER OR AMEND THE ORDER OF
REFERENCE**

Plaintiff TD Bank National Association, Successor by Merger to Carolina First Bank ("TD Bank") hereby submits this Response to Defendant Silver Real Estate Fund I, L.P.'s ("Silver") Supplemental Memorandum in Support of its Motion to Vacate or Alter or Amend the Order of Reference (the "Motion to Vacate"), as follows:

As stated in more detail in its Memorandum in Opposition to Silver's Motion to Vacate, TD Bank submits that this action was properly referred to the Master pursuant to S.C. Code Ann. § 29-3-660, which expressly authorizes the court to "adjudge payment of the residue of [a mortgage debt] remaining unsatisfied after a sale of the mortgaged premises against . . . any person *other than the mortgagor*" who secured the debt by a covenant, obligation or guaranty. *Id.* (emphasis added). This authority is not limited by statute just to a mortgagor-defendant, but applies to all defendants in a foreclosure action, unless a legal counterclaim or cross-claim is asserted for which a jury trial would be available.

The cases, almost without exception, support the general proposition that, in the absence of statute construed as otherwise providing, a defendant in a mortgage foreclosure suit has no absolute right to a jury trial of issues of fact bearing upon the plaintiff's right to recover a deficiency judgment against him. The

basis of that proposition, as ordinarily laid down, is that a foreclosure suit is one in equity to which the entry of a deficiency judgment is merely incidental, the general rule being that when an equity court takes jurisdiction for one purpose, it will retain it for the purpose of rendering complete relief with reference to the matters in controversy.

112 A.L.R. 1492 *Right to Jury Trial of Issues as to Personal Judgment for Deficiency in Suit to Foreclose Mortgage* (2011).

In its Supplemental Memorandum, Silver cites *Collier v. Green*, 244 S.C. 367, 373, 137 S.E.2d 277, 281 (1964), for the proposition that “[t]o the Court belongs all issues of law and all cases in chancery, and to the jury all questions of fact in cases at law for the recovery of money or of any specific real or personal property;” however, Silver fails to cite the remainder of this sentence, which continues that “the constitutional declaration that ‘the right of jury trial shall remain inviolate’ *does not apply to cases within the equitable jurisdiction of the Court.*” *Id.* (citing *Lucken v. Wichman*, 5 S.C. 411 (1874)) (emphasis added). Here, pursuant to S.C. Code Ann. § 29-3-660 and Rules 53 and 71 of the South Carolina Rules of Civil Procedure, the subject mortgage foreclosure as well as the incidental determination of the deficiency judgment is properly before the Master-in-Equity.

Furthermore, as between Silver and TD Bank (or any other party), it is undisputed that there are no questions of fact at issue in this case. Silver has not pled any legal counterclaims against TD Bank or legal cross-claims against its co-defendants that would necessitate a jury trial. (Silver’s Amended Answer.) Additionally, no factual issues exist regarding Silver’s execution of the guaranty agreement in question, which Silver, in its Amended Answer, admits that it executed. (Silver’s Amended Answer, ¶ 6.) When questioned by the court on this point, counsel for Silver was unable to point to a single factual issue at stake in the litigation. Thus,

even looking at the first half of the sentence from *Collier* that is cited by Silver in its Supplemental Memorandum, there are no "questions of fact" to submit to a jury.

Given this fact, the action on Silver's guaranty agreement will never be tried before a jury. At best, Silver is arguing that its case should be heard by a Circuit Court Judge, rather than the Master-in-Equity;¹ or that the case should be sent back to Circuit Court, only to be again referred to the Master-in-Equity due to the complete lack of any factual issues. Certainly, such a proposition is not consistent with Rule 1 of the South Carolina Rules of Civil Procedure, which urges a construction of the rules that would "secure the just, speedy, and inexpensive determination of every action."

Accordingly, TD Bank respectfully requests that the Court DENY Silver's Motion to Vacate.

This 17th day of January 2012
Greenville, South Carolina



Michael J. Bogle (S.C. Bar No. 71125)

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Telephone: (864) 255-5424

*Attorneys for TD Bank National Association,
Successor by Merger to Carolina First
Bank*

¹ In essence, Silver is asking the court to bifurcate this case, where TD Bank would try its foreclosure claim before the Master-in-Equity, then walk down the hall to the next courtroom, where it would try its claim for a deficiency, as against Silver, before a Circuit Court Judge (not a jury). Here, where there are no questions of fact at issue, such an exercise is both wasteful and unnecessary, especially where the Court is capable of hearing all parts of the case at once, sitting as Master-in-Equity and Special Circuit Court Judge.

CERTIFICATE OF SERVICE

The undersigned hereby certifies that, on the 17th day of January, 2012, she served a copy of the attached **RESPONSE TO DEFENDANT SILVER REAL ESTATE FUND'S SUPPLEMENTAL MEMORANDUM IN SUPPORT OF MOTION TO VACATE OR ALTER OR AMEND THE ORDER OF REFERENCE** by United States First Class Mail to the following individual(s):

Robert E. Stepp, Esq.
Tina Cundari, Esq.
Sowell Gray Stepp & Laffitte, LLC
1310 Gadsden Street
Post Office Box 11449
Columbia, South Carolina 29211

Attorneys for Copper Lakes, LLC
f/k/a Tall Pines Investments, LLC

Andrew C. English, III, Esq.
Callison Tighe & Robinson, LLC
1812 Lincoln Street
Columbia, South Carolina 29201

Attorney for Defendant Silver Real
Estate Fund, I, L.P.

Frank H. Gibbs, III, Esq.
Gibbes Burton, LLC
308 East Saint John Street
Spartanburg, South Carolina 29302
Attorney for Grand Dunes Development
Company, LLC

Susan Church

Susan Church
Legal Assistant

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-23-10047

TD Bank National Association, Successor by
Merger to Carolina First Bank,

Plaintiff,

v.

Copper Lakes, LLC f/k/a Tall Pines Investments,
LLC, Grande Dunes Development Company,
LLC and Silver Real Estate Fund I, L.P.,

Defendants.

**DEFENDANT SILVER REAL
ESTATE FUND I, L.P.'S MOTION TO
ALTER OR AMEND, PURSUANT TO
RULE 59(e), SCRCP**

TO: MATTHEW TRENT, ESQUIRE, ATTORNEY FOR PLAINTIFF; ROBERT E. STEPP, ESQUIRE, ATTORNEY FOR DEFENDANT COPPER LAKES, LLC; and FRANK H. GIBBES, III, ESQUIRE, ATTORNEY FOR DEFENDANT GRANDE DUNES DEVELOPMENT COMPANY:

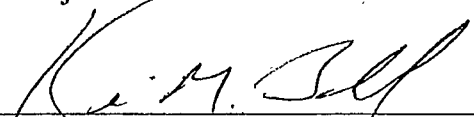
NOTICE IS HEREBY GIVEN that Defendant Silver Real Estate Fund I, L.P. (Silver), in accordance with S.C.R.C.P. moves the Court, pursuant to Rule 59(e), SCRCP, for an Order amending its Order dated February 10, 2012, mailed on February 13, 2012, and written notice of the entry of said order received by Defendant Silver Real Estate on February 14, 2012 (and attached hereto).

The grounds for this motion are that the Court did not have jurisdiction to transfer the case from the Circuit Court to the Master in Equity. Thus, any order issued after that improper reference is invalid.

As the Court's order of February 10, 2012, recognized, Rule 53 allows a Clerk of Court to refer a mortgage foreclosure, without consent of a mortgagor, to a master in equity or referee. Here, however, TD Bank did not simply seek relief against the mortgagor (Copper Lakes), but also against

a third party guarantor (Silver). The Court noted that it agreed with the argument that Rule 53 "...should not typically allow an *ex parte* referral of a claim against a third party guarantor." However, the Order then states that because it found that Silver had not plead any legal claims against TD Bank that would necessitate a jury trial, then it would allow the October 17, 2011 *ex parte* referral to stand.

It is respectfully submitted that the Circuit court rules must be strictly construed. "Strict construction of reference statutes is supported by the rationale that the validity of the referee system depends upon strict compliance with the statute, so that a trial referee does not encroach upon, or unconstitutionally compete with other constitution courts." 66 Am.Jur.2d References § 6, citing *Great Country Bank v. Pastore*, 241 Conn. 423, 696 A.2d 1254 (1997). The Court's order recognizes the need to comply with the rules and the fact that *ex parte* referral of a third party is not proper, but then allows the *ex parte* reference to stand. Because the *ex parte* reference is improper, there is a jurisdictional defect. Any order issued by the Master in Equity as a result of the improper reference is also null and void. Thus, this Court should alter or amend its order filed February 10, 2012 to vacate the October 17, 2011 order of reference and to declare the Master in Equity's Order of October 25, 2011 void as it was issued without jurisdiction.


A. Camden Lewis
Keith M. Babcock
Ariail E. King
LEWIS, BABCOCK & GRIFFIN, L.L.P.
1513 Hampton Street
Post Office Box 11208
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(803)771-8000
ATTORNEYS FOR PLAINTIFF

Columbia, South Carolina
February 22, 2012

STATE OF SOUTH CAROLINA

IN THE COURT OF COMMON PLEAS

C.A. No.: 2010-CP-23-10047

COUNTY OF GREENVILLE

TD Bank National Association, Successor by
Merger to Carolina First Bank,

2012 FEB 10 P 4:03

Plaintiff,

v.

Copper Lakes, LLC f/k/a Tall Pines
Investments, LLC; and Silver Real Estate Fund
I, L.P.,

FILED-CLERK OF COURT
GREENVILLE, SC

**ORDER DENYING SILVER'S MOTION
TO VACATE OR ALTER OR AMEND
THE ORDER OF REFERENCE AND
DENYING SILVER'S MOTION TO
RECONSIDER, ALTER OR AMEND THE
ORDER DISMISSING GRANDE DUNES**

Defendants.

This case involves a loan from Plaintiff TD Bank National Association, Successor by Merger to Carolina First Bank ("TD Bank") to Defendant Copper Lakes, LLC f/k/a Tall Pines Investments, LLC ("Copper Lakes"). The Complaint seeks foreclosure as to Copper Lakes and a deficiency judgment against the two guarantors of the loan, Defendants Grande Dunes Development Company, LLC ("Grande Dunes") and Silver Real Estate Fund I, L.P. ("Silver"). On or about October 13, 2011, TD Bank filed a Motion to Refer the action to the Master-in-Equity, which was signed and filed by the Clerk of Court on or about October 17, 2011. On October 18, 2011, TD Bank moved the Court for an Order dismissing Grande Dunes following a settlement between the parties, which Order was entered by the Court on or about October 25, 2011.

Before the Court is Silver's Motion to Vacate or Alter or Amend the Order of Reference ("Motion to Vacate") and Silver's Motion to Reconsider, Alter or Amend the Order dismissing Grande Dunes ("Motion to Reconsider"). The Court heard oral argument on January 11, 2012 from counsel for Silver, Keith M. Babcock, and counsel for TD Bank, Michael J. Bogle. Counsel for Grande Dunes, Frank H. Gibbes, was also present. The Court also reviewed

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FEB 10 2012

memoranda in support of both Motions, filed by Silver, as well as memoranda in opposition to the same, filed by TD Bank. Having read Silver's Motions, reviewed the relevant pleadings in the case and heard the arguments of counsel, the Court hereby DENIES Silver's Motion to Vacate and DENIES Silver's Motion to Reconsider as follows:

The primary issue before this Court is whether the case was improperly referred by the Clerk of Court in light of the fact that TD Bank seeks, in part, recovery against Silver, a third-party guarantor. As previously ruled upon by the Court, Rule 53 allows a Clerk of Court to refer a case, without consent of a mortgagor, to a master-in-equity or special referee. Typically, that reference includes any right of a mortgagee to seek a deficiency judgment against the mortgagor.

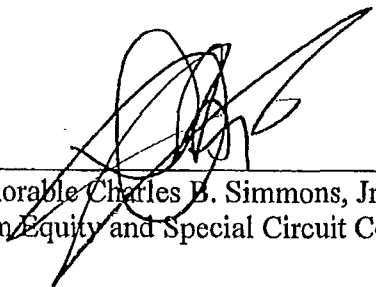
The facts presented to the Court herein establish, as noted above, that TD Bank seeks to recover against a third-party guarantor, Silver. The Court can clearly envision a situation where a third-party guarantor may have legitimate jury defenses or may bring other claims entitling it to a right to a trial by jury that should not be referred under Rule 53. In this regard, the Court agrees with the premise suggested by Silver that Rule 53 should not typically allow an *ex parte* referral of a claim against a third party guarantor. Notwithstanding this, the Court has carefully reviewed the Answer and Amended Answer of Silver and finds that Silver has not pled any legal claims against TD Bank or any other party that would allow or necessitate a trial by jury.

In light of the posture of the pleadings of Silver, the Court finds that even had the case not been referred by the Clerk of Court, reference would otherwise have been appropriate. Thus, the Court does not find a basis to alter or amend the Order of Reference signed by the Clerk of Court and filed on or about October 17, 2011.

2 

Furthermore, as there are no pending claims against Grande Dunes in this action as neither Copper Lakes nor Silver have asserted any cross-claims against it, this Court finds no basis to disturb the October 25, 2011 Order dismissing Grande Dunes from the case.

IT IS HEREBY ORDERED.



The Honorable Charles B. Simmons, Jr.
Master In Equity and Special Circuit Court Judge

February 7, 2012

STATE OF SOUTH CAROLINA
COUNTY OF GREENVILLE

IN THE COURT OF COMMON PLEAS
CIVIL ACTION NO. 2010-CP-23-10047

TD Bank National Association, Successor by
Merger to Carolina First Bank,

Plaintiff,

v.

Copper Lakes, LLC f/k/a Tall Pines Investments,
LLC, Grande Dunes Development Company,
LLC and Silver Real Estate Fund I, L.P.,

Defendants.

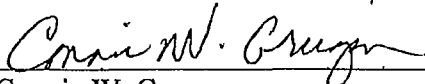
CERTIFICATE OF SERVICE

I, Connie W. Grugan, secretary for the law firm of Lewis, Babcock & Griffin, L.L.P., hereby certify that I have served Defendant Silver Real Estate Fund I, L.P.'s Motion to Alter or Amend, Pursuant to Rule 59(e), SCRCF upon opposing counsel, by mailing a copy of same, postage prepaid and return address clearly indicated, to said opposing counsel as follows:

J. Matthew Trent, Esquire
Womble Carlyle Sandridge & Rice, PLLC
550 S. Main Street, Suite 400
Greenville, South Carolina 29601

Robert E. Stepp, Esquire
Sowell Gray Stepp & Laffitte, LLC
Post Office Box 11449
Columbia, South Carolina 29211

Frank H. Gibbes, III, Esquire
Gibbes Burton, LLC
308 East Saint John Street
Spartanburg, South Carolina 29302



Connie W. Grugan

This 22nd day of February, 2012.

STATE OF SOUTH CAROLINA

COUNTY OF GREENVILLE

TD BANK NATIONAL ASSOCIATION,
SUCCESSOR BY MERGER TO CAROLINA
FIRST BANK,

PLAINTIFF,

v.

COPPER LAKES, LLC F/K/A TALL PINES
INVESTMENTS, LLC, GRANDE DUNES
DEVELOPMENT COMPANY, LLC AND
SILVER REAL ESTATE FUND I, L.P.

DEFENDANTS.

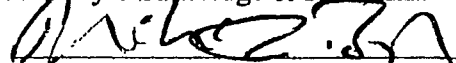
IN THE COURT OF COMMON PLEAS
C.A. No.: 2010-CP-23-10047

**NOTICE OF
FORECLOSURE HEARING**

Please be advised pursuant to Rules 53 and 71 of the South Carolina Rules of Civil Procedure that Plaintiff has applied for the entry of a judgment and order of foreclosure in the within action and that Charles B. Simmons, Jr., Master in Equity for Greenville County, South Carolina has scheduled a hearing to determine the amount of damages and other matters in the within action, at which hearing Plaintiff may present to the Master in Equity the testimony of certain witnesses in writing pursuant to S.C. Code Ann. § 14-11-110. Such hearing is to commence at 3:00 p.m. on March 21, 2012, in the Office of Charles B. Simmons, Jr., Master in Equity for Greenville County, South Carolina at the Greenville County Courthouse, 305 East North Street, Greenville, South Carolina 29601.

Womble Carlyle Sandridge & Rice, LLP

By:



Michael J. Bogle (S.C. Bar No. 71125)

Email: mbogle@wcsr.com

J. Matthew Trent (S.C. Bar No. 74192)

Email: mtrent@wcsr.com

D. Allen Grumbine (S.C. Bar No. 2343)

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Telephone: (864) 255-5424

*Attorneys for TD Bank National Association,
Successor by Merger to Carolina First
Bank*

March
February 9, 2012

CERTIFICATE OF SERVICE

I hereby certify that on the 9th day of March, 2012, I served the **Notice of Foreclosure Hearing** by electronic transmission and depositing same in United States Mail, first-class, proper postage affixed, addressed to the person(s) hereinafter named, at the place(s) and address(es) stated below, which are the last known address(es):

Via Electronic Transmission to
rstepp@sowellgray.com and United States
Mail

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Tina Cundari, Esq.
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*Attorneys for Copper Lakes, LLC f/k/a Tall
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Via Electronic Transmission to
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*Attorney for Defendant Silver Real Estate
Fund, I, L.P.*

March 9, 2012
Greenville, South Carolina

Via Electronic Transmission to
fgibbes@gibbesburton.com and United States
Mail

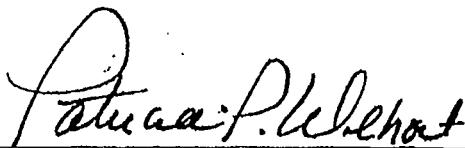
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*Attorney for Grand Dunes Development
Company, LLC*

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Fund, I, L.P.*



Patricia P. Wilhoit, Paralegal
to Michael J. Bogle

From: Simmons, Judge Charles <CSimmons@greenvillecounty.org>
Sent: Monday, March 19, 2012 1:13 PM
To: Ariail E. King
Cc: Wrenn, Catherine; Trent, Matt; Frank Gibbes; bstepp@sowellgray.com; Kimbrell, Karen; Drew English; Pat K. McCright; Bogle, Michael; Kimbrell, Karen
Subject: RE: TD Bank v. Copper Lakes et al.

To All,
In light of the current status, I believe it most prudent to stay the matter until an Order from our appellate court either remanding the issues or ruling on the substantive issues raised in the appeal.
Judge Simmons

Charles B. Simmons, Jr., Judge
Greenville County Courthouse
305 East North Street, Suite 313
Greenville, SC 29601

Phone: (864) 467-8556
Fax: (864) 467-8401

From: Ariail E. King [mailto:aek@lblegal.com]
Sent: Monday, March 19, 2012 11:32 AM
To: Simmons, Judge Charles
Cc: Wrenn, Catherine; Trent, Matt; Frank Gibbes; bstepp@sowellgray.com; Kimbrell, Karen; Drew English; Pat K. McCright; Bogle, Michael
Subject: RE: TD Bank v. Copper Lakes et al.

Judge Simmons:

I have read Mr. Bogle's email to you. However, there is one order on appeal, for which Silver asserts there is no jurisdiction. Thus, we respectfully submit that there is no way to stay part of that order, and proceed on any other part.

Ariail E. King
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From: Bogle, Michael [mailto:MBogle@wcsr.com]

Sent: Monday, March 19, 2012 11:10 AM

To: 'CSimmons@greenvillecounty.org'

Cc: Wrenn, Catherine; Trent, Matt; Ariail E. King; 'Frank Gibbes'; 'bstepp@sowellgray.com'; 'Kimbrell, Karen'; 'Drew English'; Pat K. McCright

Subject: RE: TD Bank v. Copper Lakes et al.

Judge Simmons –

We are in receipt of Silver Real Estate Fund I, L.P.'s ("Silver") purported Notice of Appeal of your February 7, 2012 and February 28, 2012 Orders (the "Silver Orders") in the above-referenced action. It is the position of TD Bank that this is yet another meritless attempt to delay this proceeding, and we strongly disagree with Silver that this appeal does anything to delay or otherwise affect the foreclosure proceeding between TD Bank and Copper Lakes, LLC f/k/a Tall Pines Investment, LLC ("Copper Lakes"). There is no question that the foreclosure proceeding is properly before Your Honor. Copper Lakes has not asserted any legal counterclaims or cross claims, nor has it contested the reference to the Master. Furthermore, as Silver is not a signatory to the subject note or mortgage, it has no standing or right to intervene – or otherwise object to the scheduling or final disposition of the foreclosure proceeding.

Silver executed a guarantee as to the subject loan. Whether it deserves a jury trial as to the enforcement of this guarantee is the issue that was before Your Honor in the Silver Orders. Thus, while the Court of Appeals has exclusive jurisdiction over this portion of the case, other portions (such as the foreclosure) not affected by the issues involved in this appeal are not, and are not subject to any stay. As stated by Rule 205 of the South Carolina Appellate Court Rules: "Nothing in these Rules shall prohibit the lower court, commission or tribunal from proceeding with matters not affected by the appeal."

The foreclosure hearing scheduled this week involves a note and mortgage between TD Bank and Copper Lakes. There is no question that, regardless of the outcome of Silver's appeal, this foreclosure proceeding will be decided by the Court, not a jury. See Rule 71(a), South Carolina Rules of Civil Procedure ("Actions to foreclose liens . . . shall be tried by the court, and shall ordinarily be referred to a master pursuant to Rule 53."). Accordingly, this appeal by Silver, a third party, should not result in any further delay in the foreclosure proceeding. Thank you for your attention to this matter.

Michael Bogle

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Email: mbogle@wcsr.com

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Special Circuit Court Judge

Case No. 10-CP-23-10047

TD Bank National Association,
Successor by Merger to Carolina
First Bank Respondent

v.

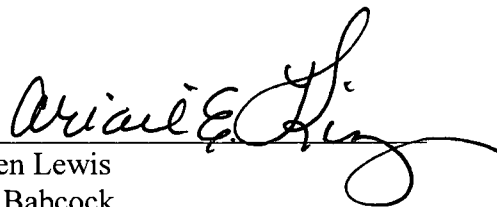
Copper Lakes, LLC f/k/a Tall Pines
Investments, LLC; Grande Dunes
Development Company, and Silver
Real Estate Fund I, L.P., Defendants,

of whom

Silver Real Estate Fund I, L.P. is Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to included by any of the parties and not any other material, and that Appellant has complied with the August 13, 2007 Order of the Supreme Court on Personal Data Identifiers.



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ATTORNEYS FOR APPELLANT

Columbia, South Carolina

February 26, 2013

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM RICHLAND COUNTY
Court of Common Pleas

Charles B. Simmons, Jr., Special Circuit Court Judge

Case No. 10-CP-23-10047

TD Bank National Association,
Successor by Merger to Carolina
First Bank Respondent

v.

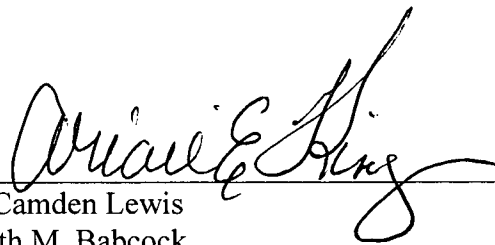
Copper Lakes, LLC f/k/a Tall Pines
Investments, LLC; Grande Dunes
Development Company, and Silver
Real Estate Fund I, L.P., Defendants,

of whom

Silver Real Estate Fund I, L.P. is Appellant.

CERTIFICATE OF COUNSEL

The undersigned certifies that the Record on Appeal contains all material proposed to included by any of the parties and not any other material, and that Appellant has complied with the August 13, 2007 Order of the Supreme Court on Personal Data Identifiers.



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February 26, 2013