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ORIGINAL

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2013-1629
Circuit Court Case No. 2011-CP-27-011

Jeffrey H. Anders and Maureen Anders, Michael K. Callahan and Amy Callahan, Melinda A. Cavicchia, Michael B. Ciulis, Stephen Kipa and Kimberley A.K. Kipa, Chad Kurtz, Spencer L. Morgan, Richard O'Reilly and Alicia F. O'Reilly, Daniel Ryan and Susan Ryan, Gennady Shmukler, Michael Schmuff and Joanne Schmuff, and Matthew Terry, Kathryn M. Tillman, Valerie A. Lowe, TACG Properties, LLC, Mackay Marsh, LLC, Plaintiffs,

of whom

Spencer L. Morgan is the Appellant,

vs.

The Settings of Mackay Point, LLC, The Settings Development Companies, LLC, Branch Banking & Trust Co., Wachovia Bank, N.A., Bond Safeguard Insurance Company, and Jasper County, Defendants,

of which

Wachovia Bank, N.A. is the Respondent.

RECORD ON APPEAL

RECEIVED

MAR 04 2014

SC Court of Appeals

APPELLANT'S COUNSEL:

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Maring Law Firm, P.A.
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P.O. Box 478
Georgetown, SC 29442-0478
Telephone: 843-545-9544
Facsimile: 843-545-9735
Attorney for Spencer L. Morgan

RESPONDENT'S COUNSEL:

S. Sterling Laney, III
Hugh M. Claytor
550 South Main Street, Suite 400
Greenville, SC 29601
Telephone: (864) 255-5400

M. Todd Carroll
1727 Hampton Street
Columbia, SC 29201
Telephone: (803) 454-6504

Attorneys for Wachovia Bank, N.A. n/k/a Wells Fargo Bank, N.A.

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Form 4 Order and Order for Final Judgment dated June 18, 2013

Form 4

Jeggery (sic) H. Anders; Maureen Anders; Michael K. Callahan; Amy Callahan; Melinda A. Cavicchia, Michael B. Ciulis; Stephen Kipa; Kimberly A.K. Kipa; and Chad Kurtz vs. The Settings of MacKay Point, LLC; The Setting Development Companies, LLC; Wachovia Bank, NA - Carmen T. Mullen, Circuit Court Judge

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Complaint

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Wachovia Bank's Answer and Counterclaim

Jeffrey H. Anders and Maureen Anders, Michael K. Callahan and Amy Callahan, Melinda A. Cavicchia, Michael B. Ciulis, Stephen Kipa and Kimberly A.K. Kipa, Chad Kurtz, Spencer L. Morgan, Richard O'Reilly and Alicia F. O'Reilly, Daniel Ryan and Susan Ryan, Gennady Shmukler, Michael Schmuff and Joanne Schmuff, and Matthew Terry, Kathryn M. Tillman, Valerie A. Lowe, TACG Properties, LLC, Mackay Marsh, LLC, vs. The Settings of Mackay Point, LLC, The Settings Development Companies, LLC, Branch Banking and Trust Co., Wachovia Bank, N.A., Bond Safeguard Insurance Company, and Jasper County - S. Sterling Laney, III - Attorney for Wachovia Bank, N.A. s/b/m to Wells Fargo Bank, N.A.

Plaintiffs' Reply to Wachovia Bank's Answer and Counterclaim

Jeffrey H. Anders and Maureen Anders, Michael K. Callahan and Amy Callahan, Melinda A. Cavicchia, Michael B. Ciulis, Stephen Kipa and Kimberly A.K. Kipa, Chad Kurtz, Spencer L. Morgan, Richard O'Reilly and Alicia F. O'Reilly, Daniel Ryan and Susan Ryan, Gennady Shmukler, Michael Schmuff and Joanne Schmuff, and Matthew Terry, Kathryn M. Tillman, Valerie A. Lowe, TACG Properties, LLC, Mackay Marsh, LLC, vs. The Settings of Mackay Point, LLC, The Settings Development Companies, LLC, Branch Banking and Trust Co., Wachovia Bank, N.A., Bond Safeguard Insurance Company, and Jasper County - Robert W. Maring, Attorney for Plaintiffs

Transcript of May 7, 2013, Hearing (Cover Page and Page 15)

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Jeffrey H. Anders and Maureen Anders, Michael K. Callahan and Amy Callahan, Melinda A. Cavicchia, Michael B. Ciulis, Stephen Kipa and Kimberly A.K. Kipa, Chad Kurtz, Spencer L. Morgan, Richard O'Reilly and Alicia F. O'Reilly, Daniel Ryan and Susan Ryan, Gennady Shmukler, Michael Schmuff and Joanne Schmuff, and Matthew Terry, Kathryn M. Tillman, Valerie A. Lowe, TACG Properties, LLC, Mackay Marsh, LLC, vs. The Settings of Mackay Point, LLC, The Settings Development Companies, LLC, Branch Banking and Trust Co., Wachovia Bank, N.A., Bond Safeguard Insurance Company, and Jasper County - Transcript of Record before The Honorable Carmen T. Mullen, Judge, on May 28, 2013

Appellant's Responses to Wells Fargo's First Set of Requests for Admission

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Appellant's Motion for Continuance and Exhibits

Jeffrey H. Anders and Maureen Anders, Michael K. Callahan and Amy Callahan, Melinda A. Cavicchia, Michael B. Ciulis, Stephen Kipa and Kimberly A.K. Kipa, Chad Kurtz, Spencer L. Morgan, Richard O'Reilly and Alicia F. O'Reilly, Daniel Ryan and Susan Ryan, Gennady Shmukler, Michael Schmuff and Joanne Schmuff, and Matthew Terry, Kathryn M. Tillman, Valerie A. Lowe, TACG Properties, LLC, Mackay Marsh, LLC, vs. The Settings of Mackay Point, LLC, The Settings Development Companies, LLC, Branch Banking and Trust Co., Wachovia Bank, N.A., Bond Safeguard Insurance Company, and Jasper County - Notice of Motion and Motion for Continuance - Robert W. Maring, Attorney for Plaintiff

Exhibits

- a. Affidavit of Spencer L. Morgan dated May 22, 2013
- b. Affidavit of Gary A. Leyendecker dated May 22, 2013

Appellant's Motion for Reconsideration

Jeffrey H. Anders and Maureen Anders, Michael K. Callahan and Amy Callahan, Melinda A. Cavicchia, Michael B. Ciulis, Stephen Kipa and Kimberly A.K. Kipa, Chad Kurtz, Spencer L. Morgan, Richard O'Reilly and Alicia F. O'Reilly, Daniel Ryan and Susan Ryan, Gennady Shmukler, Michael Schmuff and Joanne Schmuff, and Matthew Terry, Kathryn M. Tillman, Valerie A. Lowe, TACG Properties, LLC, Mackay Marsh, LLC, vs. The Settings of Mackay Point, LLC, The Settings Development Companies, LLC, Branch Banking and Trust Co., Wachovia Bank, N.A., Bond Safeguard Insurance Company, and Jasper County - Notice of Motion and Motion for Reconsideration - Robert W. Maring, Attorney for Plaintiff

Appellant's Notice of Intent to Appeal

Eachovia Bank, N.A., Respondent v. Spencer L. Morgan, Appellant - Robert W. Maring, Attorney for Appellant

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Eachovia Bank, N.A., Respondent v. Spencer L. Morgan, Appellant - Robert W. Maring, Attorney for Appellant

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

JEFFREY H. ANDERS AND MAUREEN
ANDERS, MICHAEL K. CALLAHAN AND
AMY CALLAHAN, MELINDA A.
CAVICCHIA, MICHAEL B. CIULIS,
STEPHEN KIPA AND KIMBERLEY A. K.
KIPA, CHAD KURTZ, SPENCER L.
MORGAN, RICHARD O'REILLY AND
ALICIA F. O'REILLY, DANIEL RYAN AND
SUSAN RYAN, GENNADY SHMUKLER,
MICHAEL SCHMUFF AND JOANNE
SCHMUFF, AND MATTHEW TERRY,
KATHRYN M. TILLMAN, VALERIE A.
LOWE, TACG PROPERTIES, LLC,
MACKAY MARSH, LLC,

Plaintiffs,

v.

THE SETTINGS OF MACKAY POINT, LLC,
THE SETTINGS DEVELOPMENT
COMPANIES, LLC, BRANCH BANKING &
TRUST CO., WACHOVIA BANK, N.A.,
BOND SAFEGUARD INSURANCE
COMPANY, AND JASPER COUNTY.

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No. 2011-CP-27-011

CONSENT SCHEDULING ORDER

2011 DEC -9 AM 9:42
FILED
MARQUANT 0031 CK
CLERK OF COURT
JASPER COUNTY SC

PURSUANT TO RULE 16 of the South Carolina Rules of Civil Procedure, and with the written consent of all parties involved, by and through their undersigned counsel, the following schedule is hereby adopted in the above-captioned matter:

1. Plaintiff shall be allowed to file an amended complaint to add new parties on or before **February 27, 2012**;
2. Defendants shall be allowed to file responsive pleadings to the amended complaint no later than **April 2, 2012**;

3. The parties shall complete all discovery necessary for trial by **September 3, 2012**;
4. The parties must file all motions, except those to compel discovery responses, non-waivable motions made pursuant to Rule 12 of the South Carolina Rules of Civil Procedure, and those motions related to the admissibility of evidence at trial, by **October 1, 2012**; and
5. The parties shall have this case ready for trial on or after **November 5, 2012**.
6. By consent of the parties, each of the aforementioned deadlines, except for the deadline relating to having the case ready for trial, may be extended.

IT IS SO ORDERED.

J. C. Mullen

Presiding Judge-Fourteenth Judicial Circuit

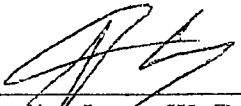
This 12 day of Dec., 2011.

Jasper County, South Carolina

Jeffrey H. Anders and Maureen Anders, et al. v. The Settings of Mackay Point, LLC, et al.

C.A. No. 2011-CP-27-011

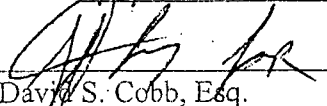
WE HEREBY CONSENT TO THE SCHEDULE SET FORTH ABOVE:


S. Sterling Laney III, Esq.
Womble Carlyle Sandridge & Rice LLP
P.O. Box 10208 (29603)
Greenville, SC

Dated: _____


Lisa A. Reynolds, Esq.
Anderson & Segui, LLC
37 1/2 Broad Street
Charleston SC 29402

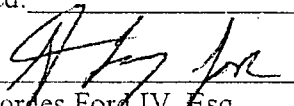
Dated: 11/8/11


David S. Cobb, Esq. *WITH PERMISSION*
Turner Padgett Graham & Laney, PA
40 Calhoun Street
Charleston, SC 29401-3500

Dated: 11/21/11

Robert W. Maring, Esq.
Maring & Moody
1130 Highmarket St
Georgetown, SC 29440-3532

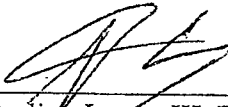
Dated: _____


F. Cordes Ford IV, Esq. *WITH PERMISSION*
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
Charleston, SC 29402
Dated: 11/21/11

Jeffrey H. Anders and Maureen Anders, et al. v. The Settings of Mackay Point, LLC, et al.

C.A. No. 2011-CP-27-011

WE HEREBY CONSENT TO THE SCHEDULE SET FORTH ABOVE:


S. Sterling Laney III, Esq.
Womble Carlyle Sandridge & Rice LLP
P.O. Box 10208 (29603)
Greenville, SC

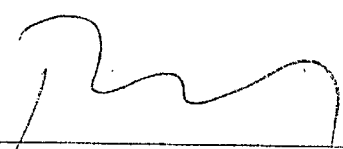
Dated: 11/6/11

Lisa A. Reynolds, Esq.
Anderson & Segui, LLC
37 1/2 Broad Street
Charleston SC 29402

Dated: _____

David S. Cobb, Esq.
Turner Padgett Graham & Laney, PA
40 Calhoun Street
Charleston, SC 29401-3500

Dated: _____


Robert W. Maring, Esq.
Maring & Moody
1130 Highmarket St
Georgetown, SC 29440-3532

Dated: 11-8-11

F. Cordes Ford IV, Esq.
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
Charleston, SC 29402
Dated: _____

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-27-00011

Jeffrey H. Anders

The Settings of Mackay Point, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court; This matter is set for the # 2 position for May 28, 2013 term of court.

ORDER INFORMATION

This order ☐ ends ☒ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge
SCRCP Form 4C (12/2011)

2142
Judge Code

1-23-13
Date
Page 1

2/8/13

Maribel James

From: Mullen, Carmen T. Law Clerk (Allison C. Coppage) <CMullenLC@scccourts.org>
Sent: Wednesday, May 22, 2013 1:58 PM
To: maribel@mmattorneysatlaw.com
Cc: Bostick, Margaret; 'Claytor, Hugh'; 'Laney, Sterling'; robert@mmattorneysatlaw.com; 'Ballew, Cindy'
Subject: RE: Anders vs. Wachovia Bank 2011-CP-27-00011

Dear all –

We received the request attached to this email. The request for continuance is denied. This case was set for a jury trial by agreement of the parties for a date certain May 28, 2013. The order was filed Jan. 28, 2013.

If I can be of any further assistance please don't hesitate to contact me.

Allison C. Coppage

Law Clerk to The Honorable Carmen T. Mullen

From: maribel@mmattorneysatlaw.com [<mailto:maribel@mmattorneysatlaw.com>]
Sent: Wednesday, May 22, 2013 12:45 PM
To: Mullen, Carmen T. Law Clerk (Allison C. Coppage)
Cc: Bostick, Margaret; 'Claytor, Hugh'; 'Laney, Sterling'; robert@mmattorneysatlaw.com; 'Ballew, Cindy'
Subject: Anders vs. Wachovia Bank 2011-CP-27-00011
Importance: High

Allison,

Please see the attached Motion for Continuance for the Jury Trial Scheduled for Tuesday, May 28, 2013.

If you or the Judge have any questions with regards to the attached please give Robert a call on his cell phone. 843-240-1985

Maribel V. James
Legal Secretary for Maring & Moody, LLC
1130 Highmarket Street (29440)
P.O. Box 478
Georgetown, SC 29442
843-545-9544 Office
843-545-9735 Fax
maribel@mmattorneysatlaw.com

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

FORM 4

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-27-00011

Jeggre H. Anders; Maureen Anders; Michael K
Callahan; Amy Callahan; Melinda A Cavicchia

The Settings of MacKay Point, LLC; The
Setting Development Companies, LLC;

Michael B. Ciulis; Stephen Kipa; Kimberly A.K.
Kipa; and Chad Kurtz

Wachovia Bank, NA

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The above-referenced lawsuit came before the court for a date certain trial on May 28, 2013. This case is dismissed for the failure to prosecute.

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

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

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

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

Circuit Court Judge

SCRPC Form 4C (03/2013)

2142
Judge Code

6-18-13
Date

Page 1

For Clerk of Court Office Use Only

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

ATTORNEY(S) FOR THE PLAINTIFF(S)

ATTORNEY(S) FOR THE DEFENDANT(S)

CLERK OF COURT

Court Reporter:

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

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

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No. 2011-CP-27-011

JEFFREY H. ANDERS AND MAUREEN
ANDERS, MICHAEL K. CALLAHAN AND
AMY CALLAHAN, MELINDA A.
CAVICCHIA, MICHAEL B. CIULIS,
STEPHEN KIPA AND KIMBERLEY A. K.
KIPA, CHAD KURTZ, SPENCER L.
MORGAN, RICHARD O'REILLY AND
ALICIA F. O'REILLY, DANIEL RYAN AND
SUSAN RYAN, GENNADY SHMUKLER,
MICHAEL SCHMUFF AND JOANNE
SCHMUFF, AND MATTHEW TERRY,
KATHRYN M. TILLMAN, VALERIE A.
LOWE, TACG PROPERTIES, LLC,
MACKAY MARSH, LLC,

Plaintiffs,

v.

THE SETTINGS OF MACKAY POINT, LLC,
THE SETTINGS DEVELOPMENT
COMPANIES, LLC, BRANCH BANKING &
TRUST CO., WACHOVIA BANK, N.A.,
BOND SAFEGUARD INSURANCE
COMPANY, AND JASPER COUNTY.

Defendants.

ORDER FOR
FINAL
JUDGMENT

2013 MAY 28 PM 6:15
JASPER COUNTY CLERK
JASPER COUNTY

trial
This matter came before the Court for a ~~hearing~~ on Tuesday, May 28, 2013, pursuant to an Order scheduling this matter for a date-certain trial to begin at 9:30 a.m. on Tuesday May 28, 2013. Present at the opening of the Court's proceedings were Defendant Wells Fargo Bank, N.A. as successor by way of Merger to Defendant Wachovia Bank, N.A. ("Wells Fargo") through its corporate representative, Carlos Gonzalez, counsel for Wells Fargo, S. Sterling Laney III and Hugh M. Claytor, and Plaintiff's counsel, Robert W. Maring. Plaintiff Spencer Morgan ("Mr. Morgan") did not appear.

RECEIVED
JASPER COUNTY CLERK
JASPER COUNTY

Since Mr. Morgan did not appear to prosecute his claim against Wells Fargo, the Court instructed Mr. Laney and Mr. Claytor to present Wells Fargo's case on its counterclaims against Mr. Morgan for breach of contract and unjust enrichment in relation to a certain Promissory Note executed on March 16, 2007 in favor of Wachovia Bank, N.A., by Mr. Morgan in the amount of One Hundred Thirty Thousand, Two Hundred Seventy Nine and 30/100 Dollars (\$130,279.30) (the "Note"). The evidence presented by Wells Fargo established that the Note had been lawfully executed on behalf of Mr. Morgan by Helen R. Roper, Esquire, as attorney-in-fact for Mr. Morgan, pursuant to a recorded Power of Attorney given to Ms. Roper by Mr. Morgan.

Mr. Laney, on behalf of Wells Fargo, referred the Court to the judicial admissions made by Mr. Maring during the hearing on Wells Fargo's Motion for Summary Judgment; namely: (1) that Mr. Morgan had duly executed the Note; (2) that Mr. Morgan had failed to make payments pursuant to the terms and conditions of the Note; and (3) that Mr. Morgan had no defenses to the validity of the Note or its enforcement by Wells Fargo. A copy of the transcript of hearing for the Motion for Summary Judgment was offered into evidence by Wells Fargo and accepted by the Court.

Mr. Laney further referred the Court to admissions made by Mr. Morgan in his deposition taken March 13, 2013, the original transcript of which is a part of the Court's record in this case. Mr. Morgan therein admitted that: (1) he applied for the subject loan from Wells Fargo; (2) Wells Fargo made the loan; (3) Mr. Morgan authorized Ms. Roper to execute the Note and close the loan; (4) he used the loan proceeds to purchase Lot 51 in the subdivision known as The Settings at McKay Point in Jasper County, South Carolina; (5) he had not made payments to Wells Fargo under the terms of the Note; and (6) he did not intend to make any payments to Wells Fargo pursuant to his obligations under the Note.

The Court took judicial notice of Mr. Morgan's responses to Wells Fargo's Requests for Admissions, which had previously been filed with the Court as part of the record in this case, that authenticated the existence of the Note and the legality of the signature on the Note. Further, the Court accepted into evidence the original Promissory Note and Power of Attorney which were submitted by Mr. Laney on behalf of Wells Fargo during the hearing on this matter.

Finally, the Court heard testimony from Carlos Gonzalez, an employee and representative of Wells Fargo, who testified as to the following: (1) the existence of the loan between Wells Fargo and Spencer Morgan in the principal amount of \$130,279.30 made on March 16, 2007; (2) the fact that the loan was in default because Mr. Morgan had failed to make payments as due under the terms and conditions of the Note; and c) the amount currently due on the Note which was One Hundred Thirty Nine Thousand Two Hundred Twenty-Eight and 68/100 Dollars (\$139,228.68), exclusive of attorneys' fees and costs of collection which are recoverable under the terms of the Note. Wells Fargo chose to forego recovery of these sums.

Mr. Maring offered no defenses to Wells Fargo's counterclaims, or any reasons why judgment should not be entered in favor of Wells Fargo and against Mr. Morgan in the sum of \$139,228.68.

Based on the totality of the evidence before the Court, the testimony submitted at the hearing on this matter, and the applicable laws of the State of South Carolina, this Court finds that Wells Fargo is entitled to judgment against Spencer Morgan on its counterclaims for breach of contract and unjust enrichment in the amount of One Hundred Thirty Nine Thousand Two Hundred Twenty-Eight and 68/100 Dollars (\$139,228.68).

The Clerk of Court for Jasper County is hereby ordered to enter judgment in the above referenced sum, in favor of Wells Fargo and against Spencer Morgan, in the public records of Jasper County.

IT IS SO ORDERED, ADJUDGED AND DECREED.



Honorable Carmen T. Mullen
Presiding Judge, Court of Common Pleas
Fourteenth Judicial Circuit

6-18-13

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

JUDGMENT IN A CIVIL CASE

CASE NO. 2011 CP-27-00011

Jeffrey H. Anders, et. al

The Settings at Mackay Point, LLC

PLAINTIFF(S)

DEFENDANT(S)

Submitted by:

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

DISPOSITION TYPE (CHECK ONE)

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

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

IT IS ORDERED AND ADJUDGED: ☐ See attached order (formal order to follow) ☒ Statement of Judgment by the Court: The motion to reconsider the order dismissing the Plaintiff, Spencer Morgan's claims for failure to prosecute filed on June 20, 2013 is denied. *No new information has been presented.*

ORDER INFORMATION

This order ☒ ends ☐ does not end the case.

Additional Information for the Clerk :

INFORMATION FOR THE JUDGMENT INDEX

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

Judgment in Favor of (List name(s) below)	Judgment Against (List name(s) below)	Judgment Amount To be Enrolled (List amount(s) below)
		\$
		\$
		\$
If applicable, describe the property, including tax map information and address, referenced in the order:		

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

Circuit Court Judge

2142
Judge Code7-18-13
Date

STATE OF SOUTH CAROLINA)
COUNTY OF JASPER)

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-27-_____

JEFFREY H. ANDERS AND)
MAUREEN ANDERS,)
MICHAEL K. CALLAHAN AND)
AMY CALLAHAN,)
MELINDA A. CAVICCHIA,)
MICHAEL B. CIULIS,)
STEPHEN KIPA AND)
KIMBERLY A. K. KIPA,)
CHAD KURTZ,)
SPENCER L. MORGAN,)
RICHARD O'REILLY AND)
ALICIA F. O'REILLY,)
DANIEL RYAN AND)
SUSAN RYAN,)
GENNADY SHMUKLER,)
MICHAEL SCHMUFF AND)
JOANNE SCHMUFF, AND)
MATTHEW TERRY,)
KATHRYN M. TILLMAN,)
VALERIE A. LOWE,)
TACG PROPERTIES, LLC,)
MACKAY MARSH, LLC)

Plaintiffs,

vs.

THE SETTINGS OF MACKAY)
POINT, LLC, THE SETTINGS)
DEVELOPMENT COMPANIES,)
LLC, BRANCH BANKING)
AND TRUST CO.,)
WACHOVIA BANK, N.A.,)
BOND SAFEGUARD)
INSURANCE COMPANY,)
AND JASPER COUNTY,)

Defendants.

COMPLAINT

Breach of Contract
Breach of Covenant of Good Faith
and Fair Dealings
Violation of Interstate Land Sales
Full Disclosure Act
Piercing the Corporate Veil/Alter-Ego

JURY TRIAL DEMANDED

2011 JAN 7 AM 10:29
MARQUETTE D. J. SMITH
CLERK OF COURT
JASPER COUNTY, SC

FILED

COMES NOW, Plaintiffs alleging against the Defendants as follows:

1. Plaintiffs Jeffrey H. Anders and Maureen R. Anders are citizens and residents of Fulton County, State of Georgia.
2. Plaintiffs Michael K. Callahan and Amy Callahan are citizens and residents of Fulton County, State of Georgia.
3. Plaintiff Melinda A. Cavicchia is a citizen and resident of Washington, District of Columbia.
4. Plaintiff Michael B. Ciulis is a citizen and resident of Mecklenburg County, State of North Carolina.
5. Plaintiffs Stephen Kipa and Kimberly A. K. Kipa are citizens and residents of Fayette County, State of Georgia.
6. Plaintiff Chad Kurtz is a citizen and resident of Mecklenburg County, State of North Carolina.
7. Plaintiff Spencer L. Morgan is a citizen and resident of Hamilton County, State of Tennessee.
8. Plaintiffs Richard O'Reilly and Alicia F. O'Reilly are citizens and residents of Nassau County, State of New York.
9. Plaintiffs Daniel Ryan and Susan Ryan are citizens and residents of Kane County, State of Illinois.
- ~~10. Plaintiff Gennady Shmuckler is a citizen and resident of Fulton County, State of Georgia.~~
11. Plaintiff Michael Schmuff and Joanne Schmuff are citizens and residents of New Castle County, State of Delaware.
12. Plaintiff Matthew Terry is a citizen and resident of DeKalb County, State of Georgia.
13. Plaintiffs Kathryn Tillman and Valerie Lowe are citizens and residents of Anderson County, State of South Carolina.
14. Plaintiff TACG Properties, LLC, is an Ohio limited liability company with its principal place of business in Summit County, Ohio.
15. Plaintiff Mackay Marsh, LLC, is a South Carolina limited liability company with its principal place of business in Jasper County, South Carolina.

16. Defendant The Settings of Mackay Point, LLC, is a South Carolina limited liability company with its principal place of business in Jasper County, South Carolina (hereinafter referred to as "Mackay Point") and is a "Developer Defendant".

17. Defendant The Settings Development Companies, LLC, is a foreign corporation and at all relevant times herein, owned, controlled and directed the operations of The Settings of Mackay Point, LLC. Consequentially, The Settings Development Companies, LLC, is liable to the Plaintiffs for the actions of The Settings at Mackay Point, LLC, hereinafter (The Settings Development Companies, LLC, and The Settings of Mackay Point, LLC, will be referred to as "Developer Defendants").

18. At all times relevant herein Richard W. McWhorter was the president of both Developer Defendants and is named for informational purposes herein due to his filing for Bankruptcy and is not a named Defendant herein.

19. Defendant Branch Banking and Trust Company is a corporation organized and existing pursuant to the laws of the State of North Carolina and is licensed and doing business in the State of South Carolina (hereinafter referred to as "BB&T").

20. Defendant Wachovia Bank, N.A., is a corporation organized and existing pursuant to the laws of the State of North Carolina and is licensed and doing business in the State of South Carolina (hereinafter referred to as "Wachovia").

21. Defendant Bond Safeguard Insurance Company is a corporation organized and existing under Illinois law and conducted business in Jasper County, South Carolina.

22. Defendant Mackay Point is located in Jasper County, South Carolina, and originally consisted of approximately 327.92 acres of undeveloped land and is a "Subdivision," as that term is defined by the Interstate Land Sales Act ("ILSA") 15 U.S.C. § 1701 et. seq.

23. From April 2006 until July 2007 BB&T loaned in excess of Fifteen Million Dollars (\$15,000,000.00) to the developer for the purpose of acquiring, developing, marketing, and selling lots at Mackay Point.

24. From September of 2006 through December 2007 the Developer sold approximately 112 lots for approximately Twenty Million Dollars (\$20,000,000.00) to various consumers, including the Plaintiffs.

25. Despite numerous indications, promises, representations and agreements obligating Developer and BB&T to do so, they have done little or no development at Mackay

Point. Specifically, Defendants have failed to build roads, install electrical service, water service, install phone lines, or amenities. Instead, the money has been wasted as articulated herein and the Mackay Point development is at a virtual standstill.

26. Defendants BB&T, Wachovia and the Developer Defendants and McWhorter were intricately intertwined in the development, marketing, financing, and sale of lots at Mackay Point and intentionally associated themselves to engage in and carry out a business venture for joint profit (as essentially co-owners) for which purpose they combined their efforts, property, money, skill, and knowledge.

27. That on or about June 30, 2006, through July 2, 2006, Developer Defendants, McWhorter, Defendants BB&T and Wachovia participated in a grand opening property release on the property. This event featured free food, free alcoholic and non-alcoholic drinks, free entertainment and helicopter rides. At that event, employees of BB&T and the Developer Defendants announced the plans for Mackay Point, dates of completion, and made assurances of the Developer Defendants' financial security.

28. Defendants BB&T's and Wachovia's strong presence at the Grand Opening event was an effort to show their financial support and backing of Mackay Point and to convince consumers of the financial viability of Mackay Point. Because of Defendants BB&T's and the Developer Defendants' joint efforts, many consumers at this event were unable to distinguish agents of BB&T from agents of the Developer Defendants.

29. That prior to the initial grand opening event at the development, Defendant Wachovia entered into an agreement with the Developer Defendants to be considered a preferred lender for the development.

30. That Defendant Wachovia went through a due diligence process in order for it to be considered a preferred lender in the subdivision.

31. That as a result of the due diligence process, Defendant Wachovia was fully aware of the scheme by which the Developer Defendants were to sell lots at an inflated price while providing a twenty percent (20%) cash back option for purchasers to receive at closing.

32. In its advertising materials, the Developer Defendants and McWhorter named Defendants BB&T and Wachovia as preferred lenders.

33. The event was elaborate and expensive with the Developer Defendants and McWhorter engaging in high-pressure sales and marketing tactics.

34. Defendant BB&T had its own sales team on site for the event and was set up to meet customers and provide immediate approval of loans for purchases.

35. Defendant Wachovia had its own sales team on site for the event and was set up to meet customers and provide immediate approval of loans for purchases.

36. That as an inducement for a potential purchaser, the Developer Defendants, McWhorter Defendants BB&T and Wachovia agreed that the Developer Defendants would pay lender as one of its inducements twenty percent (20%) of the purchase price at closing.

37. As joint ventures or partners, Defendants Wachovia, BB&T and the Developer Defendants are each jointly and severally liable for each others unlawful acts.

38. Defendants BB&T and Wachovia lent its names and prestige to the sales efforts assuring prospective lot owners at Mackay Point that they were backing the development.

39. Defendants BB&T's and Wachovia's bank officers and employees solicited consumers to consider buying lots at Mackay Point.

40. Defendants BB&T, Wachovia and the Developer Defendants created a misperception of the value of the lots at Mackay Point by falsely representing to Plaintiffs that the purchase price of a lot at Mackay Point was significantly below market value, and that Plaintiffs would have instant equity in their lot upon closing.

41. Defendants BB&T and Wachovia intentionally ordered and paid for appraisals which grossly overvalued the lots sold to Plaintiffs at Mackay Point and valued such lots as though development of Mackay Point, including its promised amenities, was complete.

42. That subsequent to the initial grand opening, the Developer Defendants, in continuance of its aggressive marketing scheme, created an elaborate sales binder which included a video of the first event and testimonials from apparent purchasers in Mackay Point.

43. That the solicitation claimed that there were over 3300 inquiries and 100 sales that took place as a result of the grand opening in the summer of 2006.

44. The records for Jasper County reflect that approximately 32 sales were made during the initial grand opening.

45. As a result of Defendants BB&T's and Wachovia's aggressive marketing practices in concert with the Developer Defendants, each Plaintiff fell victim to the scheme and purchased one or more properties at Mackay Point.

46. Defendants BB&T and Wachovia provided an atypical lending package to consumers designed to manipulate consumer concern and inspire confidence in their investment in Mackay Point. The Developer Defendants steered consumers, including the Plaintiffs, to Defendants BB&T and Wachovia to secure financing for the purchase of lots at Mackay Point.

47. Defendants BB&T and Wachovia conspired and schemed to funnel consumers, including Plaintiffs, through the lending process of Defendants BB&T and Wachovia for the purpose of maximizing the fees, commissions, and interest paid by Plaintiffs.

48. As part of an aggressive lending scheme, Defendants BB&T and Wachovia offered to finance ninety percent (90%) of the amount necessary to purchase a lot at Mackay Point, with the Developer Defendants paying twenty percent (20%) of the purchase price directly to the lender ("interest carry") at closing. This meant that Defendants BB&T and Wachovia would lend consumers a sum of money at closing that would be deposited directly into either a BB&T or Wachovia account and used to cover the interest carry.

49. The interest carry was fraudulently designed by the Developer Defendants, Defendants BB&T and Wachovia to assist in the manipulation in their capitalization rate, thus affording Defendants BB&T and Wachovia a higher market share for their stock.

50. The interest carry provisions allowed Plaintiffs to purchase lots at Mackay Point without paying any money for years.

51. Defendants BB&T, Wachovia and the Developer Defendants told Plaintiffs and other consumers that the development of Mackay Point would be complete within the interest carry time period.

52. Defendants BB&T, Wachovia and the Developer Defendants represented and misled Plaintiffs to believe they could easily "flip" their lots within the interest carry period, and that such flip would occur before Plaintiffs would have to make any payments in regard to their lots.

53. Defendants BB&T and Wachovia engaged in improper loan origination, underwriting and closing procedures.

54. The majority of the consumers who purchased lots at Mackay Point, including the Plaintiffs, financed their lots at Mackay Point through either Defendant BB&T or Defendant Wachovia because of their aggressive marketing and lending practices.

55. Prior to financing Mackay Point, Defendant BB&T knew or should have known that the Developer Defendants were inexperienced and undercapitalized and therefore knew or should have known that purchasing a lot in the Mackay Point development would be a serious financial risk.

56. Prior to implementing its preferred lot loan program in Mackay Point, Defendant Wachovia knew or should have known that the Developer Defendants were inexperienced and undercapitalized and therefore knew or should have known that purchasing a lot in the Mackay Point development would be a serious financial risk.

57. Defendant BB&T failed to require an adequate release fee from the Developer Defendants at closings on lots at Mackay Point thereby jeopardizing the viability of Mackay Point.

58. Defendant BB&T was authorized to make inspections at Mackay Point regarding the progress of construction on a regular basis, including when construction draws were requested by the Developer Defendants, yet failed to make inspections or if inspections were made without due diligence.

59. Despite Defendant BB&T's failure to inspect the progress of construction at Mackay Point, Defendant BB&T continued to approve and finance construction draws requested by the Developer Defendants and Defendant BB&T continued to loan money to consumers for lot purchases.

60. Due to Defendant BB&T's lack of oversight of the Developer Defendants, the Developer Defendants have for all purposes abandoned the development.

61. On or about January 28, 2007, Plaintiffs Jeffrey H. Anders and Maureen R. Anders and Defendant The Settings of Mackay Point, LLC, entered into a Purchase and Sale Agreement (the "Anders Contract") for the purchase and sale of Lot 109 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

62. On or about November 6, 2006, Plaintiffs Michael K. Callahan and Amy Callahan and Defendant The Settings of Mackay Point, LLC, entered into a Purchase and Sale Agreement (the "Callahan Contract") for the purchase and sale of Lot 113 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

63. On or about July 31, 2008, Plaintiff Melinda A. Cavicchia and the Defendant The Settings of Mackay Point, LLC, entered into a Purchase and Sale Agreement (the "Cavicchia

Contract”) for the purchase and sale of Lot 118 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

64. On or about February 6, 2007, Plaintiff Michael B. Cuilis and Defendant The Settings of Mackay Point, LLC entered into a Purchase and Sale Agreement (the “Cuilis Contract”) for the purchase and sale of Lot 67 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

65. On or about September 14, 2006, Plaintiffs Stephen Kipa and Kimberly K. A. Kipa and Defendant The Settings of Mackay Point, LLC, entered into Purchase and Sale Agreements (the “Kipa Contracts”) for the purchase and sale of Lots 37 and 76 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

66. On or about December 1, 2006, Plaintiff Chad Kurtz and Defendant The Settings of Mackay Point, LLC, entered into a Purchase and Sale Agreement (the “Kurtz Contract”) for the purchase and sale of Lot 102 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

67. On or about February 27, 2007, Plaintiff Spencer L. Morgan and Defendant The Settings of Mackay Point, LLC, entered into a Purchase and Sale Agreement (the “Morgan Contract”) for the purchase and sale of Lot 51 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

68. On or about July 13, 2007, Plaintiffs Richard O’Reilly and Alicia F. O’Reilly and Defendant The Settings of Mackay Point, LLC, entered into a Purchase and Sale Agreement (the “O’Reilly Contract”) for the purchase and sale of Lot 82 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

69. On or about June 1, 2007, Plaintiffs Daniel Ryan and Susan Ryan and Defendant The Settings of Mackay Point, LLC, entered into a Purchase and Sale Agreement (the “Ryan Contract”) for the purchase and sale of Lot 9 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

70. On or about July 26, 2007, Plaintiff Gennady Shmukler and Defendant The Settings of Mackay Point, LLC, entered into a Purchase and Sale Agreement (the “Shmukler Contract”) for the purchase and sale of Lot 20 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

71. On or about February 13, 2007, Plaintiffs Michael Schmuff and Joanne Schmuff and Defendant The Settings of Mackay Point, LLC, entered into a Purchase and Sale Agreement (the "Schmuff Contract") for the purchase and sale of Lot 90 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

72. On or about April 10, 2007, Plaintiff Matthew Terry and Defendant The Settings of Mackay Point, LLC, entered into a Purchase and Sale Agreement (the "First Terry Contract") for the purchase and sale of Lot 85 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

73. On or about June 25, 2007, Plaintiff Matthew Terry and Defendant The Settings of Mackay Point, LLC, entered into a Purchase and Sale Agreement (the "Second Terry Contract") for the purchase and sale of Lot 10 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

74. Plaintiffs Kathryn Tillman and Valerie Lowe and Defendant The Settings of Mackay Point, LLC, entered into a Purchase and Sale Agreement (the "Tillman/Lowe Contract") for the purchase and sale of Lot 81 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

75. On or about November 4, 2006, Gregory Yetter, manager for Plaintiff TACG Properties, LLC, and Defendant The Settings of Mackay Point, LLC, entered into a Purchase and Sale Agreement (the "Yetter Contract") for the purchase and sale of Lot 14 in the subdivision generally referred to as The Settings of Mackay Point located in Jasper County.

76. Each of the abovementioned contracts is identical in nature and therefore the individual contracts shall be hereinafter collectively referred to "the Contracts."

77. Pursuant to Paragraph 13 of the Contracts, Defendant The Settings of Mackay Point, LLC, was obligated to complete paved roads with asphalt surfaces directly adjacent to the lots purchased by Plaintiffs.

78. Pursuant to Paragraph 13 of the Contracts, Defendant The Settings of Mackay Point, LLC, was obligated to install water, sewer and electric service to the lots purchased by Plaintiffs in compliance with the representations made by The Settings of Mackay Point, LLC, in a Property Report purportedly provided to Plaintiffs at or near the time of the execution of the Contracts.

79. A Property Report was purportedly prepared by or on behalf of The Settings of Mackay Point, LLC, pursuant to the rules and regulations of the Office of Interstate Land Regulations, United States Department of Housing and Urban Development and the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 *et seq.* A copy of a Property Report that was provided with each individual Contract is attached hereto as "Exhibit A" and incorporated herein by reference.

80. The Property Report was signed by Richard W. McWhorter as Manager of The Settings of Mackay Point, LLC.

81. In the Property Report, McWhorter and Defendant The Settings of Mackay Point, LLC, represented to Plaintiffs that asphalt-paved roads would be substantially completed in the development by February 2008.

82. In the Property Report, McWhorter and Defendant The Settings of Mackay Point, LLC, represented to Plaintiffs that a system for delivery of water would be substantially completed in the development by February 2008.

83. In the Property Report, McWhorter and Defendant The Settings of Mackay Point, LLC, represented to Plaintiffs that a sewer system would be substantially completed in the development by February 2008.

84. In the Property Report, McWhorter and Defendant The Settings of Mackay Point, LLC, represented to Plaintiffs that an electrical supply system would be substantially completed in the development by February 2008.

85. In the Property Report, McWhorter and Defendant The Settings of Mackay Point, LLC, represented to Plaintiffs that telephone service lines would be substantially installed and/or completed in the development by February 2008.

86. As of the date of this filing, neither Defendant The Settings of Mackay Point, LLC, nor McWhorter have installed or substantially completed the roads, water system, sewer system, electrical supply system and telephone system that would service the Plaintiffs' lots.

87. Without a means of ingress and egress and basic water, sewer, electrical and telephone service, the Plaintiffs' lots are incapable of being improved and are essentially worthless to Plaintiffs.

88. That no work has been performed by the development for improvements of infrastructure since the date they were supposed to have been completed.

89. That commencing in August 2006, in order to obtain final Plat approval for the Subdivision, thereby enabling the sale of lots, the Developer Defendants purchased from and Defendant Bond Safeguard Insurance Company issued numerous bonds with Developer Defendants as the Principal and Jasper County as the Obligee. The bonds include the following: (a) Subdivision Bond No. 5023141 dated August 9, 2006, in the amount of Five Million Four Hundred Fifty-Eight Thousand Four Hundred Fifty-Six and 25/100 Dollars (\$5,458,456.25) for roads curbs and gutter, sewer, water, and storm drainage. The parties reduced that bond to Two Million One Hundred Sixteen Thousand Four Hundred Forty-Four and 00/100 Dollars (\$2,116,444.00) effective September 19, 2008; (b) Subdivision Bond No. 5026751 dated April 18, 2007, in the penal sum of Forty-Two Thousand Six Hundred Ninety-Four and 38/100 Dollars (\$42,694.38) for improvements to site clearing, earth work, grading, erosion control, stormwater, pavement, and traffic control for Mackay Point Road; (c) Subdivision Bond No. 5026754 dated April 18, 2007, in the penal sum of One Million Two Hundred Eighty-Seven Thousand Two Hundred Sixty-Two and 71/100 Dollars (\$1,287,262.71) for improvements for Phase II; (d) Subdivision Bond No. 5026755 dated April 18, 2007, in the penal sum of Three Million Forty-Nine Thousand One Hundred Sixty-One and 14/100 Dollars (\$3,049,161.14) for Phase II West; and (e) Subdivision Bond No. 5026756 dated April 18, 2007, in the penal sum of One Hundred Forty-Seven Thousand Eight Hundred Twenty-Five and 00/100 Dollars (\$147,825.00) for improvements and traffic control devices for Highway 17-A.

90. Plaintiffs relied upon Jasper County's approval of the final subdivision plat, and the performance bond upon which Jasper County approved same, as assurance and warranty that the Subdivision's infrastructure, the very least, would be constructed in accordance with the representations and covenants made by Developer Defendants, Defendants Wachovia, BB&T, or some combination of one or more of said Defendants.

91. That a number of Plaintiffs have made complaints and numerous demands to Jasper County to call the bonds and finish the infrastructure since February 2008, the time the infrastructure was to be completed.

92. On or about April 23, 2010, over two years from the time the infrastructure was to be completed, Jasper County filed a suit demanding payment of the bond, among other causes of action against Defendant Bond Safeguard.

93. That Defendant Bond Safeguard has denied that it is responsible for payment of the bond.

FOR A FIRST CAUSE OF ACTION
(Breach of Contract)

94. Each and every paragraph is repeated herein as if verbatim.

95. Defendants The Settings of Mackay Point, LLC, BB&T and Wachovia breached the Contracts by failing to construct and/or install the roads, water system, sewer system, electrical supply system and telephone system that would service Plaintiffs' lots.

96. Plaintiffs are unable to construct a residence or otherwise enjoy any use of their lots due to Defendants The Settings of Mackay Point, LLC's, BB&T's and Wachovia's failure to construct and/or install the roads, water system, sewer system, electrical supply system and telephone system that would service the Plaintiffs' lots.

97. Defendants The Settings of Mackay Point, LLC's, BB&T's and Wachovia's breach is so substantial and fundamental that it has defeated the essential purpose of the Contracts.

98. Plaintiffs have suffered damages as a result of Defendants' breach of the Contracts.

99. Plaintiffs are entitled to recover actual damages against these Defendants for their breach of the Contracts.

100. Given that the essential purpose of the Contracts has been defeated by the Defendants, Plaintiffs are entitled to rescission of the Contracts, the return of the entire purchase price, plus interest, costs, attorney fees and such other damages as are deemed just and proper.

FOR A SECOND CAUSE OF ACTION
(Breach of Covenant of Good Faith and Fair Dealing)

101. Each and every allegation is repeated as if verbatim.

102. Defendants, individually and collectively, marketed The Settings of Mackay Point as a residential development.

103. Defendants, individually and collectively, intended The Settings of Mackay Point to be a residential development.

104. The essential purpose of the Contracts, contemplated by all contracting parties, was for the purchased lots to be used for residential purposes.

105. As of the date of this filing, Defendants have not installed nor substantially completed the roads, water system, sewer system, electrical supply system and telephone system that would service the Plaintiffs' lots.

106. Without a means of ingress and egress and basic water, sewer, electrical and telephone service, the lots purchased by Plaintiffs are unfit and uninhabitable and cannot be used by Plaintiffs for any residential purpose.

107. Defendant The Settings of Mackay Point, LLC's failure to install and/or substantially complete the roads, water system, sewer system, electrical supply system and telephone system in The Settings of Mackay Point subdivision constitute a breach of the covenant of good faith and fair dealing in the Contracts.

108. Plaintiffs have suffered damages as a result of Defendant The Settings of Mackay Point, LLC's breach of the covenant of good faith and fair dealing in the Contracts.

109. Plaintiffs are entitled to recover actual damages against Defendant The Settings of Mackay Point, LLC, for its breach of the covenant of good faith and fair dealing in the Contracts.

110. Given that the essential purpose of the Contracts has been defeated by Defendant The Settings of Mackay Point, LLC's breach of the covenant of good faith and fair dealing, Plaintiffs are entitled to rescission of the Contracts, the return of the entire purchase price, plus interest, costs, attorney fees and such other damages as are deemed just and proper.

FOR A THIRD CAUSE OF ACTION
(Violation of Interstate Land Sales Full Disclosure Act)

111. Plaintiffs reassert and incorporate herein the allegations contained in Paragraphs 1 through 110.

112. Defendant The Settings of Mackay Point, LLC, purportedly submitted a Property Report (ILS#31718) to the Plaintiffs at or near the time of the execution of the Contracts for purchase of lots within the subdivision known as The Settings of Mackay Point.

113. The Property Reports were signed by Defendant Robert W. McWhorter, the President and founder of The Settings Development Companies, LLC, and the Manager of The Settings of Mackay Point, LLC.

114. The Property Reports contained untrue statements of material fact regarding the Developer Defendants' intent and/or ability to meet its contractual obligations in the installation

and/or construction of roads, water, sewer, electrical and telephone systems that would service Plaintiffs' lots.

115. Defendants' misstatements in the Property Reports were intended to, and did, induce the Plaintiffs' purchase of lots within The Settings of Mackay Point development.

116. The misstatements in the Property Reports were intended to, and did, defraud the Plaintiffs.

117. The actions of Defendants The Settings of Mackay Point, LLC, and Robert W. McWhorter in submitting a false and/or materially misleading Property Report violated the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 *et seq.*

118. The Plaintiffs have suffered damages as a result of Defendants The Settings of Mackay Point, LLC's, and Robert W. McWhorter's violation of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 *et seq.*

119. Plaintiffs are entitled to recover damages from Defendants The Settings of Mackay Point, LLC, and The Settings Development Companies, LLC including, but not limited to, the purchase price of the lots, diminution of value, interest, court costs, and reasonable attorneys' fees.

120. Due to the fact that the essential purpose of the Contracts was defeated by the Defendants' material and substantial violation of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 *et seq.*, Plaintiffs are entitled to rescission of the Contracts and return of the purchase price, interest, court costs, and reasonable attorneys' fees.

FOR A FOURTH CAUSE OF ACTION
(Piercing Corporate Veil/Alter Ego)

121. Plaintiffs reassert and incorporate herein the allegations contained in Paragraphs 1 through 120.

122. Upon information and belief, Defendant The Settings of Mackay Point, LLC, was, and/or is, wholly owned and operated by Defendant The Settings Development Companies, LLC.

123. Upon information and belief, Defendant The Settings Development Companies, LLC, has operated Defendant The Settings of Mackay Point, LLC, as its alter-ego, exercising total dominion and control over it, all to Defendant The Settings Development Companies, LLC's benefit and advantage.

124. Upon information and belief, Defendants The Settings Development Companies, LLC, and The Settings of Mackay Point, LLC, have intermingled their financial affairs such that Defendant The Settings of Mackay Point, LLC, was, and is, the alter-ego of Defendant The Settings Development Companies, LLC.

125. Upon information and belief, Defendant The Settings of Mackay Point failed to adhere to corporate formalities such that its actions were, and are, the actions of Defendant The Settings Development Companies, LLC.

126. Given that Defendant The Settings of Mackay Point was, and/or is, the alter-ego of Defendant The Settings Development Companies, LLC, the latter is liable to Plaintiffs for all causes of action alleged against the former in this Complaint.

127. Given that Defendant The Settings of Mackay Point was, and/or is, the alter-ego of Defendant The Settings Development Companies, LLC, the latter is liable to Plaintiffs for actual damages and/or rescission as alleged in this Complaint.

FOR A FIFTH CAUSE OF ACTION
(Fraud in the Inducement)

128. Each and every paragraph is repeated herein as if verbatim.

129. Defendants BB&T, Wachovia and the Developer Defendants made false representations to Plaintiffs or concealed material facts that they had a duty to disclose, relative to the purchase of lots at Mackay Point, and thereafter failed to do so.

130. These representations are directly related to the underlying purchase and sale transaction of the subject lots.

131. Defendants BB&T, Wachovia and the Developer Defendants made these representations intending to deceive Plaintiffs.

132. Plaintiffs reasonably relied on the representations and acted upon them by entering into an agreement to purchase the subject lots.

133. Due to the existence of fraud (induced by the Defendants BB&T, Wachovia and the Developer Defendants to the detriment of the Plaintiffs), the purchase of the subject lots and/or the loans used to finance the lots lacks mutuality, and therefore unenforceable against Plaintiffs.

134. Defendants BB&T's, Wachovia's and the Developer Defendants' fraudulent inducements proximately and legally caused and continue to cause Plaintiffs damage in an amount to be determined by a jury.

FOR A SIXTH CAUSE OF ACTION
(Fraudulent Inducement)

135. Each and every allegation contained herein is repeated as if verbatim.

136. Defendants made false representations to Plaintiffs pertaining to Mackay Point.

137. Defendants knew, or should have known, at the time Defendants made false representations that the Developer Defendants were inexperienced and undercapitalized and thus Mackay Point was not a viable project under the direction of the Developer Defendants.

138. Defendants engaged in aggressive marketing schemes with the intent to induce Plaintiffs into purchasing a lot in Mackay Point and allowed the Developer Defendants to market its promise of preferred lending and other aggressive loan provisions to consumers.

139. Plaintiffs, at the time these representations were made by Defendants and at the time Plaintiffs took the actions herein alleged, was ignorant of the falsity of Defendants' representations and believed them to be true.

140. Plaintiffs had no reason to know Defendants' representations were false and Plaintiffs' reliance was justified.

141. As a proximate result of Defendants' fraud and deceit and the facts herein alleged, Plaintiffs were induced into purchasing a lot at Mackay Point for which Plaintiffs have been damaged.

FOR A SEVENTH CAUSE OF ACTION
(Negligent Misrepresentation)

142. Each and every allegation is repeated as if verbatim.

143. Defendants owed a duty to Plaintiffs to convey information accurately and honestly concerning the viability of Mackay Point.

144. Defendants owed a duty to Plaintiffs to inspect the project and to ensure that the same was being constructed in accordance with the plans, specifications and time table which were marketed to Plaintiffs publicly by Defendants and the Developer Defendants.

145. Defendants misrepresented to Plaintiffs the values of the properties.

146. Plaintiffs justifiably relied upon Defendants' assertions to their detriment and suffered damages as a consequence of that reasonable reliance.

FOR AN EIGHTH CAUSE OF ACTION
(Negligence)

147. Each and every allegation is repeated as if verbatim.

148. Defendants owed Plaintiffs a duty of care arising out of their relationship with the Developer Defendants and their intimate knowledge of Mackay Point.

149. Defendants breached this duty of care by failing to adequately oversee the construction project at Mackay Point and inform Plaintiffs and other purchasers of the undercapitalization of the Developer Defendants.

150. As an actual and proximate result of Defendants' breach of duty owed to Plaintiffs, Plaintiffs have been damaged.

FOR A NINTH CAUSE OF ACTION
(Violation of the South Carolina Unfair and Deceptive Trade Practices Act)

151. Plaintiffs are informed and believe that Defendants are persons subject to the South Carolina Unfair Trade Practices Act and were and are engaged in trade or commerce.

152. That Plaintiffs are informed and believe that one or more of Defendants violated the South Carolina Unfair Trade Practices Act in one or more of the following ways:

- a. Misrepresenting the values of the lots;
- b. Provided financing despite the fact that it was obvious that Plaintiffs would be unable to repay the loan;
- c. Provided financing despite the fact that it was obvious that the appraisals did not reflect the value of the property;
- d. Engaging in fraudulent appraisal practices;
- e. Engaging in fraudulent and/or deceptive advertising;
- f. In creating a lot loan program with the Developer Defendants that deceived the Plaintiffs as to the true value of the lot purchased;
- g. All other acts as aforementioned alleged.

153. Plaintiffs are informed and believe that all of the above acts and the other allegations stated in this Complaint were and are undertaken by one or more of Defendants as

devices that were and are regularly used by Defendants for the purpose of attracting buyers/borrowers.

154. Plaintiffs are informed and believe that all of the aforementioned actions and omissions constitute unfair and deceptive practices under S.C. Code §39-5-10 and are subject to repetition.

155. Plaintiffs are informed and believe that all of these unfair and deceptive acts were undertaken by Defendants willfully and knowingly and violated the South Carolina Unfair Trade Practices Act.

156. That the unfair and deceptive conduct of Defendants proximately caused Plaintiffs actual damages.

157. That Plaintiffs are entitled to an award of actual damages against Defendants, with said damages to be trebled for Defendants' willful and knowing behavior pursuant to S.C. Code §39-5-140, plus reasonable attorney's fees and costs and such other and further damages as the Court deems appropriate.

FOR A TENTH CAUSE OF ACTION
(Civil Conspiracy)

158. Each and every allegation is repeated as if set forth verbatim.

159. That the actions of these Defendants were for the purpose of injuring Plaintiffs and did in fact cause Plaintiffs special damages in the form of financial loss, loss of credit and loss in value of the property.

160. That as a direct and proximate result of the actions of the Defendants, Plaintiffs suffered special damages.

161. Plaintiffs are entitled to a judgment for actual and punitive damages as to these Defendants.

FOR AN ELEVENTH CAUSE OF ACTION
(Unfair Trade Practices Act)
(As to Defendant Safeguard Bond)

162. Each and every allegation is repeated as if set forth verbatim.

163. Plaintiffs are informed and believe that Defendant Safeguard Bond is an entity subject to the South Carolina Unfair Trade Practices Act and was and is engaged in trade or commerce.

164. That Defendant Safeguard Bond entered into a bond contract with Jasper County and others for the purpose of protecting the purchase of a lot in the Subdivision which is the subject matter of this action.

165. That the Developer Defendants have failed to construct the infrastructure as contemplated by the Performance Bond and the County has demanded the payment of the bond for the purpose of constructing the infrastructure for the Subdivision.

166. Defendant Safeguard Bond has willfully violated the terms of the bond and has therefore defaulted under the terms of the bond.

167. That despite its demand by Jasper County, Defendant Safeguard Bond had unlawfully and in bad faith denied the payment of the bond.

168. The denial by Defendant Safeguard Bond in answering Jasper County's complaint for surrender of the bond is further evidence of their continued bad faith denial of the payment of the bond, which has had detrimental impact on Plaintiffs and the citizens of Jasper County.

169. The Plaintiffs are informed and believe that the denial of the payment of the bond is a willful act and is for the purpose of utilizing the funds for its own economic gain.

170. Defendant Safeguard Bond's acts and omissions, as alleged in this Complaint, are capable of, and have the potential to be repeated, to the damage of the general public and contrary to the public interest and principles of good faith and fair dealing in the conduct of trade and commerce.

171. Plaintiffs are therefore informed and believe that this Defendant has negligently, willfully and recklessly violated the terms and provisions of the Act.

172. That as a direct and proximate result of the Defendant's negligent, willful, and reckless violation of the Act, Plaintiffs have sustained financial damage and property loss, as alleged in this Complaint.

173. Plaintiffs are informed and believe that they are entitled to judgment against Defendant Safeguard Bond for all actual damages, special damages, treble damages, and attorneys' fees, in accordance with the Act.

FOR A TWELFTH CAUSE OF ACTION
(Third Party Beneficiaries/Declaratory Judgment)
(As to Defendants Safeguard Bond, Jasper County and
The Settings at Mackay Point, LLC)

174. Each and every allegation is repeated as if set forth verbatim.

175. Upon information and belief, Plaintiffs were the intended beneficiaries of the Subdivision Performance Bond issued by Safeguard Bond, as follows:

a. The Safeguard Bond Performance Bonds were issued for the purpose of obtaining the County's approval of the Final Bonded Subdivision Plat;

b. The County's approval of the Final Bonded Subdivision Plat was a condition precedent to the Developer Defendants being authorized to convey title to lots within the Subdivision to ultimate purchasers of said lots, including Plaintiffs;

c. The County accepted the Safeguard Bond Performance Bonds and, in reliance thereon, approved the Final Bonded Subdivision Plat for the Subdivision; and

e. The preceding facts were conveyed to Plaintiffs by the Developer Defendants and other Defendants, where after and in reliance whereof, Plaintiffs proceeded to closing on lots, and discharged their duties and obligations fully under their Contract to purchase said lot.

176. That Defendants County and Safeguard Bond knew or should have known that Plaintiffs would rely upon the County's acceptance of Safeguard Bond's Performance Bond and its subsequent approval of the Final Bonded Subdivision Plat for the Subdivision and that Plaintiffs were entitled to rely thereon in accordance with relevant statutory and municipal code provisions as alleged more fully herein below.

177. Upon information and belief, pursuant to the statutory authority granted by S.C. Code § 6-29-110, the County enacted Land Development Regulations. The purpose of these Regulations, among other things, was to assure the timely provision of required street utilities and other facilities and services to new land development.

178. Pursuant to S.C. Code § 06-18, Code of Ordinances, County of Jasper, Defendant entered into a Development Agreement. The then existing Jasper County Development Standards Ordinance required completion of the infrastructure construction or the bonding of the infrastructure as a prerequisite to recording of the subdivision plats.

179. Recorded subdivision plats were necessary in order to sell lots.

180. S.C. Code § 6-29-1120 states that:

The public health, safety, economy, good order, appearance, convenience, morals, and general welfare require the harmonious, orderly, and progressive development of land within the municipalities and counties of the State. In furtherance of this general intent, the regulation of land development by municipalities, counties or consolidated political subdivisions is authorized for the following purposes, among others:

- (1) to encourage the development of economically sound and stable municipalities and counties;
- (2) to assure the timely provision of required streets, utilities, and other facilities and services to new land developments; and
- (5) to assure, in general, the wise and timely development of new areas, and redevelopment of previously developed areas in harmony with the comprehensive plans of municipalities and counties.

181. S. C. Code § 6-29-1180 provides that in:

circumstances where the land development regulations adopted pursuant to this chapter require the installation and approval of site improvements prior to approval of the land development plan or subdivision plat for recording in the office of the county official whose duty it is to accept and record the instruments, the developer may be permitted to post a surety bond, certified check, or other instrument readily convertible to cash. The surety must be in an amount equal to at least one hundred twenty-five percent of the cost of the improvement. This surety must be in favor of the local government to ensure that, in the event of default by the developer, funds will be used to install the required improvements at the expense of the developer.

182. S.C. Code § 6-29-1120 further states that the:

Owner of any property being developed within the municipality or county may not transfer title to any lots or parts of the development unless the land development plan or subdivision has been approved by the local planning commission or designated authority and an approved plan or plat recorded in the office of the county charged with the responsibility of recording deeds, plats, and other property records.

183. Upon information and belief, prior to the closing of the individual lot to Plaintiffs, Defendants applied to the County for approval and/or pre-approval of the Subdivision Plat, and for subsequent closing of sales of lots in the Subdivision to third parties, including Plaintiffs. As required by the Land Development Regulations of Jasper County, on or about June 19, 2006, The Settings at Mackay Point, LLC, and Safeguard Bond executed the Subdivision Performance Bond for the benefit of the County, with Plaintiffs and other third party lot purchasers and property owners as intended beneficiaries. The bonds include the following (a) Subdivision Bond No. 5023141 dated August 9, 2006, in the amount of Five Million Four Hundred Fifty-Eight

provided by the Developer Defendants to and serving all lots in the Subdivision, including without limitation Plaintiffs' lots.

188. Plaintiffs' decision to enter into, execute and perform their obligations under the Purchase and Sale Agreements for their lots were made in reliance upon the Developer Defendants' promises and assurances that the Subdivision infrastructure would be completed, as guaranteed by issuance of the Subdivision Performance Bond and the County's acceptance thereof and its subsequent approval of the Final Subdivision Plat.

189. Such decision and performance by Plaintiffs were further made and delivered in reliance upon the Developer Defendants' promises, assurances, representations and contractual covenants to provide all amenities and related facilities as described more fully hereinabove.

190. Plaintiffs allegedly received permanent easements appurtenant, in perpetuity, for the use of all roads and utilities in the Subdivision and membership in the Property Owners Association which provided them perpetual and assignable rights to use all amenities and common areas in the Subdivision subject only to payment of appropriate regime fees.

191. Plaintiffs specifically relied on County's approval of the Final Plat and its recording with the County of Jasper, which permitted the sale of lots in the Subdivision and guaranteed the installation of improvements.

192. The prices, terms and conditions of lot sales in the Subdivision, including the lots purchased and closed by Plaintiffs, were premised on, and conducted in reliance upon, the full development of the Subdivision, and the Developer Defendants' promises, covenants, and assurances that the Subdivision improvements would be completed in a timely fashion.

193. Plaintiffs' lot purchases and closings were premised upon, and made in reliance of, the County's approval of the Final Plat and its recording with the County of Jasper, which permitted the sale of lots in the Subdivision and guaranteed the installation of improvements within one year.

194. As of December 2, 2010, no site infrastructure or required improvements as stipulated by Ordinance 06-18 of the County of Jasper had been commenced in the Subdivision.

195. Further, as of December 2, 2010, no amenities or related facilities, as represented, covenanted, and undertaken by the Developer Defendants, had been commenced in the Subdivision.

to build and provide the requisite infrastructure and utility services and related improvements in the Subdivision.

204. Further, Plaintiffs are entitled to recovery of their costs and attorneys' fees in the present declaratory judgment.

WHEREFORE, Plaintiffs pray that:

A. Judgment be entered in favor of Plaintiffs and against Defendant The Settings of Mackay Point, LLC, for breach of contract;

B. Judgment be entered in favor of Plaintiffs and against Defendant The Settings of Mackay Point, LLC, for breach of the covenant of good faith and fair dealing;

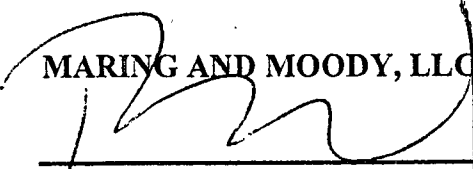
C. Judgment be entered in favor of Plaintiffs and against Defendants The Settings of Mackay Point, LLC, for violation of the Interstate Land Sales Full Disclosure Act, 15 U.S.C. § 1701 *et seq.*;

D. The Court pierce the corporate veil and enter an Order adjudging Defendant The Settings of Mackay Point, LLC, to be the alter-ego of Defendant The Settings Development Companies, LLC, making the latter liable for the actions of the former;

E. Plaintiffs be awarded actual damages against Defendants including, but not limited to, the purchase price of the Contracts, diminution of value, interest, court costs, and reasonable attorneys' fees;

F. The Court enter an Order rescinding the Contracts and returning the parties to their pre-contracting status quo; and

G. For such other and further relief as the Court may deem just and equitable in favor of the Plaintiffs.


MARING AND MOODY, LLC

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Georgetown, SC
January 6, 2011

READ THIS PROPERTY REPORT BEFORE SIGNING ANYTHING

This Report is prepared and issued by the developer of this subdivision. It is NOT prepared or issued by the Federal Government.

Federal law requires that you receive this Report prior to your signing a contract or agreement to buy or lease a lot in this subdivision. However, NO FEDERAL AGENCY HAS JUDGED THE MERITS OR VALUE, IF ANY, OF THIS PROPERTY.

If you received this Report prior to signing a contract or agreement, you may cancel your contract or agreement by giving notice to the seller any time before midnight of the seventh (7th) day following the signing of the contract or agreement.

If you did not receive this Report before you signed a contract or agreement, you may cancel the contract or agreement any time within two (2) years from the date of signing.

Name of Subdivision: The Settings of Mackay Point
Name of Developer: The Settings of Mackay Point, LLC
Date of This Report: May 18, 2007



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NOTE: In this Property Report, the words "you" and "your" refer to the buyer. The words "we," "us," and "our" refer to the developer.

RISKS OF BUYING LAND

The future value of any land is uncertain and dependent upon many factors. DO NOT expect all land to increase in value.

Any value which your Lot may have will be affected if the roads, utilities and all proposed improvements are not completed.

Resale of your Lot may be difficult or impossible, since you may face the competition of our own sales program, and local real estate brokers may not be interested in listing your Lot.

Any subdivision will have an impact on the surrounding environment. Whether or not the impact is adverse and the degree of impact, will depend upon the location, size, planning, and extent of development. Subdivisions which adversely affect the environment may cause governmental agencies to impose restrictions on the use of the land. Changes in plant and animal life, air and water quality, and noise levels may affect your use and enjoyment of your lot and your ability to sell it.

In the purchase of real estate, many technical requirements must be met in order to assure that you receive proper title. Since this purchase involves a major expenditure of money, it is recommended that you seek professional advice before you obligate yourself.

- WARNING -

THROUGHOUT THE PROPERTY REPORT THERE ARE SPECIFIC WARNINGS CONCERNING THE DEVELOPER, THE SUBDIVISION OR INDIVIDUAL LOTS. BE SURE TO READ ALL WARNINGS CAREFULLY BEFORE SIGNING ANY CONTRACT OR AGREEMENT.

GENERAL INFORMATION

This report covers two hundred eight-two lots (282) in Jasper County, South Carolina. See Page 22 for a listing of these lots. LotLot It is estimated that this Subdivision will eventually contain a total of 412 Lots.

The developer of this subdivision is:

The Settings of Mackay Point, LLC
4300 Paces Ferry Road, Suite 500
Atlanta, GA 30339
Telephone number: 678-384-4500

Answers to questions and information about this Subdivision may be obtained by telephoning the developer at the number listed above.

TITLE TO THE PROPERTY AND LAND USE

A person with legal title to property generally has the right to own, use, and enjoy the property. A contract to buy a lot may give you possession but does not give you legal title. You will not have legal title until you receive a valid deed. A restriction or an encumbrance on your lot or on the subdivision could adversely affect your title.

Here we will discuss the sales contract you will sign and the deed you will receive. We will also provide you with information about any land use restrictions and encumbrances, mortgages, or liens affecting your lot and some important facts about payments, recording, and title insurance.

METHOD OF SALE

Sales Contract and Delivery of Deed

All sales will be on a cash basis. You will sign a lot purchase agreement in which you will agree to pay an earnest money deposit upon execution of the agreement, and the remainder of the purchase price will be payable at closing.

The deed to the property will be delivered to you free and clear of liens and monetary encumbrances, on the date of closing. The deed must be delivered to you within 180 days after the date the purchase agreement is signed by you.

Type of Deed

The transfer of legal title to all Lots will be by general warranty deed.

ENCUMBRANCES, MORTGAGES AND LIENS

Currently, the Subdivision is subject to a mortgage dated April 26, 2006 and recorded May 5, 2006 in the amount of \$6,100,000 by and among Branch Banking and Trust Company. The mortgage contains release provisions for the mortgage. The Developer has represented that it is current on all of its obligations under the Mortgage.

RECORDING THE CONTRACT AND DEED

Method or Purpose of Recording

Recording a contract places third parties on notice that the property is subject to the contract of sale and does not otherwise provide protection for a purchaser. The sales contract for the purchase of your Lot does not contain acknowledgments and may not be recorded. Since South Carolina law does not require that sales contracts be recorded, and since it is not a common practice, we will not record the sales contract. So long as you are in compliance with the sales contract the contract requires that we deliver a deed to you not later than 180 days after the contract is signed.

Recording the deed in the public records protects you against claims of third parties against us or the property after the date of recording. The closing attorney will be responsible for recording the deed to your lot upon closing the sale. You will be responsible for the cost of recording the deed.

-WARNING-

UNLESS YOUR DEED IS RECORDED, YOU MAY LOSE YOUR LOT THROUGH THE CLAIMS OF SUBSEQUENT PURCHASERS OR SUBSEQUENT CREDITORS OF ANYONE HAVING AN INTEREST IN THE LAND.

Title Insurance

You should obtain an attorney's opinion of title or a title insurance policy which will describe the rights of ownership which are being acquired in the Lot. We recommend that an appropriate professional interpret the opinion or policy.

PAYMENTS

Escrow

Your earnest money deposit will be held in an escrow account with Buist, Byars, Pearce & Taylor, LLC located at One Westbury Park, suite 101 Bluffton, SC 29910. Buist, Byars, Pearce and Taylor, LLC is an independent, third party escrow agent. In accordance with the Purchase Agreement and escrow agreement, purchasers will be entitled to receive a return of all money paid in the event of the Developer's failure to convey title.

Prepayments

If the purchase of your lot is financed by an independent financial institution, you will need to review the financing documents to determine whether there is any prepayment penalty.

Default

In the event you default in the performance of any obligation or covenant under the the sales contract prior to closing or which prevents closing from taking place as provided, we may elect to terminate the contract by written notice to you and retain all moneys paid, including accrued interest, if any, as full and complete liquidated damages for your default.

RESTRICTIONS ON THE USE OF YOUR LOT

Restrictive Covenants

The Declaration of Covenants, Conditions, and Restrictions for The Settings of Mackay Point ("Declaration") has been recorded against the land in the subdivision in the public records of Jasper County, South Carolina. The restrictive covenants require certain activities which will impact the use of your lot. These provisions will be discussed in the paragraphs below.

This discussion contains only highlights and should not be a substitute for your careful review of the restrictive covenants.

Architectural Review: No structure or thing shall be placed, erected, installed, or posted on the property and no improvements or other work shall take place except in compliance with the Declaration and the "Architectural Design Standards and Guidelines" as administered by the Design Review Board. Additionally, the Developer has established a preferred builder program. All Owners will be subject to the terms as set forth in the preferred builder program.

Prior to the commencement of any work on the Lot, the owner shall submit to the reviewer an application for approval of the proposed work. The reviewer may establish fees and charges for the application and may employ architects, and engineers to perform review. Construction must commence within eighteen (18) months of the approval. All work shall be completed within one (1) year of commencement. Failure to complete on time, may be considered nonconforming and be subject to enforcement action.

Right of First Refusal: The Developer shall have a right of first refusal with regard to any bona fide offer which an owner received for the purchase of an unimproved Lot. Before the unimproved Lot may be sold to any person, the owners shall first offer in writing to sell the Lot to the Developer at a price equal to the agreed upon bona fide offer. The Developer shall have thirty (30) days to accept the offer.

A complete copy of the Declaration of Covenants, Conditions and Restrictions for The Settings of Mackay Point is available upon request, and are given at the time of sale.

Easements

Easements shown on recorded plats and found in the Declaration of Covenants, Conditions and Restrictions for The Settings of Mackay Point may affect your plans for building or using your lot, including drainage easements, sewer easements, utility easements, dock easements and walking path easements. None of these type easements will affect the building area of the lot or inhibit its use.

You should carefully review the final recorded plat, and the Master and Supplemental Declarations for the section where your Lot is located to determine what, if any, easements and/or flood zones/wetland areas affect your Lot.

PLATS, ZONING, SURVEYING, PERMITS AND ENVIRONMENT

Plats

The plats covering the Phase One and Phase Two lots in this Property Report are approved by regulatory authorities and recorded in the public records of Jasper County, South Carolina.

Zoning

The Lots may be used for single-family homes. This use conforms to local zoning requirements and the restrictive covenants.

Surveying

Each lot covered by this Property Report is identified on the subdivision plats. If you require a separate boundary survey of your lot, the approximate cost to you is estimated to be \$300.00.

Permits

Prior to beginning construction on your lot, you must obtain approval of your plans from the design review board (described on page 10 in the Restrictive Covenants section of this Property Report) by contacting us at our office shown on page 5 of this Property Report; and you must obtain permits or approvals from Jasper County, Grays Highway, Mary Gordon Ellis Executive Building, Ridgeland, SC 29936.

Environment

No determination has been made as to the possible adverse effects the Subdivision may have upon the environment and surrounding area.

ROADS

ACCESS TO THE SUBDIVISION

Access to the Subdivision is provided by Mackay Point Road, a public two-lane road paved with asphalt. The wearing surface of this road is approximately 20". Jasper County is responsible for the maintenance of this road at no direct cost to purchasers. We are not aware of any contemplated improvements by Jasper County.

ACCESS WITHIN THE SUBDIVISION

Legal and physical access by conventional automobile is or will be provided to the Lots by way of private roads dedicated to the use of Lot owners by a perpetual easement granted in the recorded restrictive covenants and on recorded plats.

We, The Settings of Mackay Point, LLC, are the developer of all the lots in the subdivision, and are responsible for the road construction at no additional cost to lot purchasers. We have provided financial assurance for completion of the interior roads by posting bonds with the Jasper County, South Carolina authorities for the lots.

Phase	Estimated Starting Date (Month/Year)	% of Construction Now Complete	Estimated Completion Date (Month/Year)	Present Surface	Final Surface
One	April 2007	0%	<u>February 2008</u>	gravel	asphalt
Two	August 2007	0%	<u>October 2009</u>	dirt	asphalt

We are responsible for maintenance of the private roads until we convey them to the property owners association. An annual road maintenance fund shall be established at the inception of the development. All purchasers will contribute \$200 annually to the road maintenance fund which is a portion of the annual assessment. Such fund will be collected at closing and thereafter annually, so long as you remain a Lot owner. After the roads are conveyed to the Association, all Lot owners will additionally contribute to the cost of maintenance through payment of assessments as provided in the restrictive covenants. The roads will be maintained so as to provide year-round access.

The table below identifies the distance (in miles) from the center of the subdivision to nearby communities.

Community Name	Population	Distance Over Paved Roads	Distance Over Unpaved Roads	Total Distance
Ridgeland, SC	2,518	14.62 miles	Not Applicable	14.62 miles
Yemassee, SC	830	3.59 mile	Not Applicable	3.59 mile
Hardeeville, SC	1,793	29.73 miles	Not Applicable	29.73 miles

UTILITIES

WATER

Water will be supplied to the individual Lots in the Subdivision by a central distribution system.

Central System

The water supplier is the Beaufort-Jasper Water & Sewer Authority, located at 6 Snake Road, Okatie,, SC 29909. The water supplier is a regulated, public, municipal utility, which is not controlled or affiliated with the developer.

We, The Settings of Mackay Point, LLC, are the developer of the lots in the subdivision and are responsible for construction of the water system, and for extending the water mains to the front of or adjacent to each Lot. You must pay the one-time connection fee of \$500.00.

Phase	Estimated Starting Date (Month/Year)	% of Construction Now Complete	Estimated Completion Date (Month/Year)
One	August 2007	0%	<u>February 2008</u>
Two	September 2007	0%	<u>October 2009</u>

Financial assurance for completion of the central water system is represented by bonds that we have posted with the Jasper County, South Carolina authorities for the lots.

You may not install an individual water system on your Lot. Water will not be available to your Lot until the central system is extended to the Lot.

The water system for Jasper County has a sufficient capacity to supply the water needed for the anticipated population of the Subdivision, and its water is tested regularly to be sure that it meets the standards for a public water system.

SEWER

Sewage disposal will be supplied to the individual Lots in the Subdivision by a central system.

Central System

We, The Settings of Mackay Point, LLC are the developer of all of the lots in the subdivision, and are responsible for construction of the sewer system, and for extending the sewer lines to the front of or adjacent to your Lot.

Jasper County Public Utilities will own and operate the sewer system. The address for Jasper County Public Utilities is 6 Snake Road, Okatie, SC 29909.

You must pay the following costs for sewer: construction costs to bring the sewer line from the boundary of your Lot to your home; a one-time residential tap and meter fee of \$500.00 and an inspection fee of \$50.00.

You may not install an individual sewage disposal system on your Lot. Sewer service will not be available to your Lot until the central system is extended to the Lot.

ELECTRICITY

South Carolina Electric & Gas (SCE&G), a publicly regulated utility, will supply electrical services to the Subdivision, and is responsible for installation of electrical service lines. The address for South Carolina Electric & Gas is P.O. Box 760, Charleston, South Carolina 29402

We are responsible for extending the service lines to your Lot at no cost to you.

Phase	Estimated Starting Date (Month/Year)	% of Construction Now Complete	Estimated Completion Date (Month/Year)
One	August 2007	0%	<u>February 2008</u>
Two	December 2007	0%	<u>October 2009</u>

TELEPHONE

Telephone service will be furnished by Hargray Service, lines have been or will be extended in front of, or adjacent to, each Lot.

Phase	Estimated Starting Date (Month/Year)	% of Construction Now Complete	Estimated Completion Date (Month/Year)
One	August 2007	0%	<u>February 2008</u>
Two	December 2007	0%	<u>October 2009</u>

FUEL OR OTHER ENERGY SOURCE

Natural Gas

At this time electricity and propane gas are the energy sources available to the Subdivision. Propane tanks must be buried. Propane gas is available through a number of suppliers, including People's Gas and Appliances, whose address is 16 Ice House Road, Beaufort, South Carolina 29906, telephone number (843) 524-2906. The approximate cost of the tank and installation is \$900.00. Rates may vary depending on the supplier. Individual usage rates will vary. If natural gas is provided in the future, Lot owners will be required to use natural gas.

FINANCIAL INFORMATION

The Developer's financial statements have been audited and an accountant has qualified that the financial statements present fairly, in all material respects, the financial position of The Settings of Mackay Point, LLC as of December 31, 2006.

A copy of our financial statements for the period ending March 31, 2007 are available from us upon request.

LOCAL SERVICES

FIRE PROTECTION

Fire protection from Jasper County is available to serve the Subdivision on a year-round basis.

POLICE PROTECTION

Police protection is provided by Jasper County's Sheriff's Office on a year-round basis.

SCHOOLS

Elementary, junior high and senior high schools are available to residents of the Subdivision. School bus transportation is not available from within the Subdivision at this time. School bus service may be available in the future as Lots are built and the community is established.

HOSPITAL

The nearest available hospital is Low Country General Hospital, located at Hwy 278 West, Ridgeland, South Carolina 29936. Emergency ambulance service is available.

PHYSICIANS AND DENTISTS

The nearest physicians and dentists offices are located respectively in Beaufort, SC and Ridgeland, SC.

SHOPPING FACILITIES

The nearest shopping facilities are located Yemassee, SC.

MAIL SERVICE

Mail service to each home in the Subdivision will be provided by the U. S. Postal System.

PUBLIC TRANSPORTATION

No public transportation available in the Subdivision or to nearby towns. The nearest public transportation is provided through Low Country Regional Transportation Authority, located approximately 5 miles from the Subdivision. This transportation system is mainly regional and provides access between smaller towns.

RECREATIONAL FACILITIES

Facility	% of Construction Now Complete	Estimated Construction Start Date (Month/Year)	Estimated Date Available for Use (Month/Year)	Financial Assurance of Completion	Buyer's Annual Cost of Assessment
Pavilions	0%	November 2007	April 2008	None	*
River Clubhouse/Pool	0%	December 2007	December 2008	None	*
Lake Recreational Facilities	0%	December 2008	December 2009	None	*
Multi Purpose Court	0%	December 2008	December 2009	None	*
Community Dock	0%	January 2008	March 2008	None	*
Gatehouse	0%	November 2007	March 2008	None	*
Hiking Trails	0%	December 2007	December 2009	None	*

*The cost to use these facilities will be included in the annual assessment levied by the Settings of Mackay Point Association.

-WARNING-

THE DEVELOPER IS NOT CONTRACTUALLY OBLIGATED TO COMPLETE THE RECREATIONAL FACILITIES AND PURCHASERS SHOULD CAREFULLY CONSIDER THE PURCHASE IF IT IS BASED ON THE ASSUMPTION THAT THE RECREATIONAL FACILITIES WILL BE COMPLETED.

Constructing the Facilities

The above recreational facilities are planned. Other recreational facilities may be added to the Subdivision. Any proposed facilities are based on current development plans and are

subject to change. The Settings of Mackay Point shall be responsible for the cost of construction of the recreational facilities.

Maintaining the Facilities

The Association will be responsible for maintenance of the proposed facilities listed above, out of funds collected from the general annual assessments paid by owners.

Transfer of the Facilities

Upon completion of the facilities, we will transfer the facilities to the Association by general warranty deed, free and clear of any liens or encumbrances.

Permits

We have not obtained permits for the proposed recreational facilities at this time; therefore, there are no assurances that lot owners will be able to use the proposed recreational facilities.

Who May Use the Facilities

The recreational facilities may be used by the Lot owners and their guests, subject to rules and regulations adopted by the Association.

SUBDIVISION CHARACTERISTICS AND CLIMATE

GENERAL TOPOGRAPHY

The general topography of the land in the Subdivision is flat, coastal terrain and with marshes along the river. Approximately 34% of the Subdivision is to remain as natural open space. The subdivision contains natural lakes and wetlands which are intended to be preserved.

There are no steep slopes, rock out croppings, or unstable or expansive soil conditions which will necessitate the use of special construction technique to build on or use and Lot in the Subdivision.

WATER COVERAGE

The Subdivision is subject to intermittent flooding, during which some Lots may become partially covered by water. Some Lots are located adjacent to wetland areas, marshes, or lakes and may be covered by water at some times. It is suggested that you walk, inspect and survey your Lot prior to purchase. All Lots have a sufficient area to build a home. You should carefully review the plats and Declaration for your Lot prior to signing a Purchase Agreement to determine any restrictions on building your home.

DRAINAGE AND FILL

All of the Lots in the Subdivision will contain a suitable building site. The Lots will require no corrective drainage or fill work prior to construction on the suitable building site; however depending upon the location of the residence and the type and scope of the improvements to the Lot, drainage and fill could be required. If you choose to take certain measures to improve your Lot to accommodate your plans for a residence, you will bear the cost of such measures.

FLOOD PLAIN

Some Lots may be located within a flood zone. Purchasers should carefully review the plat to determine whether their Lot is in the flood zone. For Lots in the flood zone, flood insurance will be available and may be required in connection with financing improvements upon your Lot. Mandatory flood insurance applies and rates will vary based on the size and location of your Lot and the value of your residence. The Flood Insurance Program is a federally assisted program and insurance is available to purchasers of Lots in The Settings of Mackay Point at prevailing rates.

FLOODING AND EROSION

We do not have an approved program that will provide controls for soil erosion and sedimentation throughout the Subdivision. At this time, we do have an erosion control plan which includes the installation and maintenance of silt fences, seeding, erosion matting and other erosion control practices.

NUISANCES

We are not aware of any onsite or offsite unpleasant odors, noises, pollutants, or other nuisances. You should be aware that there are wetland and marshy areas within the Subdivision. There may be typical odors and wildlife as a result of these areas.

The Settings of Mackay Point is a new community that may eventually contain over 412 homes. Noise and other factors typically associated with new home construction will continue until all of the homes in the community are built. Prospective purchasers should recognize that ongoing construction is a part of any new community.

HAZARDS

We are not aware of any existing or possible future nuisance or safety hazards that affect the Subdivision. The Subdivision is subject to natural hazards associated with coastal property such as storm surge, tropical storms, and hurricanes.

CLIMATE

Temperatures (in Fahrenheit)			
Season	High	Low	Mean
Summer	91.2	67.8	79.5
Winter	62.6	37.2	49.9

The average rainfall is 50.48 inches, and average snowfall is 0.40 inches.

OCCUPANCY

No homes are occupied on a full or part time basis as of the date of this Property Report.

ADDITIONAL INFORMATION

In this section we will discuss the following areas:

- Property Owners Association;
- Annual Real Estate Taxes;
- Resale or Exchange Program;
- Equal Opportunity in Lot Sales; and
- Listing of Lots.

PROPERTY OWNERS ASSOCIATION

We have formed The Settings of Mackay Point Association (the "Association"), a South Carolina nonprofit corporation on behalf of all Lot and unit owners in the Subdivision, including the developer as to its unsold Lots. All Lot owners will automatically be members of the Association. We have voting control of the association until the turnover date. The developer control period shall continue so long as the Developer owns one (1) Lot in the Subdivision or December 31, 2026, whichever occurs first.

The Association will collect assessments from all property owners in The Settings of Mackay Point. The Declaration provides for the authorization of the Association to levy and the obligation of the owners to pay all assessments. The assessments include, but may not be limited to, (i) Annual Assessments, (ii) Special Assessments, and (iii) Specific Assessments.

Annual assessments are those assessments that are charged for the operation, maintenance, repair, replacement of the common elements. The annual assessments are levied equally against all Lot owners, excluding the Developer.

Special assessments are those assessments that are charged to cover unbudgeted expenses or expenses in excess of those budgeted.

Specific assessments are levied against a particular Lot to cover the costs of providing services upon request of an owner, or to cover the costs incurred to bring the owner in compliance with the governing documents.

All assessments that are not paid on the date specified by the Association shall incur late charges and interest at the rate of ten percent (10%) per annum or such higher rate as the Board may determine.

The Declaration provides that all assessments levied by the Association are a charge and continuing lien on the real property and improvements thereon against which each assessment is made. Such lien, when delinquent, may be enforced by suit, judgment, and judicial or nonjudicial foreclosure.

While the final budget has not been formulated, the Developer anticipates that the initial current level of assessment will be approximately \$1,000 annually. All assessments are subject to increase. It is anticipated that this level of assessment will meet the expected

operating expenses, including maintenance and replacement costs of the Association for the current year.

TAXES

You will be obligated to pay real property taxes on the Lot after title to the Lot is transferred to you. Real property taxes on the Lot will be paid to Jasper County, South Carolina. The tax office is located at: 651 Grays Highway, Mary Gordon Ellis Executive Building P.O. Box 428, Ridgeland, SC 29936. The millage rate for 2006 was 01095. Your taxes will be determined by using the following formula: Value of Lot *6%*.2220. As an example of your estimated taxes, if the lot is \$200,000, your estimated taxes are \$2664.00 (\$200,000 x 6% x .222).

RESALE OR EXCHANGE PROGRAM

Some restrictions found in the restrictive covenants for the Subdivision may affect resale of your Lots. We do not have a program to assist you in the sale of your Lot.

We do not have any provision that will allow you to exchange one Lot for another.

EQUAL OPPORTUNITY IN LOT SALES

We are in compliance Title VIII of the Civil Rights Act of 1968 by not directly or indirectly discriminating on the basis of race, religion, sex or national origin in any of the following general areas: Lot marketing and advertising, rendering of Lot services, and in requiring terms and conditions on Lot sales.

LISTING OF LOTS

The following Lots are offered for sale in the Subdivision:

<u>Phase</u>	<u>Lots</u>	<u>Totals</u>
Phase 1	1-134	134 Lots
Phase 2	135-282	148 Lots
<u>Total Number of Lots</u>		<u>282</u>

COST SHEET

In addition to the purchase price of your lot, there are other expenditures which must be made. Listed below are the major costs. There may be other fees for use of the recreational facilities.

All costs are subject to change.

Sales Price

\$ 120,000

Cash Price of Lot

Estimated one-time charges

- | | |
|---|----------|
| 1. Water connection fee (\$500.00) | \$500.00 |
| 2. Sewer connection fee (\$500.00 + \$50.00 Inspection Fee) | \$550.00 |
| 3. Construction costs to extend electric and/or telephone services (estimate) | |
| 4. Electric Connection Fee | \$0.00 |
| 5. Buried Propane Tank Fee (Tank & Installation) | \$900.00 |
| 6. Architectural Review Fee | \$500.00 |

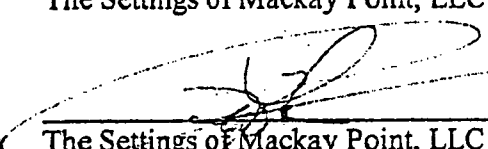
Total of estimated sales price and one-time charges

\$ 122,450

- | | |
|--|------------|
| 1. Taxes -Average unimproved Lot after sale to purchaser | \$ 1598.40 |
| 2. Assessments of property owners association | \$1000.00 |

The information contained in this Property Report is an accurate description of our subdivision and development plans.

The Settings of Mackay Point, LLC a South Carolina limited liability company


The Settings of Mackay Point, LLC

Name: Richard W. McWhorter

Title: Manager

RECEIPT, AGENT CERTIFICATION, AND CANCELLATION PAGE

PURCHASER RECEIPT
IMPORTANT: READ CAREFULLY

Name of Subdivision:
OILSR Number: 31718

The Settings of Mackay Point

Date of Report: May 18, 2007

We must give you a copy of this Property Report and give you an opportunity to read it before you sign any contract or agreement. By signing this receipt, you acknowledge that you have received a copy of our Property Report.

Received by: X Date: _____
Street Address: 9440 Dominion Way Alpharetta, GA 30022
City State Zip

If any representations are made to you which are contrary to those in this Report, please notify the:

Office of Interstate Land Sales Registration
HUD Building, 451 Seventh Street, S. W.
Washington, D.C. 20410

AGENT CERTIFICATION

I certify that I have made no representations to the person(s) receiving this Property Report which are contrary to the information contained in this Property Report.

Lot 20 Block _____ Section _____
Name of Salesperson: Walter L. Gray

Signature: Walter L. Gray Date: 6/22/2007

PURCHASER CANCELLATION

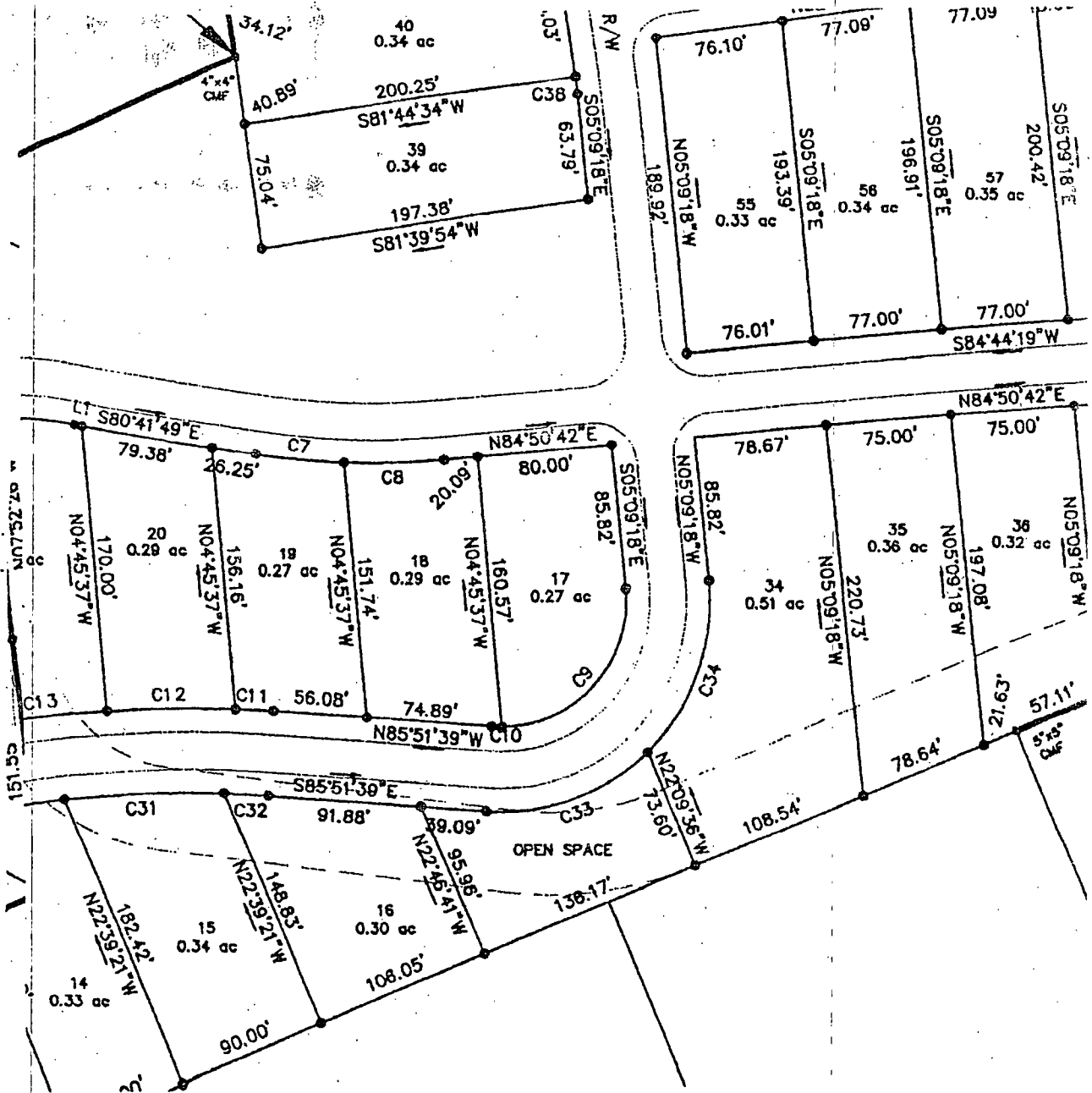
If you are entitled to cancel your purchase contract and wish to do so, you may cancel by personal notice or in writing. If you cancel in person or by telephone, it is recommended that you immediately confirm the cancellation by certified mail. You may use the form below:

Name of Subdivision: The Settings of Mackay Point

Date of Contract: _____

This will confirm that I/we wish to cancel our purchase contract.

Purchaser(s) signature: _____ Date: _____



STATE OF SOUTH CAROLINA
COUNTY OF JASPER

JEFFREY H. ANDERS AND MAUREEN
ANDERS, MICHAEL K. CALLAHAN AND
AMY CALLAHAN, MELINDA A.
CAVICCHIA, MICHAEL B. CIULIS,
STEPHEN KIPA AND KIMBERLEY A. K.
KIPA, CHAD KURTZ, SPENCER L.
MORGAN, RICHARD O'REILLY AND
ALICIA F. O'REILLY, DANIEL RYAN AND
SUSAN RYAN, GENNADY SHMUKLER,
MICHAEL SCHMUFF AND JOANNE
SCHMUFF, AND MATTHEW TERRY,
KATHRYN M. TILLMAN, VALERIE A.
LOWE, TACG PROPERTIES, LLC,
MACKAY MARSH, LLC,

Plaintiffs,

v.

THE SETTINGS OF MACKAY POINT, LLC,
THE SETTINGS DEVELOPMENT
COMPANIES, LLC, BRANCH BANKING &
TRUST CO., WACHOVIA BANK, N.A.,
BOND SAFEGUARD INSURANCE
COMPANY, AND JASPER COUNTY.

Defendants.

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT

C.A. No. 2011-CP-27-011

**WACHOVIA BANK, N.A.'S ANSWER
AND COUNTERCLAIM TO
PLAINTIFFS' COMPLAINT**

Wells Fargo Bank, N.A., as successor in interest to Wachovia Bank, N.A. by way of merger ("Wachovia"), answers the Complaint of Plaintiffs (the "Complaint") and counterclaims against Plaintiffs as follows:

1. Each and every allegation not expressly admitted is denied.

FOR A FIRST DEFENSE
(Response to Numbered Allegations of Complaint)

2. The allegations in Paragraphs 1 through 15 are admitted upon information and belief.

3. Because Plaintiffs direct the allegations in Paragraph 16 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a true and accurate belief as to these allegations and therefore denies the same.

4. Because Plaintiffs direct the allegations in Paragraph 17 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a true and accurate belief as to these allegations and therefore denies the same.

5. Because Plaintiffs direct the allegations in Paragraph 18 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a true and accurate belief as to these allegations and therefore denies the same.

6. Because Plaintiffs direct the allegations in Paragraph 19 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a true and accurate belief as to these allegations and therefore denies the same.

7. In response to the allegations in Paragraph 20, it is admitted that, at all times relevant to this action, Wachovia was licensed and doing business in the State of South Carolina. The remaining allegations in Paragraph 20 are denied to the extent that Wachovia, as a national association, was not organized and existing under the laws of North Carolina, but rather the federal laws of the United States of America. Further answering the allegations in Paragraph 20, Wells Fargo, N.A. is the successor by merger to Wachovia.

8. Because Plaintiffs direct the allegations in Paragraph 21 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a true and accurate belief as to these allegations and therefore denies the same.

9. Answering Paragraph 22, Wachovia admits that the development is located in Jasper County, South Carolina. Wachovia is without knowledge or information sufficient to form

a true and accurate belief as to the remaining allegations in Paragraph 22 and therefore denies the same.

10. Because Plaintiffs direct the allegations in Paragraph 23 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a true and accurate belief as to these allegations and therefore denies the same.

11. Because Plaintiffs direct the allegations in Paragraph 24 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a true and accurate belief as to these allegations and therefore denies the same.

12. To the extent the allegations in Paragraph 25 are directed at, or otherwise pertain to Wachovia, Wachovia denies that it has any duty to build roads, install electrical services, water service, install phone lines, or amenities. To the extent that Plaintiffs direct the allegations in Paragraph 25 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

13. The allegations in Paragraph 26 are denied as worded. In further response to the allegations in Paragraph 26, Wachovia denies that it was "intricately intertwined" with Defendant BB&T, the Developer Defendants, or Defendant McWhorter. Moreover, Wachovia denies that it "intentionally associated" itself with Defendant BB&T, the Developer Defendants, or Defendant McWhorter to engage in and carry out a business venture for joint profit as essentially co-owners. Wachovia denies any and all remaining allegations in Paragraph 26 and any legal conclusions or inferences drawn therefrom.

14. To the extent the allegations in Paragraph 27 are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 27 as worded. Wachovia admits that it used promotional materials from time to time to promote certain financial services provided by

Wachovia. Additionally, Wachovia admits that on certain occasions its employees were on site at the development known as MacKay Point. To the extent that Plaintiffs direct the allegations in Paragraph 27 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same. Wachovia denies any and all remaining allegations in Paragraph 27 and any legal conclusions or inferences drawn therefrom.

15. To the extent the allegations in Paragraph 28 are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 28. To the extent that Plaintiffs direct the allegations in Paragraph 28 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same. Wachovia denies any and all remaining allegations in Paragraph 28 and any legal conclusions or inferences drawn therefrom.

16. The allegations in Paragraph 29 are denied and strict proof thereof demanded. Further answering the allegations in Paragraph 29, Wachovia is informed and believes that the Developer Defendants and their agents may have referred to Wachovia from time to time as a "preferred lender."

17. The allegations in Paragraph 30 are denied and strict proof thereof demanded.

18. The allegations in Paragraph 31 are denied and strict proof thereof demanded.

19. Paragraph 32 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, such "advertising materials" speak for themselves.

20. To the extent the allegations in Paragraph 33 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in

Paragraph 33 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

21. Because Plaintiffs direct the allegations in Paragraph 34 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies the same.

22. The allegations in Paragraph 35 are denied. Wachovia admits that on certain occasions it had employees on site at the development known as MacKay Point. More specifically, Wachovia denies the allegation that its employees were ever on site to "provide immediate approval of loans for purchases."

23. The allegations in Paragraph 36 are denied.

24. To the extent the allegations in Paragraph 37 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 37 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

25. To the extent the allegations in Paragraph 38 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 38 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

26. To the extent the allegations in Paragraph 39 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 39 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

27. To the extent the allegations in Paragraph 40 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 40 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

28. To the extent the allegations in Paragraph 41 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 41 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

29. Because Plaintiffs direct the allegations in Paragraph 42 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies the same.

30. Wachovia is without knowledge or information sufficient to form a true and accurate belief as to the allegations in Paragraph 43 therefore denies the same. Further answering the allegations in Paragraph 43, to the extent such solicitation exists, it speaks for itself.

~~31. Wachovia is without knowledge or information sufficient to form a true and~~
accurate belief as to the allegations in Paragraph 44 as they relate to other parties and therefore denies the same. Further answering the allegations in Paragraph 44, the records speak for themselves.

32. To the extent the allegations in Paragraph 45 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 45 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

33. To the extent the allegations in Paragraph 46 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 46 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

34. To the extent the allegations in Paragraph 47 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 47 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

35. Answering the allegations in Paragraph 48, Wachovia admits that it provided certain financing to qualified borrowers requesting financing to purchase of real property located in the subject development. All remaining allegations in Paragraph 48 are denied and any legal conclusions which Plaintiffs attempt to derive by the use of the word "scheme" are denied and strict proof thereof demanded.

36. To the extent the allegations in Paragraph 49 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 49 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

37. The allegations in Paragraph 50 are denied.

38. To the extent the allegations in Paragraph 51 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 51 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

39. To the extent the allegations in Paragraph 52 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 52 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

40. To the extent the allegations in Paragraph 53 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 53 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

41. To the extent the allegations in Paragraph 54 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 54 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

42. Because Plaintiffs direct the allegations in Paragraph 55 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies the same.

43. The allegations in Paragraph 56 are denied.

44. Because Plaintiffs direct the allegations in Paragraph 57 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies the same.

45. Because Plaintiffs direct the allegations in Paragraph 58 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies the same.

46. Because Plaintiffs direct the allegations in Paragraph 59 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies the same.

47. Because Plaintiffs direct the allegations in Paragraph 60 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies the same.

48. Paragraph 61 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 61 that is inconsistent or conflicts with the contract.

49. Paragraph 62 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 62 that is inconsistent or conflicts with the contract.

50. Paragraph 63 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 63 that is inconsistent or conflicts with the contract.

51. Paragraph 64 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 64 that is inconsistent or conflicts with the contract.

52. Paragraph 65 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 65 that is inconsistent or conflicts with the contract.

53. Paragraph 66 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 66 that is inconsistent or conflicts with the contract.

54. Paragraph 67 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 67 that is inconsistent or conflicts with the contract.

55. Paragraph 68 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 68 that is inconsistent or conflicts with the contract.

56. Paragraph 69 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 69 that is inconsistent or conflicts with the contract.

57. Paragraph 70 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself

and Wachovia denies any allegation in Paragraph 70 that is inconsistent or conflicts with the contract.

58. Paragraph 71 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 71 that is inconsistent or conflicts with the contract.

59. Paragraph 72 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 72 that is inconsistent or conflicts with the contract.

60. Paragraph 73 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 73 that is inconsistent or conflicts with the contract.

61. Paragraph 74 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 74 that is inconsistent or conflicts with the contract.

62. Paragraph 75 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contract speaks for itself and Wachovia denies any allegation in Paragraph 75 that is inconsistent or conflicts with the contract.

63. Wachovia is without knowledge or information sufficient to form a true and accurate belief as to the allegations in Paragraph 76 and therefore denies the same.

64. Paragraph 77 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contracts speak for themselves and Wachovia denies any allegation in Paragraph 77 that is inconsistent or conflicts with the contracts.

65. Paragraph 78 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the contracts speak for themselves and Wachovia denies any allegation in Paragraph 78 that is inconsistent or conflicts with the contracts.

66. Paragraph 79 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the property report speaks for itself and Wachovia denies any allegation in Paragraph 79 that is inconsistent or conflicts with the property report.

~~67. Paragraph 80 does not contain an allegation directed towards Wachovia and~~
therefore requires no response. To the extent a response is required, the property report speaks for itself and Wachovia denies any allegation in Paragraph 80 that is inconsistent or conflicts with the property report.

68. Paragraph 81 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the property report speaks for itself and Wachovia denies any allegation in Paragraph 81 that is inconsistent or conflicts with the property report.

69. Paragraph 82 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the property report speaks for itself and Wachovia denies any allegation in Paragraph 82 that is inconsistent or conflicts with the property report.

70. Paragraph 83 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the property report speaks for itself and Wachovia denies any allegation in Paragraph 83 that is inconsistent or conflicts with the property report.

71. Paragraph 84 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the property report speaks for itself and Wachovia denies any allegation in Paragraph 84 that is inconsistent or conflicts with the property report.

72. Paragraph 85 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, the property report speaks for itself and Wachovia denies any allegation in Paragraph 85 that is inconsistent or conflicts with the property report.

73. Because Plaintiffs direct the allegations in Paragraph 86 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies the same.

74. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 87 and therefore denies the same.

75. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 88 and therefore denies the same.

76. Because Plaintiffs direct the allegations in Paragraph 89 and all subparts thereto to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies the same. To the extent a response is required, the bonds speak for themselves and Wachovia denies any allegation in Paragraph 89 that is inconsistent or conflicts with the bonds.

77. To the extent the allegations in Paragraph 90 are directed towards, or otherwise pertain to Wachovia, they are denied. To the extent that Plaintiffs direct the allegations in Paragraph 90 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

78. Wachovia is without knowledge or information sufficient to form a true and accurate belief as to the allegations in Paragraph 91 and therefore denies the same.

79. Because Plaintiffs direct the allegations in Paragraph 92 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies the same.

80. Because Plaintiffs direct the allegations in Paragraph 93 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of these allegations and therefore denies the same.

AS TO THE FIRST CAUSE OF ACTION
(Breach of Contract)

81. In response to the allegations in Paragraph 94, the responses to the allegations in Paragraphs 1 through 93 are restated and incorporated herein by reference.

82. This cause of action has been dismissed to the extent it is directed towards Wachovia. Accordingly, the allegations in Paragraphs 95 through 100 are denied.

AS TO THE SECOND CAUSE OF ACTION
(Breach of Covenant of Good Faith and Fair Dealing)

83. In response to the allegations in Paragraph 101, the responses to the allegations in Paragraphs 1 through 100 are restated and incorporated herein by reference.

84. This cause of action has been dismissed to the extent it is directed towards Wachovia. Accordingly, the allegations in Paragraphs 102 through 110 are denied.

AS TO THE THIRD CAUSE OF ACTION
(Violation of Interstate Land Sales Full Disclosure Act)

85. In response to the allegations in Paragraph 111 of the Complaint, the responses to the allegations in Paragraphs 1 through 110 are restated and incorporated herein by reference.

86. This cause of action has been dismissed to the extent it is directed towards Wachovia. Accordingly, the allegations in Paragraphs 112 through 120 are denied.

AS TO THE FOURTH CAUSE OF ACTION
(Piercing Corporate Veil/Alter Ego)

87. In response to the allegations in Paragraph 121, the responses to the allegations in Paragraphs 1 through 120 are restated and incorporated herein by reference.

88. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 122 as they relate to other parties and therefore denies the same.

89. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 123 as they relate to other parties and therefore denies the same.

90. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 124 as they relate to other parties and therefore denies the same.

91. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 125 as they relate to other parties and therefore denies the same.

92. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 126 as they relate to other parties and therefore denies the same.

93. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 127 as they relate to other parties and therefore denies the same.

AS TO THE FIFTH CAUSE OF ACTION
(Fraud in the Inducement)

94. In response to the allegations in Paragraph 128, the responses to the allegations in Paragraphs 1 through 127 are restated and incorporated herein by reference.

95. To the extent the allegations in Paragraph 129 are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 129. To the extent that Plaintiffs direct the allegations in Paragraph 129 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

96. The allegations in Paragraph 130 are denied.

97. To the extent the allegations in Paragraph 131 are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 131. To the extent that Plaintiffs direct the allegations in Paragraph 131 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

98. The allegations in Paragraph 132 are denied.

99. The allegations in Paragraph 133 are denied.

100. The allegations in Paragraph 134 are denied.

AS TO THE SIXTH CAUSE OF ACTION
(Fraudulent Inducement)

101. In response to the allegations in Paragraph 135, the responses to the allegations in Paragraphs 1 through 134 are restated and incorporated herein by reference.

102. To the extent the allegations in Paragraph 136 are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 136. To the extent that Plaintiffs direct the allegations in Paragraph 136 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

103. To the extent the allegations in Paragraph 137 are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 137. To the extent that Plaintiffs direct the allegations in Paragraph 137 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

104. To the extent the allegations in Paragraph 138 are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 138. To the extent that Plaintiffs direct the allegations in Paragraph 138 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

105. The allegations in Paragraph 139 are denied.

106. The allegations in Paragraph 140 are denied.

107. The allegations in Paragraph 141 are denied.

AS TO THE SEVENTH CAUSE OF ACTION
(Negligent Misrepresentation)

108. In response to the allegations in Paragraph 142, the responses to the allegations in Paragraphs 1 through 141 are restated and incorporated herein by reference.

109. To the extent the allegations in Paragraph 143 are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 143. To the extent that Plaintiffs direct the allegations in Paragraph 143 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

110. To the extent the allegations in Paragraph 144 are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 144. To the extent that Plaintiffs direct the allegations in Paragraph 144 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

111. To the extent the allegations in Paragraph 145 are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 145. To the extent that Plaintiffs direct the allegations in Paragraph 145 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

112. The allegations in Paragraph 146 are denied.

AS TO THE EIGHTH CAUSE OF ACTION
(Negligence)

113. In response to the allegations in Paragraph 147, the responses to the allegations in Paragraphs 1 through 146 are restated and incorporated herein by reference.

114. This cause of action has been dismissed to the extent it is directed towards Wachovia. Accordingly, the allegations in Paragraphs 148 through 150 are denied.

AS TO THE NINTH CAUSE OF ACTION
(Violation of the South Carolina Unfair and Deceptive Trade Practices Act)

115. To the extent the allegations in Paragraph 151 are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 151. To the extent that Plaintiffs direct the allegations in Paragraph 151 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

116. To the extent the allegations in Paragraph 152 and all subparts thereto are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 152 and any subparts thereto. To the extent that Plaintiffs direct the allegations in Paragraph 152 and all subparts thereto to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

117. To the extent the allegations in Paragraph 153 are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 153. To the extent that Plaintiffs direct the allegations in Paragraph 153 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

118. Wachovia is informed and believes that the allegations in Paragraph 154 constitute legal conclusions to which no response is necessary. However, to the extent a response is deemed necessary, the allegations in Paragraph 154 are denied.

119. To the extent the allegations in Paragraph 155 are directed at, or otherwise pertain to Wachovia, Wachovia denies the allegations in Paragraph 155. To the extent that Plaintiffs direct the allegations in Paragraph 155 to parties other than Wachovia, Wachovia is without knowledge or information sufficient to form a belief as to the truth of such allegations and therefore denies the same.

120. The allegations in Paragraph 156 are denied.

121. The allegations in Paragraph 157 are denied.

AS TO THE TENTH CAUSE OF ACTION
(Civil Conspiracy)

122. In response to the allegations in Paragraph 158, the responses to the allegations in Paragraphs 1 through 157 are restated and incorporated herein by reference.

123. This cause of action has been dismissed to the extent it is directed towards Wachovia. Accordingly, the allegations in Paragraphs 159 through 161 are denied.

AS TO THE ELEVENTH CAUSE OF ACTION
(Unfair Trade Practices Act)
(As to Defendant Safeguard Bond)

124. In response to the allegations in Paragraph 162, the responses to the allegations in Paragraphs 1 through 161 are restated and incorporated herein by reference.

125. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 163 as they relate to other parties and therefore denies the same.

126. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 164 as they relate to other parties and therefore denies the same.

127. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 165 of the Complaint as they relate to other parties and therefore denies the same.

128. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 166 as they relate to other parties and therefore denies the same.

129. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 167 as they relate to other parties and therefore denies the same.

130. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 168 as they relate to other parties and therefore denies the same.

131. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 169 as they relate to other parties and therefore denies the same.

132. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 170 as they relate to other parties and therefore denies the same.

133. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 171 as they relate to other parties and therefore denies the same.

134. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 172 as they relate to other parties and therefore denies the same.

135. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 173 as they relate to other parties and therefore denies the same.

AS TO THE TWELFTH CAUSE OF ACTION
(Third Party Beneficiaries/Declaratory Judgment)
(As to Defendants Safeguard Bond, Jasper County and
The Settings at Mackay Point, LLC)

136. In response to the allegations in Paragraph 174, the responses to the allegations in Paragraphs 1 through 173 are restated and incorporated herein by reference.

137. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 175 and all subparts thereto as they relate to other parties and therefore denies the same.

138. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 176 as they relate to other parties and therefore denies the same.

139. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 177 as they relate to other parties and therefore denies the same.

140. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 178 as they relate to other parties and therefore denies the same.

141. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 179 of the Complaint.

142. Paragraph 180 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, S.C. Code Ann. § 6-29-1120 speaks for itself and Wachovia denies any allegation in Paragraph 180 that is inconsistent or conflicts with S.C. Code Ann. § 6-29-1120.

143. Paragraph 181 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, S.C. Code Ann. § 6-29-1180 speaks for itself and Wachovia denies any allegation in Paragraph 181 that is inconsistent or conflicts with S.C. Code Ann. § 6-29-1180.

144. Paragraph 182 does not contain an allegation directed towards Wachovia and therefore requires no response. To the extent a response is required, S.C. Code Ann. § 6-29-1120 speaks for itself and Wachovia denies any allegation in Paragraph 182 that is inconsistent or conflicts with S.C. Code Ann. § 6-29-1120.

145. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 183 and all subparts thereto as they relate to other parties and therefore denies the same.

146. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 184 as they relate to other parties and therefore denies the same.

147. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 185 as they relate to other parties and therefore denies the same.

148. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 186 as they relate to other parties and therefore denies the same.

149. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 187 and therefore denies the same.

150. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 188 and therefore denies the same.

151. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 189 and therefore denies the same.

152. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 190 and therefore denies the same.

153. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 191 and therefore denies the same.

154. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 192 and therefore denies the same.

155. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 193 and therefore denies the same.

156. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 194 and therefore denies the same.

157. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 195 and therefore denies the same.

158. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 196 as they relate to other parties and therefore denies the same.

159. Wachovia is without knowledge or information sufficient to form a belief as to the truth of the allegations in Paragraph 197 as they relate to other parties and therefore denies the same.

160. Wachovia is informed and believes that no response is necessary to the allegations in Paragraph 198 as they contain legal conclusions and do not appear to be directed to Wachovia. However, to the extent a response is deemed necessary, Wachovia denies the allegations in Paragraph 198.

161. To the extent that Paragraph 199 purports to interpret S.C. Code Ann. § 15-53-30, S.C. Code Ann. § 15-53-30 speaks for itself and Wachovia denies any statement in paragraph 199 that is inconsistent with or conflicts with S.C. Code Ann. § 15-53-30. Moreover, Wachovia is informed and believes that no response is necessary to the allegations in Paragraph 199 as they contain legal conclusions and do not appear to be directed to Wachovia. However, to the extent a response is deemed necessary, Wachovia denies the allegations in Paragraph 199.

162. To the extent that Paragraph 200 purports to interpret S.C. Code Ann. § 15-53-30, S.C. Code Ann. § 15-53-30 speaks for itself and Wachovia denies any statement in paragraph 200 that is inconsistent with or conflicts with S.C. Code Ann. § 15-53-30. Moreover, Wachovia is informed and believes that no response is necessary to the allegations in Paragraph 200 as they contain legal conclusions and do not appear to be directed to Wachovia. However, to the extent a response is deemed necessary, Wachovia denies the allegations in Paragraph 200.

163. To the extent that Paragraph 201 purports to interpret S.C. Code Ann. § 15-53-30, S.C. Code Ann. § 15-53-30 speaks for itself and Wachovia denies any statement in paragraph 201 that is inconsistent with or conflicts with S.C. Code Ann. § 15-53-30. Moreover, Wachovia is informed and believes that no response is necessary to the allegations in Paragraph 201 as they contain legal conclusions and do not appear to be directed to Wachovia. However, to the extent a response is deemed necessary, Wachovia denies the allegations in Paragraph 201.

164. Wachovia is informed and believes that no response is necessary to the allegations in Paragraph 202 as they contain legal conclusions and do not appear to be directed to Wachovia. However, to the extent a response is deemed necessary, Wachovia denies the allegations in Paragraph 202.

165. Wachovia is informed and believes that no response is necessary to the allegations in Paragraph 203 as they contain legal conclusions and do not appear to be directed to Wachovia. However, to the extent a response is deemed necessary, Wachovia denies the allegations in Paragraph 203.

166. Wachovia is informed and believes that no response is necessary to the allegations in Paragraph 204 as they contain legal conclusions and do not appear to be directed to Wachovia. However, to the extent a response is deemed necessary, Wachovia denies the allegations in Paragraph 204.

AS TO PLAINTIFFS' PRAYER FOR RELIEF

167. Wachovia denies that Plaintiffs are entitled to any of the relief prayed for in any part of the Complaint, including, but not limited to, the unnumbered paragraphs and all subparts thereto found on the twenty-fifth page of said Complaint.

FOR A SECOND DEFENSE
(Failure to State a Claim)

168. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

169. Plaintiffs' Complaint fails to state facts upon which a claim for relief may be granted against Wachovia. Therefore, pursuant to Rule 12(b)(6) of the South Carolina Rules of Civil Procedure, the Court should dismiss Plaintiffs' claim against Wachovia.

FOR A THIRD DEFENSE
(Waiver)

170. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

171. Further answering the Complaint and without waiving any other defenses, Wachovia states that Plaintiffs has waived his claims against Wachovia through his conduct.

FOR A FOURTH DEFENSE
(Assumption of the Risk)

172. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

173. Further answering the Complaint and without waiving any other defenses, Plaintiffs' claims against Wachovia are barred because Plaintiffs knew and understood the cost, risk, and potential rewards of purchasing the property and therefore assumed the risk associated with the same.

FOR A FIFTH DEFENSE
(Laches)

174. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

175. Further answering the Complaint and without waiving any other defenses, Plaintiffs' claims against Wachovia are barred, in whole or in part, under the doctrine of laches.

FOR A SIXTH DEFENSE
(Estoppel)

176. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

177. Further answering the Complaint and without waiving any other defenses, Plaintiffs' claims against Wachovia are barred in whole or in part, under the doctrine of estoppel.

FOR A SEVENTH DEFENSE
(Intervening and Superseding Acts)

178. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

179. Further answering the Complaint and without waiving any other defenses, Wachovia is not liable or responsible for damages to the extent that damages, if any, are due. Such damages, if they exist, were contributed to or caused by, in whole or in part, the conduct of third parties over whom Wachovia had no control and for whose conduct it was not responsible.

To the extent that conduct of third parties was an intervening, superseding, isolating, or sole cause of the Plaintiffs' alleged damages, Wachovia pleads the foregoing as a bar to recovery to any of them.

FOR AN EIGHTH DEFENSE
(Absence of Agreement with Other Defendants)

180. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

181. Further answering the Complaint and without waiving any other defenses, Plaintiffs' claims against Wachovia fail because Wachovia did not enter into an agreement with

other Defendants to form a joint venture or to otherwise facilitate any alleged fraud upon the Plaintiffs, the existence of which is expressly denied.

FOR A NINTH DEFENSE
(Fraud, Fraud in the Inducement, Constructive Fraud, Fraudulent Concealment and Negligent Misrepresentation)

182. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

183. Further answering the Complaint and without waiving any other defenses, (i) Plaintiffs has failed to plead the circumstances giving rise to such claims with particularity as required by Rule 9(b) of the South Carolina Rules of Civil Procedure; and (ii) Plaintiffs has failed to allege that Wachovia made any misrepresentation to him or that he reasonably relied on any such misrepresentation as required to support a claim for fraud, fraud in the inducement, constructive fraud, fraudulent concealment or negligent misrepresentation.

FOR A TENTH DEFENSE
(Rescission)

184. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

185. Further answering the Complaint and without waiving any other defenses, Plaintiffs are not entitled to rescission of the promissory notes and mortgage because Plaintiffs have not returned the loan proceeds to Wachovia, nor indicated he is willing and able to do so.

FOR AN ELEVENTH DEFENSE
(No Duty)

186. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

187. Further answering the Complaint and without waiving any other defenses, Plaintiffs' claims for negligence and unfair trade practices against Wachovia fail because Wachovia did not owe any duty to Plaintiffs.

FOR A TWELFTH DEFENSE
(Unfair Trade Practices)

188. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

189. Further answering the Complaint and without waiving any other defenses, Plaintiffs' claims for negligence and unfair trade practices against Wachovia fail because the South Carolina Unfair Trade Practice Act does not apply and, even if it did, Plaintiffs have failed to allege any conduct on the part of Wachovia that would support such a claim or rise to the level of unfair trade practice or an action that will cause injury to the public.

FOR A THIRTEENTH DEFENSE
(Punitive Damages)

190. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

191. Further answering the Complaint and without waiving any other defenses, Plaintiffs' claim for punitive damages fails to state a claim for relief because he has failed to state any viable claim against Wachovia and otherwise failed to allege conduct sufficient to support an award of punitive damages.

FOR A FOURTHTEENTH DEFENSE
(Punitive Damages)

192. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

193. Further answering the Complaint and without waiving any other defenses, Plaintiffs' claim for punitive damages violates provisions of the South Carolina Constitution as well as the Fifth, Sixth, Seventh, Eighth and Fourteenth Amendments to the Constitution of the United States and should be stricken.

FOR A FIFTHTEENTH DEFENSE
(Offset)

194. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

195. Further answering the Complaint and without waiving any other Defenses, if and to the extent Plaintiffs are entitled to recover damages against Wachovia, which is expressly denied, Wachovia is entitled to set off the damages caused by Plaintiffs' breaches of the promissory notes against any amount Wachovia is required to pay on the claims asserted by Plaintiffs.

FOR A SIXTEENTH DEFENSE
(Negligent Misrepresentation)

196. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

197. Wachovia is informed that Plaintiffs' claim for negligent misrepresentation should be dismissed with prejudice because Plaintiffs fail to allege facts that show Wachovia had a pecuniary interest in negligently misrepresenting the value of the property which served as collateral for its notes and the loan proceeds to Plaintiffs.

FOR A SEVENTEENTH DEFENSE
(Speculative Damages)

198. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

199. Plaintiffs' claim for damages is speculative and therefore disallowed under South Carolina law.

EIGHTEENTH DEFENSE
(Failure to Mitigate)

200. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

201. Plaintiffs are legally obligated to mitigate his damages. Upon information and belief Wachovia can show that Plaintiffs has failed to mitigate his damages and is therefore barred from recovery based on this failure.

FOR A NINETEENTH DEFENSE
(Economic Loss Rule)

202. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

203. Wachovia is informed and believes that Plaintiffs' claims, to the extent they may seek to recover only economic losses in tort, are barred by the economic loss doctrine.

FOR A TWENTIETH DEFENSE
(Statute of Limitations)

204. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

205. Wachovia is informed and believes that Plaintiffs' claims are barred the applicable statute of limitations.

FOR A TWENTY-FIRST DEFENSE
(Prior Breach)

206. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

207. Plaintiffs' claims are barred by their prior breach of their loan contracts with Wachovia.

FOR A TWENTY-SECOND DEFENSE
(Compliance with the Note and Mortgage)

208. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

209. Wachovia incorporates by reference all of the terms, conditions, exclusions, exceptions, and limitations of the promissory notes between Plaintiffs and Wachovia and would show that it performed all of its obligations under any alleged loan contract and/or in procuring any alleged loan contract. Wachovia further pleads the terms and conditions of any alleged loan contract as a complete defense and bar to this action.

FOR A TWENTY-THIRD DEFENSE
(Regulated Industry)

210. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

211. Further answering the Complaint and without waiving any other defenses, Wachovia states that it operates within a regulated industry and, therefore, is exempt from liability under the South Carolina Unfair Trade Practices Act.

FOR A TWENTY-FOURTH DEFENSE
(Public Interest not Affected)

212. Wachovia incorporates by references all of the above paragraphs as if set forth fully herein.

213. Further answering the Complaint and without waiving any other defenses, Wachovia states that the acts alleged by Plaintiffs in the Complaint do not affect the public

interest but are essentially public in nature and, therefore, the South Carolina Unfair Trade Practices Act is inapplicable.

FOR A TWENTY-FIFTH DEFENSE
(Reservation of Rights)

214. Wachovia incorporates by reference all of the above paragraphs as if set forth fully herein.

215. Wachovia has not had an opportunity to conduct a sufficient investigation or to engage in adequate discovery regarding the circumstances of Plaintiffs' allegations. It intends to act as best as it can to inform itself of the pertinent facts and prevailing circumstances surrounding any reported injury or damage to Plaintiffs and gives notice of its intent to assert any further affirmative defenses that its information-gathering process may indicate are supported by fact and/or law.

FOR A TWENTY-SIXTH DEFENSE AND FIRST COUNTERCLAIM
(Breach of Contract as to Plaintiffs-Counterclaim Defendants Jeffrey H. Anders and Maureen Anders, Melinda A. Cavicchia, Michael B. Ciulis, Chad Kurtz, Spencer L. Morgan, Richard O'Reilly and Alicia F. O'Reilly, Daniel Ryan and Susan Ryan, Gennady Shmukler, Michael Schmuff and Joanne Schmuff, Matthew Terry, Kathryn M. Tillman, Valerie A. Lowe)

216. Plaintiffs Jeffrey H. Anders and Maureen R. Anders (collectively the "Anderses") entered into a Purchase and Sale Agreement for McKay Point Lot 109 on January 28, 2007, which is located in Jasper County, South Carolina.

217. On or about February 28, 2007, the Anderses gave a promissory note (the "Anders Note") in the principal amount of One Hundred and Twenty-Eight Thousand Four Hundred and Fifty-Seven and 10/100 Dollars (\$128,457.10) to Wachovia. A true and correct copy of the Anders Note is attached hereto and incorporated herein as **Exhibit A**. The maturity date of the Anders Note is March 1, 2012.

218. According to the Anders Note, interest accrues on the outstanding principal balance at a fixed annual rate of 6.89%.

219. Pursuant to the terms of the Anders Note, if any payments are not timely made, the Anderses are obligated to pay a late charge equal to 4% of each payment past due for 15 or more days.

220. Pursuant to the terms of the Anders Note, failure to make timely payments under the Anders Note will result in default under the Anders Note.

221. In the event of the Anderses' default under the Note, Wachovia may take any of the following actions: (i) accelerate the maturity of the Anders Note and any other obligations under the Anders Note whereupon the Anders Note and the accelerated Obligations shall be immediately due and payable and/or (ii) exercise any rights and remedies provided under the Anders Note and other loan documents or as provided by law or equity.

222. Additionally, the Anders Note provides that, in the event of default, the Anderses shall pay all of Wachovia's expenses incurred to enforce or collect any obligations under the Anders Note. These expenses include, but are not limited to, reasonable attorneys' fees, foreclosure fees and court costs.

223. The Anderses have defaulted under the terms of the Note.

224. In breach of its legal obligations under the Anders Note, the Anderses have refused to pay this amount to Wachovia.

225. Therefore, Wachovia is entitled to judgment against the Anderses in the amount of the outstanding balance of the Anders Note (and its accrued and accruing interest and late fees), plus the costs of this action, and reasonable attorney's fees to be determined by the Court.

226. Plaintiff Melinda A. Cavicchia ("Cavicchia") entered into a Purchase and Sale Agreement for McKay Point Lot 228 on June 28, 2007, which is located in Jasper County, South Carolina.

227. On or about July 19, 2007, Cavicchia gave a promissory note (the "Cavicchia Note") in the principal amount of One Hundred and Fifty Seven Thousand Seven Hundred and Three and 20/100 Dollars (\$157,703.20) to Wachovia. A true and correct copy of the Cavicchia Note is attached hereto and incorporated herein as **Exhibit B**. The maturity date of the Cavicchia Note is July 18, 2012.

228. According to the Cavicchia Note, interest accrues on the outstanding principal balance at a fixed annual rate of 7.39%.

229. Pursuant to the terms of the Cavicchia Note, if any payments are not timely made, Cavicchia is obligated to pay a late charge equal to 4% of each payment past due for 15 or more days.

230. Pursuant to the terms of the Cavicchia Note, failure to make timely payments under the Cavicchia Note will result in default under the Cavicchia Note.

231. In the event of Cavicchia's default under the Note, Wachovia may take any of the following actions: (i) accelerate the maturity of the Cavicchia Note and any other obligations under the Cavicchia Note whereupon the Cavicchia Note and the accelerated Obligations shall be immediately due and payable and/or (ii) exercise any rights and remedies provided under the Cavicchia Note and other loan documents or as provided by law or equity.

232. Additionally, the Cavicchia Note provides that, in the event of default, Cavicchia shall pay all of Wachovia's expenses incurred to enforce or collect any obligations under the

Cavicchia Note. These expenses include, but are not limited to, reasonable attorneys' fees, foreclosure fees and court costs.

233. Cavicchia has defaulted under the terms of the Note.

234. In breach of its legal obligations under the Cavicchia Note, Cavicchia has refused to pay this amount to Wachovia.

235. Therefore, Wachovia is entitled to judgment against Cavicchia in the amount of the outstanding balance of the Cavicchia Note (and its accrued and accruing interest and late fees), plus the costs of this action, and reasonable attorney's fees to be determined by the Court.

236. Plaintiff Michael A. Ciulis ("Ciulis") entered into a Purchase and Sale Agreement for McKay Point Lot 67 on February 6, 2007, which is located in Jasper County, South Carolina.

237. On or about March 8, 2007, Ciulis gave a promissory note (the "Ciulis Note") in the principal amount of Two Hundred Ten Thousand One Hundred Ninety-Two and 20/100 Dollars (\$210,192.20) to Wachovia. A true and correct copy of the Ciulis Note is attached hereto and incorporated herein as **Exhibit C**. The maturity date of the Ciulis Note is March 7, 2012.

238. According to the Ciulis Note, interest accrues on the outstanding principal balance at a fixed annual rate of 6.79%.

239. Pursuant to the terms of the Ciulis Note, if any payments are not timely made, Ciulis is obligated to pay a late charge equal to 4% of each payment past due for 15 or more days.

240. Pursuant to the terms of the Ciulis Note, failure to make timely payments under the Ciulis Note will result in default under the Ciulis Note.

241. In the event of Ciulis's default under the Note, Wachovia may take any of the following actions: (i) accelerate the maturity of the Ciulis Note and any other obligations under

the Ciulis Note whereupon the Ciulis Note and the accelerated Obligations shall be immediately due and payable and/or (ii) exercise any rights and remedies provided under the Ciulis Note and other loan documents or as provided by law or equity.

242. Additionally, the Ciulis Note provides that, in the event of default, Ciulis shall pay all of Wachovia's expenses incurred to enforce or collect any obligations under the Ciulis Note. These expenses include, but are not limited to, reasonable attorneys' fees, foreclosure fees and court costs.

243. Ciulis has defaulted under the terms of the Note.

244. In breach of its legal obligations under the Ciulis Note, Ciulis has refused to pay this amount to Wachovia.

245. Therefore, Wachovia is entitled to judgment against Ciulis in the amount of the outstanding balance of the Ciulis Note (and its accrued and accruing interest and late fees), plus the costs of this action, and reasonable attorney's fees to be determined by the Court.

246. Plaintiff Chad Kurtz ("Kurtz") entered into a Purchase and Sale Agreement for McKay Point Lot 102 on December 1, 2006, which is located in Jasper County, South Carolina.

247. On or about January 1, 2006, Kurtz gave a promissory note (the "Kurtz Note") in the principal amount of One Hundred Forty-Nine Thousand Four Hundred Twenty-Three and 40/100 Dollars (\$149,423.40) to Wachovia. A true and correct copy of the Kurtz Note is attached hereto and incorporated herein as **Exhibit D**. The maturity date of the Kurtz Note is December 1, 2011.

248. According to the Kurtz Note, interest accrues on the outstanding principal balance at a fixed annual rate of 6.74%.

249. Pursuant to the terms of the Kurtz Note, if any payments are not timely made, Kurtz is obligated to pay a late charge equal to 5% of each payment past due for 10 or more days.

250. Pursuant to the terms of the Kurtz Note, failure to make timely payments under the Kurtz Note will result in default under the Kurtz Note.

251. In the event of Kurtz's default under the Note, Wachovia may take any of the following actions: (i) accelerate the maturity of the Kurtz Note and any other obligations under the Kurtz Note whereupon the Kurtz Note and the accelerated Obligations shall be immediately due and payable and/or (ii) exercise any rights and remedies provided under the Kurtz Note and other loan documents or as provided by law or equity.

252. Additionally, the Kurtz Note provides that, in the event of default, Kurtz shall pay all of Wachovia's expenses incurred to enforce or collect any obligations under the Kurtz Note. These expenses include, but are not limited to, reasonable attorneys' fees, foreclosure fees and court costs.

253. Kurtz has defaulted under the terms of the Note.

254. In breach of its legal obligations under the Kurtz Note, Kurtz has refused to pay this amount to Wachovia.

255. Therefore, Wachovia is entitled to judgment against Kurtz in the amount of the outstanding balance of the Kurtz Note (and its accrued and accruing interest and late fees), plus the costs of this action, and reasonable attorney's fees to be determined by the Court.

256. Plaintiff Spencer L. Morgan ("Morgan") entered into a Purchase and Sale Agreement for McKay Point Lot 51 on February 7, 2007, which is located in Jasper County, South Carolina.

257. On or about March 16, 2007, Morgan gave a promissory note (the "Morgan Note") in the principal amount of One Hundred Thirty Thousand Two Hundred Seventy-Nine and 30/100 Dollars (\$130,279.30) to Wachovia. A true and correct copy of the Morgan Note is attached hereto and incorporated herein as **Exhibit E**. The maturity date of the Morgan Note is March 15, 2012.

258. According to the Morgan Note, interest accrues on the outstanding principal balance at a fixed annual rate of 6.89%.

259. Pursuant to the terms of the Morgan Note, if any payments are not timely made, Morgan is obligated to pay a late charge equal to 4% of each payment past due for 15 or more days.

260. Pursuant to the terms of the Morgan Note, failure to make timely payments under the Morgan Note will result in default under the Morgan Note.

261. In the event of Morgan's default under the Note, Wachovia may take any of the following actions: (i) accelerate the maturity of the Morgan Note and any other obligations under the Morgan Note whereupon the Morgan Note and the accelerated Obligations shall be immediately due and payable and/or (ii) exercise any rights and remedies provided under the Morgan Note and other loan documents or as provided by law or equity.

262. Additionally, the Morgan Note provides that, in the event of default, Morgan shall pay all of Wachovia's expenses incurred to enforce or collect any obligations under the Morgan Note. These expenses include, but are not limited to, reasonable attorneys' fees, foreclosure fees and court costs.

263. Morgan has defaulted under the terms of the Note.

264. In breach of its legal obligations under the Morgan Note, Morgan has refused to pay this amount to Wachovia.

265. Therefore, Wachovia is entitled to judgment against Morgan in the amount of the outstanding balance of the Morgan Note (and its accrued and accruing interest and late fees), plus the costs of this action, and reasonable attorney's fees to be determined by the Court.

266. Plaintiffs Richard O'Reilly and Alicia F. O'Reilly (collectively the "O'Reillys") entered into a Purchase and Sale Agreement for McKay Point Lot 82 on June 15, 2007, which is located in Jasper County, South Carolina.

267. On or about July 13, 2007, the O'Reillys gave a promissory note (the "O'Reilly Note") in the principal amount of One Hundred Fifty-Three Thousand One Hundred Forty-Seven and 70/100 Dollars (\$153,147.70) to Wachovia. A true and correct copy of the O'Reilly Note is attached hereto and incorporated herein as **Exhibit F**. The maturity date of the O'Reilly Note is July 12, 2010.

268. According to the O'Reilly Note, interest accrues on the outstanding principal balance at a fixed annual rate of 6.89%.

269. Pursuant to the terms of the O'Reilly Note, if any payments are not timely made, the O'Reillys are obligated to pay a late charge equal to 4% of each payment past due for 15 or more days.

270. Pursuant to the terms of the O'Reilly Note, failure to make timely payments under the O'Reilly Note will result in default under the O'Reilly Note.

271. In the event of the O'Reillys' default under the Note, Wachovia may take any of the following actions: (i) accelerate the maturity of the O'Reilly Note and any other obligations under the O'Reilly Note whereupon the O'Reilly Note and the accelerated Obligations shall be

immediately due and payable and/or (ii) exercise any rights and remedies provided under the O'Reilly Note and other loan documents or as provided by law or equity.

272. Additionally, the O'Reilly Note provides that, in the event of default, the O'Reillys shall pay all of Wachovia's expenses incurred to enforce or collect any obligations under the O'Reilly Note. These expenses include, but are not limited to, reasonable attorneys' fees, foreclosure fees and court costs.

273. The O'Reillys have defaulted under the terms of the Note.

274. In breach of its legal obligations under the O'Reilly Note, the O'Reillys have refused to pay this amount to Wachovia.

275. Therefore, Wachovia is entitled to judgment against the O'Reillys in the amount of the outstanding balance of the O'Reilly Note (and its accrued and accruing interest and late fees), plus the costs of this action, and reasonable attorney's fees to be determined by the Court.

276. Plaintiffs Daniel Ryan and Susan Ryan (collectively the "Ryans") entered into a Purchase and Sale Agreement for McKay Point Lot 9 on June 20, 2007, which is located in Jasper County, South Carolina.

277. On or about July 11, 2007, the Ryans gave a promissory note (the "Ryan Note") in the principal amount of One Hundred Twenty-Eight Thousand Four Hundred Ninety-Three 00/100 Dollars (\$128,493.00) to Wachovia. A true and correct copy of the Ryan Note is attached hereto and incorporated herein as **Exhibit G**. The maturity date of the Ryan Note is July 10, 2012.

278. According to the Ryan Note, interest accrues on the outstanding principal balance at a fixed annual rate of 7.14%.

279. Pursuant to the terms of the Ryan Note, if any payments are not timely made, the Ryans are obligated to pay a late charge equal to 4% of each payment past due for 15 or more days.

280. Pursuant to the terms of the Ryan Note, failure to make timely payments under the Ryan Note will result in default under the Ryan Note.

281. In the event of the Ryans' default under the Note, Wachovia may take any of the following actions: (i) accelerate the maturity of the Ryan Note and any other obligations under the Ryan Note whereupon the Ryan Note and the accelerated Obligations shall be immediately due and payable and/or (ii) exercise any rights and remedies provided under the Ryan Note and other loan documents or as provided by law or equity.

282. Additionally, the Ryan Note provides that, in the event of default, the Ryans shall pay all of Wachovia's expenses incurred to enforce or collect any obligations under the Ryan Note. These expenses include, but are not limited to, reasonable attorneys' fees, foreclosure fees and court costs.

283. The Ryans have defaulted under the terms of the Note.

284. In breach of its legal obligations under the Ryan Note, the Ryans have refused to pay this amount to Wachovia.

285. Therefore, Wachovia is entitled to judgment against the Ryans in the amount of the outstanding balance of the Ryan Note (and its accrued and accruing interest and late fees), plus the costs of this action, and reasonable attorney's fees to be determined by the Court.

286. Plaintiff Gennady Shmukler ("Shmukler") entered into a Purchase and Sale Agreement for McKay Point Lot 20 on June 23, 2007, which is located in Jasper County, South Carolina.

287. On or about July 26, 2007, Shmukler gave a promissory note (the "Shmukler Note") in the principal amount of One Hundred Ten Thousand Three Hundred Twenty-Six and 00/100 Dollars (\$110,326.00) to Wachovia. A true and correct copy of the Shmukler Note is attached hereto and incorporated herein as **Exhibit H**. The maturity date of the Shmukler Note is July 25, 2012.

288. According to the Shmukler Note, interest accrues on the outstanding principal balance at a fixed annual rate of 7.39%.

289. Pursuant to the terms of the Shmukler Note, if any payments are not timely made, Shmukler is obligated to pay a late charge equal to 4% of each payment past due for 15 or more days.

290. Pursuant to the terms of the Shmukler Note, failure to make timely payments under the Shmukler Note will result in default under the Shmukler Note.

291. In the event of Shmukler's default under the Note, Wachovia may take any of the following actions: (i) accelerate the maturity of the Shmukler Note and any other obligations under the Shmukler Note whereupon the Shmukler Note and the accelerated Obligations shall be immediately due and payable and/or (ii) exercise any rights and remedies provided under the Shmukler Note and other loan documents or as provided by law or equity.

292. Additionally, the Shmukler Note provides that, in the event of default, Shmukler shall pay all of Wachovia's expenses incurred to enforce or collect any obligations under the Shmukler Note. These expenses include, but are not limited to, reasonable attorneys' fees, foreclosure fees and court costs.

293. Shmukler has defaulted under the terms of the Note.

294. In breach of its legal obligations under the Shmukler Note, Shmukler has refused to pay this amount to Wachovia.

295. Therefore, Wachovia is entitled to judgment against Shmukler in the amount of the outstanding balance of the Shmukler Note (and its accrued and accruing interest and late fees), plus the costs of this action, and reasonable attorney's fees to be determined by the Court.

296. Plaintiffs Michael Schmuff and Joanne Schmuff (collectively the "Schmuffs") entered into a Purchase and Sale Agreement for McKay Point Lot 90 on January 6, 2007, which is located in Jasper County, South Carolina.

297. On or about February 13, 2007, the Schmuffs gave a promissory note (the "Schmuff Note") in the principal amount of Two Hundred Seventy Thousand Five Hundred Eighteen and 70/100 Dollars (\$270,518.70) to Wachovia. A true and correct copy of the Schmuff Note is attached hereto and incorporated herein as **Exhibit I**. The maturity date of the Schmuff Note is February 15, 2012.

298. According to the Schmuff Note, interest accrues on the outstanding principal balance at a fixed annual rate of 6.74%.

299. Pursuant to the terms of the Schmuff Note, if any payments are not timely made, the Schmuffs are obligated to pay a late charge equal to 5% of each payment past due for 10 or more days.

300. Pursuant to the terms of the Schmuff Note, failure to make timely payments under the Schmuff Note will result in default under the Schmuff Note.

301. In the event of the Schmuffs' default under the Note, Wachovia may take any of the following actions: (i) accelerate the maturity of the Schmuff Note and any other obligations under the Schmuff Note whereupon the Schmuff Note and the accelerated Obligations shall be

immediately due and payable and/or (ii) exercise any rights and remedies provided under the Schmuff Note and other loan documents or as provided by law or equity.

302. Additionally, the Schmuff Note provides that, in the event of default, the Schmuffs shall pay all of Wachovia's expenses incurred to enforce or collect any obligations under the Schmuff Note. These expenses include, but are not limited to, reasonable attorneys' fees, foreclosure fees and court costs.

303. The Schmuffs have defaulted under the terms of the Note.

304. In breach of its legal obligations under the Schmuff Note, the Schmuffs have refused to pay this amount to Wachovia.

305. Therefore, Wachovia is entitled to judgment against the Schmuffs in the amount of the outstanding balance of the Schmuff Note (and its accrued and accruing interest and late fees), plus the costs of this action, and reasonable attorney's fees to be determined by the Court.

306. Plaintiff Matthew A. Terry ("Terry") entered into a Purchase and Sale Agreement for McKay Point Lot 85 on March 8, 2007, which is located in Jasper County, South Carolina.

307. On or about April 10, 2007, Terry gave a promissory note (the "Terry Note I") in the principal amount of One Hundred Thirty-Two Thousand Seven Hundred Forty-Three and 60/100 Dollars (\$132,743.00) to Wachovia. A true and correct copy of the Terry Note I is attached hereto and incorporated herein as **Exhibit J**. The maturity date of the Terry Note I is April 10, 2011.

308. According to the Terry Note I, interest accrues on the outstanding principal balance at a fixed annual rate of 6.74%.

309. Pursuant to the terms of the Terry Note I, if any payments are not timely made, Terry is obligated to pay a late charge equal to 4% of each payment past due for 15 or more days.

310. Pursuant to the terms of the Terry Note I, failure to make timely payments under the Terry Note I will result in default under the Terry Note I.

311. In the event of Terry's default under the Note, Wachovia may take any of the following actions: (i) accelerate the maturity of the Terry Note I and any other obligations under the Terry Note whereupon the Terry Note I and the accelerated Obligations shall be immediately due and payable and/or (ii) exercise any rights and remedies provided under the Terry Note I and other loan documents or as provided by law or equity.

312. Additionally, the Terry Note provides that, in the event of default, Terry shall pay all of Wachovia's expenses incurred to enforce or collect any obligations under the Terry Note I. These expenses include, but are not limited to, reasonable attorneys' fees, foreclosure fees and court costs.

313. Terry has defaulted under the terms of the Note.

314. In breach of its legal obligations under the Terry Note I, Terry has refused to pay this amount to Wachovia.

315. Therefore, Wachovia is entitled to judgment against Terry in the amount of the outstanding balance of the Terry Note I (and its accrued and accruing interest and late fees), plus the costs of this action, and reasonable attorney's fees to be determined by the Court.

316. Plaintiff Matthew A. Terry also entered into a Purchase and Sale Agreement for McKay Point Lot 10 on May 25, 2007, which is located in Jasper County, South Carolina.

317. On or about June 25, 2007, Terry gave a promissory note (the "Terry Note II") in the principal amount of One Hundred Twenty-Five Thousand Seven Hundred Twenty-Four and 70/100 Dollars (\$125,724.70) to Wachovia. A true and correct copy of the Terry Note II is

attached hereto and incorporated herein as **Exhibit K**. The maturity date of the Terry Note II is August 25, 2012.

318. According to the Terry Note II, interest accrues on the outstanding principal balance at a fixed annual rate of 6.89%.

319. Pursuant to the terms of the Terry Note II, if any payments are not timely made, Terry is obligated to pay a late charge equal to 4% of each payment past due for 15 or more days.

320. Pursuant to the terms of the Terry Note II, failure to make timely payments under the Terry Note II will result in default under the Terry Note II.

321. In the event of Terry's default under the Note, Wachovia may take any of the following actions: (i) accelerate the maturity of the Terry Note II and any other obligations under the Terry Note II whereupon the Terry Note II and the accelerated Obligations shall be immediately due and payable and/or (ii) exercise any rights and remedies provided under the Terry Note II and other loan documents or as provided by law or equity.

322. Additionally, the Terry Note II provides that, in the event of default, Terry shall pay all of Wachovia's expenses incurred to enforce or collect any obligations under the Terry Note II. These expenses include, but are not limited to, reasonable attorneys' fees, foreclosure fees and court costs.

323. Terry has defaulted under the terms of the Note.

324. In breach of its legal obligations under the Terry Note II, Terry has refused to pay this amount to Wachovia.

325. Therefore, Wachovia is entitled to judgment against Terry in the amount of the outstanding balance of the Terry Note II (and its accrued and accruing interest and late fees), plus the costs of this action, and reasonable attorney's fees to be determined by the Court.

326. Plaintiffs Kathryn M. Tillman and Valerie A. Lowe ("Tillman & Lowe") entered into a Purchase and Sale Agreement for McKay Point Lot 81 on March 10, 2007, which is located in Jasper County, South Carolina.

327. On or about April 11, 2007, Tillman & Lowe gave a promissory note (the "Tillman & Lowe Note") in the principal amount of One Hundred Thirty-Three Thousand and Twelve and 60/100 Dollars (\$133,012.60) to Wachovia. A true and correct copy of the Tillman & Lowe Note is attached hereto and incorporated herein as **Exhibit L**. The maturity date of the Tillman & Lowe Note is April 11, 2012.

328. According to the Tillman & Lowe Note, interest accrues on the outstanding principal balance at a fixed annual rate of 6.89%.

329. Pursuant to the terms of the Tillman & Lowe Note, if any payments are not timely made, Tillman & Lowe are obligated to pay a late charge equal to 4% of each payment past due for 15 or more days.

330. Pursuant to the terms of the Tillman & Lowe Note, failure to make timely payments under the Tillman & Lowe Note will result in default under the Tillman & Lowe Note.

331. In the event of Tillman & Lowe's default under the Note, Wachovia may take any of the following actions: (i) accelerate the maturity of the Tillman & Lowe Note and any other obligations under the Tillman & Lowe Note whereupon the Tillman & Lowe Note and the accelerated Obligations shall be immediately due and payable and/or (ii) exercise any rights and remedies provided under the Tillman & Lowe Note and other loan documents or as provided by law or equity.

332. Additionally, the Tillman & Lowe Note provides that, in the event of default, Tillman & Lowe shall pay all of Wachovia's expenses incurred to enforce or collect any

obligations under the Tillman & Lowe Note. These expenses include, but are not limited to, reasonable attorneys' fees, foreclosure fees and court costs.

333. Tillman & Lowe have defaulted under the terms of the Note.

334. In breach of its legal obligations under the Tillman & Lowe Note, Tillman & Lowe have refused to pay this amount to Wachovia.

335. Therefore, Wachovia is entitled to judgment against Tillman & Lowe in the amount of the outstanding balance of the Tillman & Lowe Note (and its accrued and accruing interest and late fees), plus the costs of this action, and reasonable attorney's fees to be determined by the Court.

FOR A TWENTY-SEVENTH DEFENSE AND SECOND COUNTERCLAIM

**(Unjust Enrichment / Quantum Meruit as to Plaintiffs-Counterclaim Defendants
Jeffrey H. Anders and Maureen Anders, Melinda A. Cavicchia, Michael B. Ciulis, Chad
Kurtz, Spencer L. Morgan, Richard O'Reilly and Alicia F. O'Reilly, Daniel Ryan and
Susan Ryan, Gennady Shmukler, Michael Schmuff and Joanne Schmuff, Matthew A.
Terry, Kathryn M. Tillman and Valerie A. Lowe)**

336. Wachovia incorporates by reference all of the above paragraphs as if they are fully set forth herein.

337. As stated above and as reflected by the Anders Note, Wachovia non-gratuitously loaned the Anderses \$128,457.10.

338. The Anderses have defaulted under the terms of the Anders Note and have not repaid Wachovia the entire amount they owe to Wachovia pursuant to the Anders Note.

339. The Anderses have refused to pay Wachovia the full sum owed under the terms of the Anders Note.

340. As a result, the Anderses have been unjustly enriched, and it is inequitable for them to retain this money without paying Wachovia for its value.

341. As stated above and as reflected by the Cavicchia Note, Wachovia non-gratuitously loaned Cavicchia \$157,703.20.

342. Cavicchia has defaulted under the terms of the Cavicchia Note and has not repaid Wachovia the entire amount they owe to Wachovia pursuant to the Cavicchia Note.

343. Cavicchia has refused to pay Wachovia the full sum owed under the terms of the Cavicchia Note.

344. As a result, Cavicchia has been unjustly enriched, and it is inequitable for them to retain this money without paying Wachovia for its value.

345. As stated above and as reflected by the Ciulis Note, Wachovia non-gratuitously loaned Ciulis \$210,192.20.

346. Ciulis has defaulted under the terms of the Ciulis Note and has not repaid Wachovia the entire amount they owe to Wachovia pursuant to the Ciulis Note.

347. Ciulis has refused to pay Wachovia the full sum owed under the terms of the Ciulis Note.

348. As a result, Ciulis has been unjustly enriched, and it is inequitable for them to retain this money without paying Wachovia for its value.

349. As stated above and as reflected by the Kurtz Note, Wachovia non-gratuitously loaned Kurtz \$149,423.40.

350. Kurtz has defaulted under the terms of the Kurtz Note and has not repaid Wachovia the entire amount they owe to Wachovia pursuant to the Kurtz Note.

351. Kurtz has refused to pay Wachovia the full sum owed under the terms of the Kurtz Note.

352. As a result, Kurtz has been unjustly enriched, and it is inequitable for them to retain this money without paying Wachovia for its value.

353. As stated above and as reflected by the Morgan Note, Wachovia non-gratuitously loaned Morgan \$130,279.30.

354. Morgan has defaulted under the terms of the Morgan Note and has not repaid Wachovia the entire amount they owe to Wachovia pursuant to the Morgan Note.

355. Morgan has refused to pay Wachovia the full sum owed under the terms of the Morgan Note.

356. As a result, Morgan has been unjustly enriched, and it is inequitable for them to retain this money without paying Wachovia for its value.

357. As stated above and as reflected by the O'Reilly Note, Wachovia non-gratuitously loaned the O'Reillys \$153,147.70.

358. The O'Reillys have defaulted under the terms of the O'Reilly Note and have not repaid Wachovia the entire amount they owe to Wachovia pursuant to the O'Reilly Note.

359. The O'Reillys have refused to pay Wachovia the full sum owed under the terms of the O'Reilly Note.

360. As a result, the O'Reillys have been unjustly enriched, and it is inequitable for them to retain this money without paying Wachovia for its value.

361. As stated above and as reflected by the Ryan Note, Wachovia non-gratuitously loaned the Ryans \$128,493.00.

362. The Ryans have defaulted under the terms of the Ryan Note and have not repaid Wachovia the entire amount they owe to Wachovia pursuant to the Ryan Note.

363. The Ryans have refused to pay Wachovia the full sum owed under the terms of the Ryan Note.

364. As a result, the Ryans have been unjustly enriched, and it is inequitable for them to retain this money without paying Wachovia for its value.

365. As stated above and as reflected by the Shmukler Note, Wachovia non-gratuitously loaned Shmukler \$110,326.00.

366. Shmukler has defaulted under the terms of the Shmukler Note and has not repaid Wachovia the entire amount they owe to Wachovia pursuant to the Shmukler Note.

367. Shmukler has refused to pay Wachovia the full sum owed under the terms of the Shmukler Note.

368. As a result, Shmukler has been unjustly enriched, and it is inequitable for them to retain this money without paying Wachovia for its value.

369. As stated above and as reflected by the Schmuff Note, Wachovia non-gratuitously loaned the Schmuffs \$270,518.70.

370. The Schmuffs have defaulted under the terms of the Schmuff Note and have not repaid Wachovia the entire amount they owe to Wachovia pursuant to the Schmuff Note.

371. The Schmuffs have refused to pay Wachovia the full sum owed under the terms of the Schmuff Note.

372. As a result, the Schmuffs have been unjustly enriched, and it is inequitable for them to retain this money without paying Wachovia for its value.

373. As stated above and as reflected by the Terry Note I, Wachovia non-gratuitously loaned Terry \$132,743.60.

374. Terry has defaulted under the terms of the Terry Note I and has not repaid Wachovia the entire amount they owe to Wachovia pursuant to the Terry Note I.

375. Terry has refused to pay Wachovia the full sum owed under the terms of the Terry Note I.

376. As a result, Terry has been unjustly enriched, and it is inequitable for them to retain this money without paying Wachovia for its value.

377. As stated above and as reflected by the Terry Note II, Wachovia non-gratuitously loaned Terry \$125,724.70.

378. Terry has defaulted under the terms of the Terry Note II and has not repaid Wachovia the entire amount they owe to Wachovia pursuant to the Terry Note II.

379. Terry has refused to pay Wachovia the full sum owed under the terms of the Terry Note II.

380. As a result, Terry has been unjustly enriched, and it is inequitable for them to retain this money without paying Wachovia for its value.

381. As stated above and as reflected by the Tillman & Lowe Note, Wachovia non-gratuitously loaned Tillman & Lowe \$133,012.60.

382. Tillman & Lowe have defaulted under the terms of the Tillman & Lowe Note and have not repaid Wachovia the entire amount they owe to Wachovia pursuant to the Tillman & Lowe Note.

383. Tillman & Lowe have refused to pay Wachovia the full sum owed under the terms of the Tillman & Lowe Note.

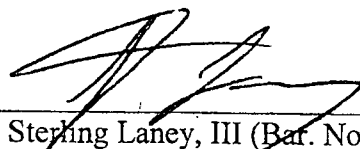
384. As a result, Tillman & Lowe have been unjustly enriched, and it is inequitable for them to retain this money without paying Wachovia for its value.

PRAYER FOR RELIEF

WHEREFORE, Wachovia respectfully prays unto the Court that:

- A. It enter judgment against Plaintiffs on Plaintiffs' claims against Wachovia;
- B. It award Wachovia actual damages, consequential damages, plus continuing interest at the rate(s) specified in the Note, the costs of this action, and reasonable attorney's fees to be determined by the Court; and
- C. It award Wachovia such further relief as the Court deems just and proper.

Respectfully Submitted,


S. Sterling Laney, III (Bar. No. 6933)
Womble Carlyle Sandridge & Rice, LLP
Post Office Box 10208
Greenville, South Carolina 29603-0208
Telephone: (864) 255-5400
Fax: (864) 239-5440
Email: slaney@wcsr.com

*Attorney for Wachovia Bank, N.A. s/b/m to
Wells Fargo Bank N.A.*

This 22 day of December, 2011

Greenville, South Carolina

EXHIBIT

A

BK: 41 LOC: LN TP: 96
 RC: 3036090 125910/00

Date: 02/28/07

Ref. No. 0703000164
 Acct. No.

Note

BORROWER(S):
 JEFFREY HIRAM ANDERS II
 MAUREEN R ANDERS
 4085 BIRKSHIRE HTS
 FORT MILL, SC 29708

Amount Financed \$ 128457.10

1. BORROWER(S) PROMISE TO PAY. In return for a loan that I have received, the undersigned Borrower(s) (hereinafter referred to as "I," "me," or "my") jointly and severally promise to pay to Wachovia Bank, National Association, a national banking association organized and existing under the law of the United States of America ("Lender"), the sum of \$ 128457.10 (this amount will be called "Principal"), plus daily simple interest ("Interest") beginning on the date that Principal is advanced. The Principal may include points, origination fees and other amounts permitted by applicable law. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note and who is entitled to receive payments under this Note will be called the "Note Holder."

2. INTEREST. Interest will accrue on the entire Principal balance outstanding at any time. Notwithstanding anything to the contrary, I do not agree to pay and the Note Holder does not intend to charge any interest at a rate that is higher than the maximum rate of interest that could be charged under applicable law for the extension of credit that is agreed to under this Note (either before or after maturity). If any notice of interest accrual is sent and is in error, and if the Note Holder actually collects more interest than allowed by law or this Note, the Note Holder agrees to refund any such excess interest.

I agree to pay interest on the unpaid Principal balance of this Note owing after maturity, and until paid in full at the same rate in effect before maturity. I agree that any loan origination fee paid to the Note Holder is earned as of the date of this Note.

Interest accrues on the Principal remaining unpaid from time to time, until paid in full. The interest rate, as defined in this Section 2 below, will be charged at a rate of 1/365th of the interest rate for each day, or 1/366th of the interest rate for each day in any leap year, applied against that day's outstanding Principal balance. The dollar amount of the finance charge and the payments disclosed to me for this credit transaction are based upon my payments being received by the Note Holder on the date payments are due. If my payments are received after the due date, even if received before the date a Late Charge as permitted by Section 4 applies, I may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of Principal. This is a result of the accrual of daily interest.

To the extent that any fees or charges are added to the Principal balance, they will thereafter bear interest and I agree to pay this interest. I understand that in the event my first payment due date is more than one month from the date of this Note, one or more of my initial payments may not pay all of the interest owed on the date of the payment and therefore may not reduce the outstanding Principal balance.

If the governing law which applies to this Note sets maximum loan charges and is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial payment.

Check One:

☒ **Fixed Rate:**

I agree to pay interest on the outstanding Principal balance at a fixed annual rate of 6.89 % ("Interest Rate").

☐ **Adjustable Rate:**

(A) **Interest Rate:** I agree to pay interest on the outstanding Principal balance at the initial annual rate of N/A % ("Interest Rate") until the first Change Date as defined in Paragraph (B) below. Thereafter, the interest rate I pay may change as of each Change Date and will be calculated pursuant to Paragraph (D) below. My initial annual rate may not be related to the formula used to determine later rates.

(B) **Date Definitions:**

(i) **Change Date:** Each date on which the interest rate may change is called the Change Date. The interest rate may change _____ and every _____ month(s) thereafter.

(ii) **Index Date:** The 25th day of each month is an "Index Date." If the index is not published on the 25th day of the month, then the index date shall be the first day prior to the 25th day of the month on which the index is published.

(iii) **Look-back Date:** The date that is 30 days prior to a Change Date is called the "Look-back Date."

(C) **The Index: Check One:**

☐ The "Index" is the "Prime Rate" as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one Prime Rate published on an Index Date, then the Note Holder will use the higher of such prime rates. If this index ceases to exist, the Note Holder may substitute another index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of the Prime Rate.

- ☐ The "Index" is the average of interbank offered rates for ____ month U.S. dollar-denominated deposits in the London market ("LIBOR") as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one LIBOR published on an Index Date, then the Note Holder will use the higher of such LIBOR rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of LIBOR.
- (D) Calculation of New Interest Rate:** The new annual interest rate that will be applicable beginning on each Change Date will be determined as follows:

Check One:

- ☐ The new annual interest rate will be equal to the index published on the index date for the calendar month immediately preceding the Look-back Date for that Change Date, rounded down to the nearest .01%, plus ____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.
- ☐ The new annual interest rate will be equal to the index published on the index date for the calendar month immediately preceding that Change Date, rounded down to the nearest .01%, plus ____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.
- (E) Limits on Interest Rate Changes:** My interest rate will never be greater than ____% or less than 0%.
- ☐ If this box is checked, the interest rate will be subject to the additional limitations on increases. The interest rate I am required to pay at the first Change Date will never be greater than ____%. Thereafter increases will be subject to an additional limitation on each Change Date such that the interest rate I pay will never be increased on any single Change Date by more than 2% from the interest rate I have been paying for the preceding 12 months.
- ☐ If this box is checked, there will be no additional limitation on increases in my interest rate.

(F) Notice of Changes: The Note Holder will deliver or mail to me a notice of any changes in my interest rate as required by applicable law. The notice will include information about any changes to my payment amount.

3. PAYMENTS.

(A) Payment Options and Schedule:

Check One:

- ☒ **Interest Payments:** I will pay accrued interest beginning on 04/01/07 as follows; check one:
- ☒ monthly or ☐ quarterly ("Interest Payments"). The amount of each interest payment will vary depending upon the amount of principal outstanding, the date principal payments or installment payments are received and if Section 2 of this Note provides for an Adjustable Rate, the interest rate then in effect. In addition, I will make the following Payments:

Check One:

- ☒ **Principal Reduction Payments and/or a Balloon Payment:** In addition to the interest payments, I will make Principal Payments as set forth in the Payment Schedule below:
- ☐ **Installment Payments:** For purposes of this Section 3, the "Payment Change Date" is the first payment due date that is at least 26 days after the "Anniversary Date." The Anniversary Date is the date that is ____ year(s) after the Note Date. Beginning on the Payment Change Date, in place of interest payments, I will make installment payments of Principal and interest. On the Anniversary Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal balance in full over the period of time ending on the Maturity Date as defined in Paragraph (D) with interest at the rate set in accordance with Section 2. The result of this calculation will be my new payment amount. The Note Holder will give me notice of this new payment amount. This payment amount is estimated in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, this payment amount may change. On each subsequent Change Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount beginning on the first payment due date which is at least 26 days after the Change Date. I will pay my new payment amount until the payment amount changes again or until the Maturity Date as described in Paragraph (D).
- ☐ **Installment Payments or Installment Payments with a Balloon Payment:** I will pay the unpaid Principal and interest in installment payments as set forth in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, the payment amounts, including the final payment, as set forth in the Payment Schedule may change. On each Change Date, the Note Holder will determine the ☐ monthly ☐ quarterly ☐ semi-annual or ☐ annual payment amount that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount. I will pay my new payment amount beginning on the first payment due date after the Change Date until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

Payment Schedule:

Number of Payments	Payment Amount	Frequency	Start/Due Date	Number of Payments	Payment Amount	Frequency	Start/Due Date
80	\$Interest Only	M	04/01/07		\$		
1	\$128457.10	M	03/01/12		\$		
Frequency Legend: M = Monthly Q = Quarterly S = Semi Annually A = Annually							

(B) **Place of Payments:** I will make my payments in U.S. funds payable to the Note Holder at the address provided to me by the Note Holder or at a different address if required by the Note Holder.

(C) **Application of Payments:** Unless otherwise prohibited by the law governing this Note, each payment I make on this Note will first reduce the amount of accrued unpaid interest, then any optional insurance premiums due, then any applicable unpaid charges and then unpaid Principal. I will make payments until I have paid all of the Principal and interest and any other fees or charges that I may owe under the terms of this Note.

(D) **Maturity Date:** If on 03/01/12, I still owe any amount under this Note, I will pay those amounts in full on that date which is called the "Maturity Date."

(E) **Optional Credit Insurance:** If I have selected optional credit insurance offered by the Note Holder in connection with this loan, the payment amount(s) shown in the Payment Schedule include the premiums for the insurance coverage(s) that I have selected. I understand that the actual total premium amount I pay will depend upon my payment record.

I understand that credit life and credit disability (accident and health) insurance are not required, and that I may cancel them at any time by giving written notice to you. If my credit insurance is canceled, no further portion of any payments I make will be applied to credit insurance premiums. At my request, you will adjust my payment amount to reflect the cancellation of the credit insurance. If my credit insurance is cancelled and Section 2 of this Note provides for an Adjustable Rate, on the next Change Date the cancellation of the credit insurance will be considered in determining my new payment amount.

(F) **Balloon Payment:** If the Payment Schedule requires me to make an estimated final payment that is significantly larger than any other payment ("Balloon Payment"), I understand that I will be required to make this Balloon Payment on the Maturity Date. I understand that the Note Holder is not required to refinance any Balloon Payment and that the failure to make the required Balloon Payment on the Due Date constitutes a Default under the terms of this Note.

4. FEES AND CHARGES. In addition to interest and other amounts I may agree to pay, I agree to pay the Note Holder the following additional fees and charges:

(A) **Late Charges:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount.

(B) **Returned Payment Fee:** Unless otherwise limited or prohibited by the law governing this Note, I will pay a charge of up to \$25.00 for each payment (check or automatic payment) that I make that is returned or dishonored for any reason.

(C) **Origination Fee:** If an origination fee or other fee or charge is charged as included on the HUD-1, HUD-1A, or Itemization of Amount Financed prepared in connection with this loan transaction, I agree to pay such fees and charges. Except as otherwise required by law, I agree that such fees and charges are fully earned as of the date of this Note and are nonrefundable upon prepayment.

(D) **Additional Charges:** I agree that if, during the term of this Note, I request other services related to servicing or administering my loan for which the Note Holder has a scheduled charge, I will, to the extent permitted by the law governing this Note, pay the Note Holder the then current fee for such services or request if the Note Holder agrees to perform such service or request. I understand that any such fees are fully earned when charged and are nonrefundable upon prepayment.

5. BORROWER'S FAILURE TO PAY AS REQUIRED AND TERMS OF DEFAULT.

(A) **Terms of Default:** I will be in Default under this Note if any of the following things happen:

(i) If I fail to make any payment or comply with any of the terms of this Note or any other note with the Note Holder now or in the future; or

(ii) If I make any false, incorrect or misleading representation or warranty at any time during the application process; or

(iii) If I die; or

(iv) If I become involved in any bankruptcy or insolvency proceeding; or

(v) If the collateral described in Section 8 or any schedule to this Note is used in violation of any law or regulation or if a judgment or lien is filed or levied against me or the collateral or the collateral is impaired, damaged, or removed from the custody of the Note Holder; or

(vi) If I fail to abide by the term(s) of any Security Instrument or other documents described in Section 8 which secure payment of this Note.

(B) **Notice of Default:** If I am in Default, then the entire Principal balance, accrued interest, fees, and collection costs permitted to be collected under applicable law will be immediately due and payable. At its option or if required by law, the Note Holder may send me a written notice informing me of said Default and acceleration. If I make any payment after the Note Holder has demanded payment of the entire balance due, my payment will be applied to the unpaid balance due under this Note. The unpaid balance consists of the Principal Amount remaining due, plus accrued finance charges, unpaid Late Charges, collection costs, and all other amounts due to the Note Holder under this Note. The Note Holder shall also have other rights and remedies provided by law. If the net proceeds of collateral sold do not pay my indebtedness in full, I will pay the Note Holder the difference, plus interest at the Note Interest Rate until the unpaid balance is paid in full. Any Default of this Note will also constitute an event of Default of any separate Mortgage, Deed of Trust or Security Deed securing this Note ("Security Instrument") or Pledge Agreement securing this Note. Upon Default, the Note Holder may proceed to enforce the terms of this Note or enforce any rights that it may have under the Security Instrument or Pledge Agreement.

(C) **No Waiver by Note Holder:** Even if, at a time when I am in Default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in Default at a later time. Any failure to enforce any provision of this Note by the Note Holder shall not constitute any waiver of such rights of the Note Holder to subsequently enforce such rights or remedies.

(D) Payment of the Note Holder's Costs and Expenses: If the Note Holder has required me to pay immediately in full as described above, and I fail to do so and such failure causes the Note Holder to incur additional expenses, the Note Holder will have the right to a refund of all of its costs and expenses to the extent not prohibited by the law governing this Note. Those expenses include, for example, reasonable attorneys' fees for an attorney who is not the Note Holder's salaried employee, foreclosure fees and court costs. In no event shall these expenses exceed fifteen percent (15%) of the unpaid balance plus Court Costs.

6. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT. In addition to the protections given to the Note Holder under this Note, a separate Security Instrument(s), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Subject to applicable law, I understand that this loan is subject to repayment in full in the event the Property securing this debt is sold, conveyed or otherwise transferred.

If in addition to a Security Instrument, I pledge securities, cash accounts or other liquid collateral (the "Other Collateral") as Other Collateral for this Note, then I grant to the Note Holder a perfected security interest in such Other Collateral and all additions or replacements to, or proceeds of as is more fully described in the separate Collateral Pledge Agreement (the "Pledge Agreement") executed as of the same date as this Note. The Pledge Agreement describes the Other Collateral in detail and protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. The Pledge Agreement also describes how and under what conditions I may also be required to make immediate payment in full of all amounts that I owe under this Note. I agree to these conditions. If the Other Collateral includes securities, I agree to deliver immediately to the Note Holder, fully endorsed, any certificates for shares representing any stock dividend, stock split or right to subscribe. I further pledge and agree to deliver to the Note Holder, upon demand, additional Other Collateral satisfactory to the Note Holder and in accordance with all margin requirements. If I do not provide the Note Holder with a perfected security interest in the Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest, I will be responsible for such expenses.

If I do not provide or assist the Note Holder in obtaining a perfected security interest in the Property or Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest in such Property or Other Collateral, to the extent not otherwise prohibited by the law governing this Note, I agree that the Note Holder may add the amount of such expenses to the Principal and that such expenses will accrue interest at the Note Interest Rate until paid in full.

7. PREPAYMENT.

(A) Subject to the order of application of payments described in Section 3, I have the right to make payments of Principal at any time before they are due without penalty. A prepayment of all unpaid Principal is known as a "full prepayment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment."

(B) If I make a partial prepayment, my next due date may be advanced. If I make a payment that is more than the amount that is due, the amount in excess of the amount due is called an "Excess Payment." If I make an Excess Payment, the Note Holder will assume that I want to reduce or skip my next scheduled payment or payments. If the Excess Payment is less than or equal to the next scheduled payment, the next scheduled payment will be reduced by the amount of the Excess Payment. If the Excess Payment exceeds the amount of my next scheduled payment, the number of payments that may be skipped will be determined by subtracting each subsequently scheduled payment from the Excess Payment. So long as the remaining portion of the Excess Payment exceeds the next scheduled payment amount, that payment may be skipped. When the remaining portion of the Excess Payment is equal to or less than my next scheduled payment, that remaining portion will be used to reduce the amount of the next scheduled payment. If I want the Note Holder to handle an Excess Payment differently, I will tell the Note Holder in writing. I understand that interest will continue to accrue on the outstanding principal balance and that if I want maximum interest savings from Excess Payments, I should continue to make payments on or before the scheduled due date.

8. BORROWER'S WAIVERS. I waive my rights to require the Note Holder to do certain things. Those things are: (a) to demand payment of amounts due (known as "presentment"); (b) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (c) to obtain an official certification of non-payment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "Guarantors," "Sureties," "Co-Signers" and "Endorsers."

9. GIVING OF NOTICES.

(A) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address contained in this Note. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

(B) Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address provided to me by the Note Holder. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

10. PAYMENT IN FULL. I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL" WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, NATIONAL ASSOCIATION, SPECIAL PAYOFFS, PO BOX 10723, ROANOKE, VA 24022. ACCEPTANCE OF ANY PAYMENT SENT TO THE SPECIAL HANDLING ADDRESS DOES NOT WAIVE THE NOTE HOLDER'S RIGHT TO SUBSEQUENTLY REJECT SUCH PAYMENT IN ACCORDANCE WITH APPLICABLE LAW.

11. EXTENSIONS AND MODIFICATIONS. All Guarantors, Sureties, Co-Signers, Endorsers and I consent to any and all extensions of time, renewals, waivers or modifications which may be granted or consented to by the Note Holder as to the time of payment or any other provision of this Note. If in its sole discretion, the Note Holder permits an extension, renewal or modification to this Note, I agree to pay a charge not to exceed an amount permitted by the law governing this Note. All Guarantors, Sureties, Co-Signers, Endorsers and Makers hereby waive presentment, notice of dishonor, and protest hereof. This Note is the joint and several obligation of each Maker and shall be binding upon them and their heirs, successors and assigns.

12. INSURANCE REQUIREMENTS. I agree to purchase property/hazard insurance insuring the Property against loss and as required by the Security Instrument. I acknowledge that I may obtain property/hazard insurance from any insurance company of my choice, subject to the Note Holder's right of approval which shall not be unreasonably withheld. Unless I provide the Note Holder with evidence of the insurance coverage required by my agreement with the Note Holder, the Note Holder may purchase insurance at my expense to protect the Note Holder's interests in the Property. This insurance may, but need not, protect my interests. The coverage that the Note Holder purchases may not pay any claim that I make or any claim that is made against me in connection with the Property. I may later cancel any insurance purchased by the Note Holder, but only after providing the Note Holder with evidence that I have obtained insurance as required by our agreement. If the Note Holder purchases insurance for the Property, I will be responsible for the costs of the insurance, including interest and any other charges the Note Holder may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added to the Principal and will accrue interest at the Note Interest Rate. I understand that the costs of the insurance obtained by the Note Holder may be more than the cost of insurance I may be able to obtain on my own.

13. RESPONSIBILITY OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each of us is jointly and severally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any Guarantor, Surety, Co-Signer or Endorser of this Note (as described in Section 8 above) jointly and severally guarantee the payment, when due, to any Note Holder hereof of all amounts from time to time owing on this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. I and any Guarantor, Surety, Co-Signer or Endorser of this Note further agree that the failure by the Note Holder to perfect any security interest granted by this Note shall not affect my liability or the liability of any Guarantor hereon.

14. GOVERNING LAW. This Note will be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state where the property securing this Note is located. Federal law that governs this Note includes 12 USC 85, which incorporates in part the laws of the State of North Carolina. If the Property securing this debt is located in Maryland, to the extent this Note is governed by Maryland law, this Note is governed by Md. Code Ann., Commercial Law §12-1001 et. seq. and applicable federal law.

15. GENERAL PROVISIONS. I agree that I may not sell, assign or otherwise transfer my rights or obligations under this Note and that such action will be void. Any person who takes over my rights or obligations under this Note by operation of law will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of any Guarantor, Surety, Co-Signer or Endorser of this Note is also obligated to keep all of the promises made in this Note. This Note is intended by the Note Holder and me as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in writing signed by the Note Holder and me. This Note benefits the Note Holder, its successors and assigns, and binds me and my heirs, personal representatives and assigns. If any provision of this Note shall for any reason be held to be invalid or unenforceable, such determination shall not affect the enforceability of the remaining provisions of this Note. Headings are for convenience of reference only and shall not affect the construction of this Note or any other document associated with this loan.

16. SAVINGS AND COMPLIANCE. It is the intention of you and me to comply with applicable law. In each and every instance, our rights shall be limited by applicable law (to the extent such laws may not be effectively waived), construed so as to comply with such laws, and our rights may not be exercised except to the extent permitted by applicable law. No part of this agreement, nor any charge or receipt by you, is supposed to permit you to impose interest or other amounts in excess of lawful amounts. If an excess occurs, you will apply it as a credit or otherwise refund it and the rate or amount involved will automatically be reduced to the maximum lawful rate or amount. To the extent permitted by law, for purposes of determining your compliance with law, you may calculate charges by amortizing, prorating, allocating and spreading any such charges.

17. DOCUMENTARY TAX. For loans secured by real property located in Florida, the state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

NOTICE TO BORROWER:

1. CAUTION: IT IS IMPORTANT THAT THE BORROWER THOROUGHLY READS THIS NOTE BEFORE THE BORROWER SIGNS IT.
2. THIS NOTE IS SECURED BY EITHER A FIRST OR SUBORDINATE LIEN ON REAL PROPERTY.
3. THE BORROWER IS ENTITLED TO A COPY OF THIS NOTE.
4. DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES.
5. THE BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

For Texas residents only: NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS _____ PERCENT PER YEAR.

By signing and sealing this Note, I agree under seal to the terms set forth above.

Jeffrey Hiram Anders II by
Helen R. Roper his attorney-in-fact (SEAL)
Borrower **JEFFREY HIRAM ANDERS II** by Helen R. Roper, his Attorney-in-Fact

Maureen R. Anders by *Helen R. Roper*
her attorney-in-fact (SEAL)
Borrower **MAUREEN R. ANDERS** by Helen R. Roper, her Attorney-in-Fact

Any Guarantor, Surety, Co-Signer or Endorser of this Note acknowledges receipt and execution of the Co-Signer's Notice.

[SEAL]
Guarantor - Co-Signer

[SEAL]
Guarantor - Co-Signer

FOR OFFICE USE ONLY

Endorsement.

Pay to the Order of _____

Without Recourse

By: _____

Name: _____

Title: _____

EXHIBIT

B

BK: 41
RC: 3036090

LOC:

LN TP: 96
154800/00

Date: 07/19/07

Ref. No. 0718300127
Acct. No.

Note

BORROWER(S):
MELINDA A CAVICCHIA245 CLEARWATER HBR
SANFORD, NC 27332

Amount Financed \$ 157703.20

1. **BORROWER(S) PROMISE TO PAY.** In return for a loan that I have received, the undersigned Borrower(s) (hereinafter referred to as "I," "me," or "my") jointly and severally promise to pay to Wachovia Bank, National Association, a national banking association organized and existing under the law of the United States of America ("Lender"), the sum of \$ 157703.20 (this amount will be called "Principal"), plus daily simple interest ("Interest") beginning on the date that Principal is advanced. The Principal may include points, origination fees and other amounts permitted by applicable law. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note and who is entitled to receive payments under this Note will be called the "Note Holder."

2. **INTEREST.** Interest will accrue on the entire Principal balance outstanding at any time. Notwithstanding anything to the contrary, I do not agree to pay and the Note Holder does not intend to charge any interest at a rate that is higher than the maximum rate of interest that could be charged under applicable law for the extension of credit that is agreed to under this Note (either before or after maturity). If any notice of interest accrual is sent and is in error, and if the Note Holder actually collects more interest than allowed by law or this Note, the Note Holder agrees to refund any such excess interest.

I agree to pay interest on the unpaid Principal balance of this Note owing after maturity, and until paid in full at the same rate in effect before maturity. I agree that any loan origination fee paid to the Note Holder is earned as of the date of this Note.

Interest accrues on the Principal remaining unpaid from time to time, until paid in full. The Interest Rate, as defined in this Section 2 below, will be charged at a rate of 1/365th of the Interest Rate for each day, or 1/366th of the Interest Rate for each day in any leap year, applied against that day's outstanding Principal balance. The dollar amount of the finance charge and the payments disclosed to me for this credit transaction are based upon my payments being received by the Note Holder on the date payments are due. If my payments are received after the due date, even if received before the date a Late Charge as permitted by Section 4 applies, I may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of Principal. This is a result of the accrual of daily interest.

To the extent that any fees or charges are added to the Principal balance, they will thereafter bear interest and I agree to pay this interest. I understand that in the event my first payment due date is more than one month from the date of this Note, one or more of my initial payments may not pay all of the interest owed on the date of the payment and therefore may not reduce the outstanding Principal balance.

If the governing law which applies to this Note sets maximum loan charges and is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial payment.

Check One:

☒ Fixed Rate:I agree to pay interest on the outstanding Principal balance at a fixed annual rate of 7.39 % ("Interest Rate").☐ Adjustable Rate:

(A) **Interest Rate:** I agree to pay interest on the outstanding Principal balance at the initial annual rate of N/A % ("Interest Rate") until the first Change Date as defined in Paragraph (B) below. Thereafter, the Interest Rate I pay may change as of each Change Date and will be calculated pursuant to Paragraph (D) below. My initial annual rate may not be related to the formula used to determine later rates.

(B) **Date Definitions:**

(i) **Change Date:** Each date on which the Interest Rate may change is called the Change Date. The Interest Rate may change _____ and every _____ month(s) thereafter.

(ii) **Index Date:** The 25th day of each month is an "Index Date." If the Index is not published on the 25th day of the month, then the Index Date shall be the first day prior to the 25th day of the month on which the Index is published.

(iii) **Look-back Date:** The date that is 30 days prior to a Change Date is called the "Look-back Date."

(C) **The Index: Check One:**

☐ The "Index" is the "Prime Rate" as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one Prime Rate published on an Index Date, then the Note Holder will use the higher of such prime rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of the Prime Rate.

- ☐ The "Index" is the average of interbank offered rates for ____ month U.S. dollar-denominated deposits in the London market ("LIBOR") as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one LIBOR published on an Index Date, then the Note Holder will use the higher of such LIBOR rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of LIBOR.
- (D) Calculation of New Interest Rate: The new annual interest rate that will be applicable beginning on each Change Date will be determined as follows:

Check One:

- ☐ The new annual interest rate will be equal to the index published on the Index Date for the calendar month immediately preceding the Look-back Date for that Change Date, rounded down to the nearest .01%, plus ____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.
- ☐ The new annual interest rate will be equal to the index published on the Index Date for the calendar month immediately preceding that Change Date, rounded down to the nearest .01%, plus ____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.
- (E) Limits on Interest Rate Changes: My interest rate will never be greater than ____% or less than 0%.
- ☐ If this box is checked, the interest rate will be subject to the additional limitations on increases. The interest rate I am required to pay at the first Change Date will never be greater than ____%. Thereafter increases will be subject to an additional limitation on each Change Date such that the interest rate I pay will never be increased on any single Change Date by more than 2% from the interest rate I have been paying for the preceding 12 months.
- ☐ If this box is checked, there will be no additional limitation on increases in my interest rate.

(F) Notice of Changes: The Note Holder will deliver or mail to me a notice of any changes in my interest rate as required by applicable law. The notice will include information about any changes to my payment amount.

3. PAYMENTS.

(A) Payment Options and Schedule:

Check One:

- ☒ Interest Payments: I will pay accrued interest beginning on 08/18/07 as follows: check one:
- ☒ monthly or ☐ quarterly ("Interest Payments"). The amount of each interest payment will vary depending upon the amount of principal outstanding, the date principal payments or installment payments are received and if Section 2 of this Note provides for an Adjustable Rate, the interest rate then in effect. In addition, I will make the following Payments:

Check One:

- ☒ Principal Reduction Payments and/or a Balloon Payment: In addition to the interest payments, I will make principal payments as set forth in the Payment Schedule below:
- ☐ Installment Payments: For purposes of this Section 3, the "Payment Change Date" is the first payment due date that is at least 28 days after the "Anniversary Date." The Anniversary Date is the date that is ____ year(s) after the Note Date. Beginning on the Payment Change Date, in place of interest payments, I will make installment payments of principal and interest. On the Anniversary Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal balance in full over the of a period of time ending on the Maturity Date as defined in Paragraph (D) with interest at the rate set in accordance with Section 2. The result of this calculation will be my new payment amount. The Note Holder will give me notice of this new payment amount. This payment amount is estimated in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, this payment amount may change. On each subsequent Change Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount beginning on the first payment due date which is at least 28 days after the Change Date. I will pay my new payment amount until the payment amount changes again or until the Maturity Date as described in Paragraph (D).
- ☐ Installment Payments or Installment Payments with a Balloon Payment: I will pay the unpaid principal and interest in installment payments as set forth in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, the payment amounts, including the final payment, as set forth in the Payment Schedule may change. On each Change Date, the Note Holder will determine the ☐ monthly ☐ quarterly ☐ semi-annual or ☐ annual payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount. I will pay my new payment amount beginning on the first payment due date after the Change Date until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

Payment Schedule:

Number of Payments	Payment Amount	Frequency	Start/Due Date	Number of Payments	Payment Amount	Frequency	Start/Due Date
80	\$Interest Only	M	08/18/07		\$		
1	\$157703.20	M	07/18/12		\$		
Frequency Legend: M = Monthly Q = Quarterly S = Semi Annually A = Annually							

(B) **Place of Payments:** I will make my payments in U.S. funds payable to the Note Holder at the address provided to me by the Note Holder or at a different address if required by the Note Holder.

(C) **Application of Payments:** Unless otherwise prohibited by the law governing this Note, each payment I make on this Note will first reduce the amount of accrued unpaid interest, then any optional insurance premiums due, then any applicable unpaid charges and then unpaid Principal. I will make payments until I have paid all of the Principal and interest and any other fees or charges that I may owe under the terms of this Note.

(D) **Maturity Date:** If on 07/18/12, I still owe any amount under this Note, I will pay those amounts in full on that date which is called the "Maturity Date."

(E) **Optional Credit Insurance:** If I have selected optional credit insurance offered by the Note Holder in connection with this loan, the payment amount(s) shown in the Payment Schedule include the premiums for the insurance coverage(s) that I have selected. I understand that the actual total premium amount I pay will depend upon my payment record.

I understand that credit life and credit disability (accident and health) insurance are not required, and that I may cancel them at any time by giving written notice to you. If my credit insurance is canceled, no further portion of any payments I make will be applied to credit insurance premiums. At my request, you will adjust my payment amount to reflect the cancellation of the credit insurance. If my credit insurance is cancelled and Section 2 of this Note provides for an Adjustable Rate, on the next Change Date the cancellation of the credit insurance will be considered in determining my new payment amount.

(F) **Balloon Payment:** If the Payment Schedule requires me to make an estimated final payment that is significantly larger than any other payment ("Balloon Payment"), I understand that I will be required to make this Balloon Payment on the Maturity Date. I understand that the Note Holder is not required to refinance any Balloon Payment and that the failure to make the required Balloon Payment on the Due Date constitutes a Default under the terms of this Note.

4. FEES AND CHARGES. In addition to interest and other amounts I may agree to pay, I agree to pay the Note Holder the following additional fees and charges:

(A) **Late Charges:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount.

(B) **Returned Payment Fee:** Unless otherwise limited or prohibited by the law governing this Note, I will pay a charge of up to \$25.00 for each payment (check or automatic payment) that I make that is returned or dishonored for any reason.

(C) **Origination Fee:** If an origination fee or other fee or charge is charged as included on the HUD-1, HUD-1A, or Itemization of Amount Financed prepared in connection with this loan transaction, I agree to pay such fees and charges. Except as otherwise required by law, I agree that such fees and charges are fully earned as of the date of this Note and are nonrefundable upon prepayment.

(D) **Additional Charges:** I agree that if, during the term of this Note, I request other services related to servicing or administering my loan for which the Note Holder has a scheduled charge, I will, to the extent permitted by the law governing this Note, pay the Note Holder the then current fee for such services or request if the Note Holder agrees to perform such service or request. I understand that any such fees are fully earned when charged and are nonrefundable upon prepayment.

5. BORROWER'S FAILURE TO PAY AS REQUIRED AND TERMS OF DEFAULT.

(A) **Terms of Default:** I will be in Default under this Note if any of the following things happen:

- (i) If I fail to make any payment or comply with any of the terms of this Note or any other note with the Note Holder now or in the future; or
- (ii) If I make any false, incorrect or misleading representation or warranty at any time during the application process; or
- (iii) If I die; or
- (iv) If I become involved in any bankruptcy or insolvency proceeding; or
- (v) If the collateral described in Section 6 or any schedule to this Note is used in violation of any law or regulation or if a judgment or lien is filed or levied against me or the collateral or the collateral is impaired, damaged, or removed from the custody of the Note Holder; or
- (vi) If I fail to abide by the term(s) of any Security Instrument or other documents described in Section 6 which secure payment of this Note.

(B) **Notice of Default:** If I am in Default, then the entire Principal balance, accrued interest, fees, and collection costs permitted to be collected under applicable law will be immediately due and payable. At its option or if required by law, the Note Holder may send me a written notice informing me of said Default and acceleration. If I make any payment after the Note Holder has demanded payment of the entire balance due, my payment will be applied to the unpaid balance due under this Note. The unpaid balance consists of the Principal Amount remaining due, plus accrued finance charges, unpaid Late Charges, collection costs, and all other amounts due to the Note Holder under this Note. The Note Holder shall also have other rights and remedies provided by law. If the net proceeds of collateral sold do not pay my indebtedness in full, I will pay the Note Holder the difference, plus interest at the Note Interest Rate until the unpaid balance is paid in full. Any Default of this Note will also constitute an event of Default of any separate Mortgage, Deed of Trust or Security Deed securing this Note ("Security Instrument") or Pledge Agreement securing this Note. Upon Default, the Note Holder may proceed to enforce the terms of this Note or enforce any rights that it may have under the Security Instrument or Pledge Agreement.

(C) **No Waiver by Note Holder:** Even if, at a time when I am in Default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in Default at a later time. Any failure to enforce any provision of this Note by the Note Holder shall not constitute any waiver of such rights of the Note Holder to subsequently enforce such rights or remedies.

(D) **Payment of the Note Holder's Costs and Expenses:** If the Note Holder has required me to pay immediately in full as described above, and I fail to do so and such failure causes the Note Holder to incur additional expenses, the Note Holder will have the right to a refund of all of its costs and expenses to the extent not prohibited by the law governing this Note. Those expenses include, for example, reasonable attorneys' fees for an attorney who is not the Note Holder's salaried employee, foreclosure fees and court costs. In no event shall these expenses exceed fifteen percent (15%) of the unpaid balance plus Court Costs.

6. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT. In addition to the protections given to the Note Holder under this Note, a separate Security Instrument(s), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Subject to applicable law, I understand that this loan is subject to repayment in full in the event the Property securing this debt is sold, conveyed or otherwise transferred.

If in addition to a Security Instrument, I pledge securities, cash accounts or other liquid collateral (the "Other Collateral") as Other Collateral for this Note, then I grant to the Note Holder a perfected security interest in such Other Collateral and all additions or replacements to, or proceeds of as is more fully described in the separate Collateral Pledge Agreement (the "Pledge Agreement") executed as of the same date as this Note. The Pledge Agreement describes the Other Collateral in detail and protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. The Pledge Agreement also describes how and under what conditions I may also be required to make immediate payment in full of all amounts that I owe under this Note. I agree to these conditions. If the Other Collateral includes securities, I agree to deliver immediately to the Note Holder, fully endorsed, any certificates for shares representing any stock dividend, stock split or right to subscribe. I further pledge and agree to deliver to the Note Holder, upon demand, additional Other Collateral satisfactory to the Note Holder and in accordance with all margin requirements. If I do not provide the Note Holder with a perfected security interest in the Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest, I will be responsible for such expenses.

If I do not provide or assist the Note Holder in obtaining a perfected security interest in the Property or Other Collateral and the Note Holder incurs any expenses, including attorney's fees, in order to obtain a perfected security interest in such Property or Other Collateral, to the extent not otherwise prohibited by the law governing this Note, I agree that the Note Holder may add the amount of such expenses to the Principal and that such expenses will accrue interest at the Note Interest Rate until paid in full.

7. PREPAYMENT.

(A) Subject to the order of application of payments described in Section 3, I have the right to make payments of Principal at any time before they are due without penalty. A prepayment of all unpaid Principal is known as a "full prepayment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment."

(B) If I make a partial prepayment, my next due date may be advanced. If I make a payment that is more than the amount that is due, the amount in excess of the amount due is called an "Excess Payment." If I make an Excess Payment, the Note Holder will assume that I want to reduce or skip my next scheduled payment or payments. If the Excess Payment is less than or equal to the next scheduled payment, the next scheduled payment will be reduced by the amount of the Excess Payment. If the Excess Payment exceeds the amount of my next scheduled payment, the number of payments that may be skipped will be determined by subtracting each subsequently scheduled payment from the Excess Payment. So long as the remaining portion of the Excess Payment exceeds the next scheduled payment amount, that payment may be skipped. When the remaining portion of the Excess Payment is equal to or less than my next scheduled payment, that remaining portion will be used to reduce the amount of the next scheduled payment. If I want the Note Holder to handle an Excess Payment differently, I will tell the Note Holder in writing. I understand that interest will continue to accrue on the outstanding principal balance and that if I want maximum interest savings from Excess Payments, I should continue to make payments on or before the scheduled due date.

8. BORROWER'S WAIVERS. I waive my rights to require the Note Holder to do certain things. Those things are: (a) to demand payment of amounts due (known as "presentment"); (b) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (c) to obtain an official certification of non-payment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "Guarantors," "Sureties," "Co-Signers" and "Endorsers."

9. GIVING OF NOTICES.

(A) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address contained in this Note. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

(B) Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address provided to me by the Note Holder. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

10. PAYMENT IN FULL. I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL" WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, NATIONAL ASSOCIATION, SPECIAL PAYOFFS, PO BOX 10723, ROANOKE, VA 24022. ACCEPTANCE OF ANY PAYMENT SENT TO THE SPECIAL HANDLING ADDRESS DOES NOT WAIVE THE NOTE HOLDER'S RIGHT TO SUBSEQUENTLY REJECT SUCH PAYMENT IN ACCORDANCE WITH APPLICABLE LAW.

11. EXTENSIONS AND MODIFICATIONS. All Guarantors, Sureties, Co-Signers, Endorsers and I consent to any and all extensions of time, renewals, waivers or modifications which may be granted or consented to by the Note Holder as to the time of payment or any other provision of this Note. If in its sole discretion, the Note Holder permits an extension, renewal or modification to this Note, I agree to pay a charge not to exceed an amount permitted by the law governing this Note. All Guarantors, Sureties, Co-Signers, Endorsers and Makers hereby waive presentment, notice of dishonor, and protest hereof. This Note is the joint and several obligation of each Maker and shall be binding upon them and their heirs, successors and assigns.

12. INSURANCE REQUIREMENTS. I agree to purchase property/hazard insurance insuring the Property against loss and as required by the Security Instrument. I acknowledge that I may obtain property/hazard insurance from any insurance company of my choice, subject to the Note Holder's right of approval which shall not be unreasonably withheld. Unless I provide the Note Holder with evidence of the insurance coverage required by my agreement with the Note Holder, the Note Holder may purchase insurance at my expense to protect the Note Holder's interests in the Property. This insurance may, but need not, protect my interests. The coverage that the Note Holder purchases may not pay any claim that I make or any claim that is made against me in connection with the Property. I may later cancel any insurance purchased by the Note Holder, but only after providing the Note Holder with evidence that I have obtained insurance as required by our agreement. If the Note Holder purchases insurance for the Property, I will be responsible for the costs of the insurance, including interest and any other charges the Note Holder may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added to the Principal and will accrue interest at the Note Interest Rate. I understand that the costs of the insurance obtained by the Note Holder may be more than the cost of insurance I may be able to obtain on my own.

13. RESPONSIBILITY OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each of us is jointly and severally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any Guarantor, Surety, Co-Signer or Endorser of this Note (as described in Section 8 above) jointly and severally guarantee the payment, when due, to any Note Holder hereof of all amounts from time to time owing on this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. I and any Guarantor, Surety, Co-Signer or Endorser of this Note further agrees that the failure by the Note Holder to perfect any security interest granted by this Note shall not affect my liability or the liability of any Guarantor hereon.

14. GOVERNING LAW. This Note will be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state where the property securing this Note is located. Federal law that governs this Note includes 12 USC 85, which incorporates in part the laws of the State of North Carolina. If the Property securing this debt is located in Maryland, to the extent this Note is governed by Maryland law, this Note is governed by *Md. Code Ann., Commercial Law §12-1001 et. seq.* and applicable federal law.

15. GENERAL PROVISIONS. I agree that I may not sell, assign or otherwise transfer my rights or obligations under this Note and that such action will be void. Any person who takes over my rights or obligations under this Note by operation of law will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of any Guarantor, Surety, Co-Signer or Endorser of this Note is also obligated to keep all of the promises made in this Note. This Note is intended by the Note Holder and me as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in writing signed by the Note Holder and me. This Note benefits the Note Holder, its successors and assigns, and binds me and my heirs, personal representatives and assigns. If any provision of this Note shall for any reason be held to be invalid or unenforceable, such determination shall not affect the enforceability of the remaining provisions of this Note. Headings are for convenience of reference only and shall not affect the construction of this Note or any other document associated with this loan.

16. SAVINGS AND COMPLIANCE. It is the intention of you and me to comply with applicable law. In each and every instance, our rights shall be limited by applicable law (to the extent such laws may not be effectively waived), construed so as to comply with such laws, and our rights may not be exercised except to the extent permitted by applicable law. No part of this agreement, nor any charge or receipt by you, is supposed to permit you to impose interest or other amounts in excess of lawful amounts. If an excess occurs, you will apply it as a credit or otherwise refund it and the rate or amount involved will automatically be reduced to the maximum lawful rate or amount. To the extent permitted by law, for purposes of determining your compliance with law, you may calculate charges by amortizing, prorating, allocating and spreading any such charges.

17. DOCUMENTARY TAX. For loans secured by real property located in Florida, the state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

NOTICE TO BORROWER:

1. CAUTION: IT IS IMPORTANT THAT THE BORROWER THOROUGHLY READS THIS NOTE BEFORE THE BORROWER SIGNS IT.
2. THIS NOTE IS SECURED BY EITHER A FIRST OR SUBORDINATE LIEN ON REAL PROPERTY.
3. THE BORROWER IS ENTITLED TO A COPY OF THIS NOTE.
4. DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES.
5. THE BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

For Texas residents only: NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS _____ PERCENT PER YEAR.

By signing and sealing this Note, I agree under seal to the terms set forth above.

Melinda A. Cavicchia by Helen K. Roper

her attorney in fact [SEAL]
Borrower MELINDA A. CAVICCHIA by Helen K. Roper, her Attorney-in-Fact

_____[SEAL]
Borrower

Any Guarantor, Surety, Co-Signer or Endorser of this Note acknowledges receipt and execution of the Co-Signer's Notice.

_____[SEAL]
Guarantor - Co-Signer

_____[SEAL]
Guarantor - Co-Signer

FOR OFFICE USE ONLY	
Endorsement.	
Pay to the Order of _____	
Without Recourse	

By: _____	
Name: _____	
Title: _____	

EXHIBIT C

BK: 50
RC: 0101803

LOC:

LN TP: 96
208710/00

Date: 03/08/07

Ref. No. 0703800202
Acct. No.

Note

BORROWER(S):
MICHAEL B CULIS4335 LAUREL HILL LN
CHARLOTTE, NC 28217Amount Financed \$ 210192.20

1. **BORROWER(S) PROMISE TO PAY.** In return for a loan that I have received, the undersigned Borrower(s) (hereinafter referred to as "I," "me," or "my") jointly and severally promise to pay to Wachovia Bank, National Association, a national banking association organized and existing under the law of the United States of America ("Lender"), the sum of \$ 210192.20 (this amount will be called "Principal"), plus daily simple interest ("Interest") beginning on the date that Principal is advanced. The Principal may include points, origination fees and other amounts permitted by applicable law. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note and who is entitled to receive payments under this Note will be called the "Note Holder."

2. **INTEREST.** Interest will accrue on the entire Principal balance outstanding at any time. Notwithstanding anything to the contrary, I do not agree to pay and the Note Holder does not intend to charge any interest at a rate that is higher than the maximum rate of interest that could be charged under applicable law for the extension of credit that is agreed to under this Note (either before or after maturity). If any notice of interest accrual is sent and is in error, and if the Note Holder actually collects more interest than allowed by law or this Note, the Note Holder agrees to refund any such excess interest.

I agree to pay interest on the unpaid Principal balance of this Note owing after maturity, and until paid in full at the same rate in effect before maturity. I agree that any loan origination fee paid to the Note Holder is earned as of the date of this Note.

Interest accrues on the Principal remaining unpaid from time to time, until paid in full. The Interest Rate, as defined in this Section 2 below, will be charged at a rate of 1/365th of the Interest Rate for each day, or 1/366th of the Interest Rate for each day in any leap year, applied against that day's outstanding Principal balance. The dollar amount of the finance charge and the payments disclosed to me for this credit transaction are based upon my payments being received by the Note Holder on the date payments are due. If my payments are received after the due date, even if received before the date a Late Charge as permitted by Section 4 applies, I may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of Principal. This is a result of the accrual of daily interest.

To the extent that any fees or charges are added to the Principal balance, they will thereafter bear interest and I agree to pay this interest. I understand that in the event my first payment due date is more than one month from the date of this Note, one or more of my initial payments may not pay all of the interest owed on the date of the payment and therefore may not reduce the outstanding Principal balance.

If the governing law which applies to this Note sets maximum loan charges and is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial payment.

Check One:

☒ **Fixed Rate:**
I agree to pay interest on the outstanding Principal balance at a fixed annual rate of 6.79 % ("Interest Rate").

☐ Adjustable Rate:

(A) **Interest Rate:** I agree to pay interest on the outstanding Principal balance at the initial annual rate of N/A % ("Interest Rate") until the first Change Date as defined in Paragraph (B) below. Thereafter, the Interest Rate I pay may change as of each Change Date and will be calculated pursuant to Paragraph (D) below. My initial annual rate may not be related to the formula used to determine later rates.

(B) Date Definitions:

(i) **Change Date:** Each date on which the Interest Rate may change is called the Change Date. The Interest Rate may change _____ and every _____ month(s) thereafter.

(ii) **Index Date:** The 25th day of each month is an "Index Date." If the Index is not published on the 25th day of the month, then the Index Date shall be the first day prior to the 25th day of the month on which the Index is published.

(iii) **Look-back Date:** The date that is 30 days prior to a Change Date is called the "Look-back Date."

(C) The Index: Check One:

☐ The "Index" is the "Prime Rate" as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one Prime Rate published on an Index Date, then the Note Holder will use the higher of such prime rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of the Prime Rate.

☐ The "Index" is the average of interbank offered rates for _____ month U.S. dollar-denominated deposits in the London market ("LIBOR") as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one LIBOR published on an Index Date, then the Note Holder will use the higher of such LIBOR rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of LIBOR.

(D) **Calculation of New Interest Rate:** The new annual interest rate that will be applicable beginning on each Change Date will be determined as follows:

Check One:

☐ The new annual interest rate will be equal to the index published on the Index Date for the calendar month immediately preceding the Look-back Date for that Change Date, rounded down to the nearest .01%, plus _____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.

☐ The new annual interest rate will be equal to the index published on the Index Date for the calendar month immediately preceding that Change Date, rounded down to the nearest .01%, plus _____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.

(E) **Limits on Interest Rate Changes:** My interest rate will never be greater than _____ % or less than 0%.

☐ If this box is checked, the interest rate will be subject to the additional limitations on increases. The interest rate I am required to pay at the first Change Date will never be greater than _____ %. Thereafter increases will be subject to an additional limitation on each Change Date such that the interest rate I pay will never be increased on any single Change Date by more than 2% from the interest rate I have been paying for the preceding 12 months.

☐ If this box is checked, there will be no additional limitation on increases in my interest rate.

(F) **Notice of Changes:** The Note Holder will deliver or mail to me a notice of any changes in my interest rate as required by applicable law. The notice will include information about any changes to my payment amount.

3. PAYMENTS.**(A) Payment Options and Schedule:****Check One:**

☒ **Interest Payments:** I will pay accrued interest beginning on 04/07/07 as follows: check one:
☒ monthly or ☐ quarterly ("Interest Payments"). The amount of each interest payment will vary depending upon the amount of principal outstanding, the date principal payments or installment payments are received and if Section 2 of this Note provides for an Adjustable Rate, the interest rate then in effect. In addition, I will make the following Payments:

Check One:

☒ **Principal Reduction Payments and/or a Balloon Payment:** In addition to the interest payments, I will make principal payments as set forth in the Payment Schedule below:

☐ **Installment Payments:** For purposes of this Section 3, the "Payment Change Date" is the first payment due date that is at least 28 days after the "Anniversary Date." The Anniversary Date is the date that is _____ year(s) after the Note Date. Beginning on the Payment Change Date, in place of interest payments, I will make installment payments of principal and interest. On the Anniversary Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal balance in full over the period of time ending on the Maturity Date as defined in Paragraph (D) with interest at the rate set in accordance with Section 2. The result of this calculation will be my new payment amount. The Note Holder will give me notice of this new payment amount. This payment amount is estimated in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, this payment amount may change. On each subsequent Change Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount beginning on the first payment due date which is at least 28 days after the Change Date. I will pay my new payment amount until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

☐ **Installment Payments or Installment Payments with a Balloon Payment:** I will pay the unpaid principal and interest in installment payments as set forth in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, the payment amounts, including the final payment, as set forth in the Payment Schedule may change. On each Change Date, the Note Holder will determine the ☐ monthly ☐ quarterly ☐ semi-annual or ☐ annual payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount. I will pay my new payment amount beginning on the first payment due date after the Change Date until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

Payment Schedule:

Number of Payments	Payment Amount	Frequency	Start/Due Date	Number of Payments	Payment Amount	Frequency	Start/Due Date
60	\$ Interest Only	M	04/07/07		\$		
1	\$210192.20	M	03/07/12		\$		
Frequency Legend: M = Monthly Q = Quarterly S = Semi Annually A = Annually							

(B) Place of Payments: I will make my payments in U.S. funds payable to the Note Holder at the address provided to me by the Note Holder or at a different address if required by the Note Holder.

(C) Application of Payments: Unless otherwise prohibited by the law governing this Note, each payment I make on this Note will first reduce the amount of accrued unpaid interest, then any optional insurance premiums due, then any applicable unpaid charges and then unpaid Principal. I will make payments until I have paid all of the Principal and interest and any other fees or charges that I may owe under the terms of this Note.

(D) Maturity Date: If on 03/07/12, I still owe any amount under this Note, I will pay those amounts in full on that date which is called the "Maturity Date."

(E) Optional Credit Insurance: If I have selected optional credit insurance offered by the Note Holder in connection with this loan, the payment amount(s) shown in the Payment Schedule include the premiums for the insurance coverage(s) that I have selected. I understand that the actual total premium amount I pay will depend upon my payment record.

I understand that credit life and credit disability (accident and health) insurance are not required, and that I may cancel them at any time by giving written notice to you. If my credit insurance is canceled, no further portion of any payments I make will be applied to credit insurance premiums. At my request, you will adjust my payment amount to reflect the cancellation of the credit insurance. If my credit insurance is cancelled and Section 2 of this Note provides for an Adjustable Rate, on the next Change Date the cancellation of the credit insurance will be considered in determining my new payment amount.

(F) Balloon Payment: If the Payment Schedule requires me to make an estimated final payment that is significantly larger than any other payment ("Balloon Payment"), I understand that I will be required to make this Balloon Payment on the Maturity Date. I understand that the Note Holder is not required to refinance any Balloon Payment and that the failure to make the required Balloon Payment on the Due Date constitutes a Default under the terms of this Note.

4. FEES AND CHARGES. In addition to interest and other amounts I may agree to pay, I agree to pay the Note Holder the following additional fees and charges:

(A) Late Charges: If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount.

(B) Returned Payment Fee: Unless otherwise limited or prohibited by the law governing this Note, I will pay a charge of up to \$25.00 for each payment (check or automatic payment) that I make that is returned or dishonored for any reason.

(C) Origination Fee: If an origination fee or other fee or charge is charged as included on the HUD-1, HUD-1A, or Itemization of Amount Financed prepared in connection with this loan transaction, I agree to pay such fees and charges. Except as otherwise required by law, I agree that such fees and charges are fully earned as of the date of this Note and are nonrefundable upon prepayment.

(D) Additional Charges: I agree that if, during the term of this Note, I request other services related to servicing or administering my loan for which the Note Holder has a scheduled charge, I will, to the extent permitted by the law governing this Note, pay the Note Holder the then current fee for such services or request if the Note Holder agrees to perform such service or request. I understand that any such fees are fully earned when charged and are nonrefundable upon prepayment.

5. BORROWER'S FAILURE TO PAY AS REQUIRED AND TERMS OF DEFAULT.

(A) Terms of Default: I will be in Default under this Note if any of the following things happen:

- (i) If I fail to make any payment or comply with any of the terms of this Note or any other note with the Note Holder now or in the future; or
- (ii) If I make any false, incorrect or misleading representation or warranty at any time during the application process; or
- (iii) If I die; or
- (iv) If I become involved in any bankruptcy or insolvency proceeding; or
- (v) If the collateral described in Section 6 or any schedule to this Note is used in violation of any law or regulation or if a judgment or lien is filed or levied against me or the collateral or the collateral is impaired, damaged, or removed from the custody of the Note Holder; or
- (vi) If I fail to abide by the term(s) of any Security Instrument or other documents described in Section 6 which secure payment of this Note.

(B) Notice of Default: If I am in Default, then the entire Principal balance, accrued interest, fees, and collection costs permitted to be collected under applicable law will be immediately due and payable. At its option or if required by law, the Note Holder may send me a written notice informing me of said Default and acceleration. If I make any payment after the Note Holder has demanded payment of the entire balance due, my payment will be applied to the unpaid balance due under this Note. The unpaid balance consists of the Principal Amount remaining due, plus accrued finance charges, unpaid Late Charges, collection costs, and all other amounts due to the Note Holder under this Note. The Note Holder shall also have other rights and remedies provided by law. If the net proceeds of collateral sold do not pay my indebtedness in full, I will pay the Note Holder the difference, plus interest at the Note Interest Rate until the unpaid balance is paid in full. Any Default of this Note will also constitute an event of Default of any separate Mortgage, Deed of Trust or Security Deed securing this Note ("Security Instrument") or Pledge Agreement securing this Note. Upon Default, the Note Holder may proceed to enforce the terms of this Note or enforce any rights that it may have under the Security Instrument or Pledge Agreement.

(C) No Waiver by Note Holder: Even if, at a time when I am in Default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in Default at a later time. Any failure to enforce any provision of this Note by the Note Holder shall not constitute any waiver of such rights of the Note Holder to subsequently enforce such rights or remedies.

(D) **Payment of the Note Holder's Costs and Expenses:** If the Note Holder has required me to pay immediately in full as described above, and I fail to do so and such failure causes the Note Holder to incur additional expenses, the Note Holder will have the right to a refund of all of its costs and expenses to the extent not prohibited by the law governing this Note. Those expenses include, for example, reasonable attorneys' fees for an attorney who is not the Note Holder's salaried employee, foreclosure fees and court costs. In no event shall these expenses exceed fifteen percent (15%) of the unpaid balance plus Court Costs.

6. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT. In addition to the protections given to the Note Holder under this Note, a separate Security Instrument(s), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Subject to applicable law, I understand that this loan is subject to repayment in full in the event the Property securing this debt is sold, conveyed or otherwise transferred.

If in addition to a Security Instrument, I pledge securities, cash accounts or other liquid collateral (the "Other Collateral") as Other Collateral for this Note, then I grant to the Note Holder a perfected security interest in such Other Collateral and all additions or replacements to, or proceeds of as is more fully described in the separate Collateral Pledge Agreement (the "Pledge Agreement") executed as of the same date as this Note. The Pledge Agreement describes the Other Collateral in detail and protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. The Pledge Agreement also describes how and under what conditions I may also be required to make immediate payment in full of all amounts that I owe under this Note. I agree to these conditions. If the Other Collateral includes securities, I agree to deliver immediately to the Note Holder, fully endorsed, any certificates for shares representing any stock dividend, stock split or right to subscribe. I further pledge and agree to deliver to the Note Holder, upon demand, additional Other Collateral satisfactory to the Note Holder and in accordance with all margin requirements. If I do not provide the Note Holder with a perfected security interest in the Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest, I will be responsible for such expenses.

If I do not provide or assist the Note Holder in obtaining a perfected security interest in the Property or Other Collateral and the Note Holder incurs any expenses, including attorney's fees, in order to obtain a perfected security interest in such Property or Other Collateral, to the extent not otherwise prohibited by the law governing this Note, I agree that the Note Holder may add the amount of such expenses to the Principal and that such expenses will accrue interest at the Note Interest Rate until paid in full.

7. PREPAYMENT.

(A) Subject to the order of application of payments described in Section 3, I have the right to make payments of Principal at any time before they are due without penalty. A prepayment of all unpaid Principal is known as a "full prepayment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment."

(B) If I make a partial prepayment, my next due date may be advanced. If I make a payment that is more than the amount that is due, the amount in excess of the amount due is called an "Excess Payment." If I make an Excess Payment, the Note Holder will assume that I want to reduce or skip my next scheduled payment or payments. If the Excess Payment is less than or equal to the next scheduled payment, the next scheduled payment will be reduced by the amount of the Excess Payment. If the Excess Payment exceeds the amount of my next scheduled payment, the number of payments that may be skipped will be determined by subtracting each subsequently scheduled payment from the Excess Payment. So long as the remaining portion of the Excess Payment exceeds the next scheduled payment amount, that payment may be skipped. When the remaining portion of the Excess Payment is equal to or less than my next scheduled payment, that remaining portion will be used to reduce the amount of the next scheduled payment. If I want the Note Holder to handle an Excess Payment differently, I will tell the Note Holder in writing. I understand that interest will continue to accrue on the outstanding principal balance and that if I want maximum interest savings from Excess Payments, I should continue to make payments on or before the scheduled due date.

8. BORROWER'S WAIVERS. I waive my rights to require the Note Holder to do certain things. Those things are: (a) to demand payment of amounts due (known as "presentment"); (b) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (c) to obtain an official certification of non-payment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "Guarantors," "Sureties," "Co-Signers" and "Endorsers."

9. GIVING OF NOTICES.

(A) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address contained in this Note. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

(B) Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address provided to me by the Note Holder. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

10. PAYMENT IN FULL. I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL" WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, NATIONAL ASSOCIATION, SPECIAL PAYOFFS, PO BOX 10723, ROANOKE, VA 24022. ACCEPTANCE OF ANY PAYMENT SENT TO THE SPECIAL HANDLING ADDRESS DOES NOT WAIVE THE NOTE HOLDER'S RIGHT TO SUBSEQUENTLY REJECT SUCH PAYMENT IN ACCORDANCE WITH APPLICABLE LAW.

11. EXTENSIONS AND MODIFICATIONS. All Guarantors, Sureties, Co-Signers, Endorsers and I consent to any and all extensions of time, renewals, waivers or modifications which may be granted or consented to by the Note Holder as to the time of payment or any other provision of this Note. If in its sole discretion, the Note Holder permits an extension, renewal or modification to this Note, I agree to pay a charge not to exceed an amount permitted by the law governing this Note. All Guarantors, Sureties, Co-Signers, Endorsers and Makers hereby waive presentment, notice of dishonor, and protest hereof. This Note is the joint and several obligation of each Maker and shall be binding upon them and their heirs, successors and assigns.

12. INSURANCE REQUIREMENTS. I agree to purchase property/hazard insurance insuring the Property against loss and as required by the Security Instrument. I acknowledge that I may obtain property/hazard insurance from any insurance company of my choice, subject to the Note Holder's right of approval which shall not be unreasonably withheld. Unless I provide the Note Holder with evidence of the insurance coverage required by my agreement with the Note Holder, the Note Holder may purchase insurance at my expense to protect the Note Holder's interests in the Property. This insurance may, but need not, protect my interests. The coverage that the Note Holder purchases may not pay any claim that I make or any claim that is made against me in connection with the Property. I may later cancel any insurance purchased by the Note Holder, but only after providing the Note Holder with evidence that I have obtained insurance as required by our agreement. If the Note Holder purchases insurance for the Property, I will be responsible for the costs of the insurance, including interest and any other charges the Note Holder may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added to the Principal and will accrue interest at the Note Interest Rate. I understand that the costs of the insurance obtained by the Note Holder may be more than the cost of insurance I may be able to obtain on my own.

13. RESPONSIBILITY OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each of us is jointly and severally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any Guarantor, Surety, Co-Signer or Endorser of this Note (as described in Section 8 above) jointly and severally guarantee the payment, when due, to any Note Holder hereof of all amounts from time to time owing on this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. I and any Guarantor, Surety, Co-Signer or Endorser of this Note further agrees that the failure by the Note Holder to perfect any security interest granted by this Note shall not affect my liability or the liability of any Guarantor hereon.

14. GOVERNING LAW. This Note will be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state where the property securing this Note is located. Federal law that governs this Note includes 12 USC 85, which incorporates in part the laws of the State of North Carolina. If the Property securing this debt is located in Maryland, to the extent this Note is governed by Maryland law, this Note is governed by *Md. Code Ann., Commercial Law §12-1001 et. seq.* and applicable federal law.

15. GENERAL PROVISIONS. I agree that I may not sell, assign or otherwise transfer my rights or obligations under this Note and that such action will be void. Any person who takes over my rights or obligations under this Note by operation of law will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of any Guarantor, Surety, Co-Signer or Endorser of this Note is also obligated to keep all of the promises made in this Note. This Note is intended by the Note Holder and me as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in writing signed by the Note Holder and me. This Note benefits the Note Holder, its successors and assigns, and binds me and my heirs, personal representatives and assigns. If any provision of this Note shall for any reason be held to be invalid or unenforceable, such determination shall not affect the enforceability of the remaining provisions of this Note. Headings are for convenience of reference only and shall not affect the construction of this Note or any other document associated with this loan.

16. SAVINGS AND COMPLIANCE. It is the intention of you and me to comply with applicable law. In each and every instance, our rights shall be limited by applicable law (to the extent such laws may not be effectively waived), construed so as to comply with such laws, and our rights may not be exercised except to the extent permitted by applicable law. No part of this agreement, nor any charge or receipt by you, is supposed to permit you to impose interest or other amounts in excess of lawful amounts. If an excess occurs, you will apply it as a credit or otherwise refund it and the rate or amount involved will automatically be reduced to the maximum lawful rate or amount. To the extent permitted by law, for purposes of determining your compliance with law, you may calculate charges by amortizing, prorating, allocating and spreading any such charges.

17. DOCUMENTARY TAX. For loans secured by real property located in Florida, the state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

NOTICE TO BORROWER:

1. CAUTION: IT IS IMPORTANT THAT THE BORROWER THOROUGHLY READS THIS NOTE BEFORE THE BORROWER SIGNS IT.
2. THIS NOTE IS SECURED BY EITHER A FIRST OR SUBORDINATE LIEN ON REAL PROPERTY.
3. THE BORROWER IS ENTITLED TO A COPY OF THIS NOTE.
4. DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES.
5. THE BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

For Texas residents only: NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS _____ PERCENT PER YEAR.

By signing and sealing this Note, I agree under seal to the terms set forth above.

Michael B. Cuius by Helen R. Roper
his attorney in fact (SEAL)
Borrower MICHAEL B. CUIUS
by Helen R. Roper, his Attorney in Fact

Borrower (SEAL)

Any Guarantor, Surety, Co-Signer or Endorser of this Note acknowledges receipt and execution of the Co-Signer's Notice.

Guarantor - Co-Signer (SEAL)

Guarantor - Co-Signer (SEAL)

FOR OFFICE USE ONLY

Endorsement.
Pay to the Order of _____

Without Recourse

By: _____
Name: _____
Title: _____

EXHIBIT

D

BK: 41
RC: 3036090

LOC:

LN TP: 96
0146610/00

Date: 12/01/06

Ref. No. 0631000042
Acct. No.

Note

BORROWER(S):
CHAD J KURTZ15913 TRENTON PLACE RD
HUNTERSVILLE, NC 28078

Amount Financed \$ 149423.40

1. **BORROWER(S) PROMISE TO PAY.** In return for a loan that I have received, the undersigned Borrower(s) (hereinafter referred to as "I," "me," or "my") jointly and severally promise to pay to Wachovia Bank, National Association, a national banking association organized and existing under the law of the United States of America ("Lender"), the sum of \$149423.40 (this amount will be called "Principal"), plus daily simple interest ("Interest") beginning on the date that Principal is advanced. The Principal may include points, origination fees and other amounts permitted by applicable law. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note and who is entitled to receive payments under this Note will be called the "Note Holder."

2. **INTEREST.** Interest will accrue on the entire Principal balance outstanding at any time. Notwithstanding anything to the contrary, I do not agree to pay and the Note Holder does not intend to charge any interest at a rate that is higher than the maximum rate of interest that could be charged under applicable law for the extension of credit that is agreed to under this Note (either before or after maturity). If any notice of interest accrual is sent and is in error, and if the Note Holder actually collects more interest than allowed by law or this Note, the Note Holder agrees to refund any such excess interest.

I agree to pay interest on the unpaid Principal balance of this Note owing after maturity, and until paid in full at the same rate in effect before maturity. I agree that any loan origination fee paid to the Note Holder is earned as of the date of this Note.

Interest accrues on the Principal remaining unpaid from time to time, until paid in full. The interest rate, as defined in this Section 2 below, will be charged at a rate of 1/365th of the interest rate for each day, or 1/366th of the interest rate for each day in any leap year, applied against that day's outstanding Principal balance. The dollar amount of the finance charge and the payments disclosed to me for this credit transaction are based upon my payments being received by the Note Holder on the date payments are due. If my payments are received after the due date, even if received before the date a late charge as permitted by Section 4 applies, I may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of Principal. This is a result of the accrual of daily interest.

If the governing law which applies to this Note sets maximum loan charges and is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial payment.

Check One:

☒ Fixed Rate:I agree to pay interest on the outstanding Principal balance at a fixed annual rate of 6.74 % ("Interest Rate").☐ Adjustable Rate:

(A) **Interest Rate:** I agree to pay interest on the outstanding Principal balance at the initial annual rate of N/A % ("Interest Rate") until the first Change Date as defined in Paragraph (B) below. Thereafter, the interest rate I pay may change as of each Change Date and will be calculated pursuant to Paragraph (D) below. My initial annual rate may not be related to the formula used to determine later rates.

(B) **Date Definitions:**

(i) **Change Date:** Each date on which the interest rate may change is called the Change Date. The interest rate may change _____ and every _____ month(s) thereafter.

(ii) **Index Date:** The 25th day of each month is an "Index Date." If the index is not published on the 25th day of the month, then the Index Date shall be the first day prior to the 25th day of the month on which the index is published.

(iii) **Look-back Date:** The date that is 30 days prior to a Change Date is called the "Look-back Date."

(C) **The Index:** Check One:

☐ The "Index" is the "Prime Rate" as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one Prime Rate published on an Index Date, then the Note Holder will use the higher of such prime rates. If this index ceases to exist, the Note Holder may substitute another index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of the Prime Rate.

☐ The "Index" is the average of interbank offered rates for _____ month U.S. dollar-denominated deposits in the London market ("LIBOR") as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one LIBOR published on an Index Date, then the Note Holder will use the higher of such LIBOR rates. If this index ceases to exist, the Note Holder may substitute another index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of LIBOR.

(D) **Calculation of New Interest Rate:** The new annual interest rate that will be applicable beginning on each Change Date will be determined as follows:

Check One:

☐ The new annual interest rate will be equal to the index published on the index date for the calendar month immediately preceding the Look-back Date for that Change Date, rounded down to the nearest .01%, plus _____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.

☐ The new annual interest rate will be equal to the index published on the index date for the calendar month immediately preceding that Change Date, rounded down to the nearest .01%, plus _____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.

(E) **Limits on Interest Rate Changes:** My interest rate will never be greater than _____ % or less than 0%.

☐ If this box is checked, the interest rate will be subject to the additional limitations on increases. The interest rate I am required to pay at the first Change Date will never be greater than _____ %. Thereafter increases will be subject to an additional limitation on each Change Date such that the interest rate I pay will never be increased on any single Change Date by more than 2% from the interest rate I have been paying for the preceding 12 months.

☐ If this box is checked, there will be no additional limitation on increases in my interest rate.

(F) **Notice of Changes:** The Note Holder will deliver or mail to me a notice of any changes in my interest rate as required by applicable law. The notice will include information about any changes to my payment amount.

3. PAYMENTS.

(A) Payment Options and Schedule:

Check One:

☒ **Interest Payments:** I will pay accrued interest beginning on 01/01/07 as follows: check one:

☒ monthly or ☐ quarterly ("Interest Payments"). The amount of each interest payment will vary depending upon the amount of principal outstanding, the date principal payments or installment payments are received and if Section 2 of this Note provides for an Adjustable Rate, the interest rate then in effect. In addition, I will make the following Payments:

Check One:

☒ **Principal Reduction Payments and/or a Balloon Payment:** In addition to the interest payments, I will make principal payments as set forth in the Payment Schedule below:

☐ **Installment Payments:** For purposes of this Section 3, the "Payment Change Date" is the first payment due date that is at least 26 days after the "Anniversary Date." The Anniversary Date is the date that is _____ year(s) after the Note Date. Beginning on the Payment Change Date, in place of interest payments, I will make installment payments of principal and interest. On the Anniversary Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal balance in full over the period of time ending on the Maturity Date as defined in Paragraph (D) with interest at the rate set in accordance with Section 2. The result of this calculation will be my new payment amount. The Note Holder will give me notice of this new payment amount. This payment amount is estimated in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, this payment amount may change. On each subsequent Change Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount beginning on the first payment due date which is at least 26 days after the Change Date. I will pay my new payment amount until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

☐ **Installment Payments or Installment Payments with a Balloon Payment:** I will pay the unpaid principal and interest in installment payments as set forth in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, the payment amounts, including the final payment, as set forth in the Payment Schedule may change. On each Change Date, the Note Holder will determine the ☐ monthly ☐ quarterly ☐ semi-annual or ☐ annual payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount. I will pay my new payment amount beginning on the first payment due date after the Change Date until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

Payment Schedule:

Number of Payments	Payment Amount	Frequency	Start/Due Date	Number of Payments	Payment Amount	Frequency	Start/Due Date
60	\$ Interest Only	M	01/01/07		\$		
1	\$ 148423.40	M	12/01/11		\$		
Frequency Legend: M = Monthly Q = Quarterly S = Semi Annually A = Annually							

(B) **Place of Payments:** I will make my payments in U.S. funds payable to the Note Holder at the address provided to me by the Note Holder or at a different address if required by the Note Holder.

(C) **Application of Payments:** Unless otherwise prohibited by the law governing this Note, each payment I make on this Note will first reduce the amount of accrued unpaid interest, then any optional insurance premiums due, then any applicable unpaid charges and then unpaid Principal. I will make payments until I have paid all of the Principal and interest and any other fees or charges that I may owe under the terms of this Note.

(D) **Maturity Date:** If on 12/01/11, I still owe any amount under this Note, I will pay those amounts in full on that date which is called the "Maturity Date."

(E) **Optional Credit Insurance:** If I have selected optional credit insurance offered by the Note Holder in connection with this loan, the payment amount(s) shown in the Payment Schedule include the premiums for the insurance coverage(s) that I have selected. I understand that the actual total premium amount I pay will depend upon my payment record.

I understand that credit life and credit disability (accident and health) insurance are not required, and that I may cancel them at any time by giving written notice to you. If my credit insurance is canceled, no further portion of any payments I make will be applied to credit insurance premiums. At my request, you will adjust my payment amount to reflect the cancellation of the credit insurance. If my credit insurance is cancelled and Section 2 of this Note provides for an Adjustable Rate, on the next Change Date the cancellation of the credit insurance will be considered in determining my new payment amount.

(F) **Balloon Payment:** If the Payment Schedule requires me to make a final payment that is significantly larger than any other payment ("Balloon Payment"), I understand that I may be required to make this Balloon Payment on the Maturity Date. I understand that the law governing this Note may provide me with a right to refinance any Balloon Payment. If I have a right to refinance any Balloon Payment, the Note Holder will advise me as to whether I have a limited right to refinance and the terms surrounding such refinance. Otherwise, I understand that the Balloon Payment disclosed above will be due and payable on the Due Date disclosed above.

4. FEES AND CHARGES. In addition to interest and other amounts I may agree to pay, I agree to pay the Note Holder the following additional fees and charges:

(A) **Late Charges:** The following late charges will apply to the extent the Note is governed by the laws of the jurisdiction referenced in the subsection header or text:

(i) **Alabama:** If a payment is not received in full within 10 days of the date it is due, I will pay a late charge equal to 5% of the unpaid portion of the scheduled payment amount or \$10.00, whichever is greater. However, the late charge will never be greater than \$100.00.

(ii) **Connecticut:** If a payment is not received in full within 10 days of the date it is due, I will pay a late charge equal to 5% of the unpaid portion of the scheduled payment amount or \$10.00, whichever is less.

(iii) **Delaware:** If a payment is not received in full within 10 days of the date it is due, I will pay a late charge equal to 5% of the scheduled payment amount.

(iv) **District of Columbia, Florida, Georgia, Maryland, Tennessee, Texas, or Virginia:** If a payment is not received in full within 10 days of the date it is due, I will pay a late charge equal to 5% of the unpaid portion of the scheduled payment amount.

(v) **Mississippi:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount or \$5.00, whichever is greater. However, the late charge will never be greater than \$50.00.

(vi) **New Jersey:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 5% of the unpaid portion of the scheduled payment amount.

(vii) **North Carolina:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount.

(viii) **Pennsylvania:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 5% of the scheduled payment amount.

(ix) **South Carolina:** If a payment is not received in full within 10 days of the date it is due, I will pay a late charge equal to 5% of the unpaid portion of the scheduled payment amount. However, the late charge will never be less than \$5.80 or more than \$14.50. These amounts may change so as to always be the maximum amount allowed by law.

(B) **Returned Payment Fee:** Unless otherwise limited or prohibited by the law governing this Note, I will pay a charge of up to \$25.00 for each payment (check or automatic payment) that I make that is returned or dishonored for any reason.

(C) **Prepayment Charge:** If this Note is governed by the laws of Connecticut, Delaware, Florida, Georgia, Tennessee or Virginia, and I prepay this Note in full at any time prior to the expiration of 2/3rds of the term of this Note, I will pay a prepayment penalty of \$100.00. If this Note is governed by Maryland law and Lender will be secured in the first lien position as of the date of this Note, and if I make a full prepayment of the Principal at any time prior to the expiration of 2/3rds of the term of this Note, I will pay a prepayment penalty of \$100.00. If this Note is governed by the laws of a jurisdiction other than those referenced in this subsection above, I will not have to pay a prepayment penalty.

(D) **Origination Fee:** If an origination fee or other fee or charge is charged as included on the HUD-1, HUD-1A, or Itemization of Amount Financed prepared in connection with this loan transaction, I agree to pay such fees and charges. Except as otherwise required by law, I agree that such fees and charges are fully earned as of the date of this Note and are nonrefundable upon prepayment.

(E) **Additional Charges:** I agree that if, during the term of this Note, I request other services related to servicing or administering my loan for which the Note Holder has a scheduled charge, I will, to the extent permitted by the law governing this Note, pay the Note Holder the then current fee for such services or request if the Note Holder agrees to perform such service or request. I understand that any such fees are fully earned when charged and are nonrefundable upon prepayment.

5. BORROWER'S FAILURE TO PAY AS REQUIRED AND TERMS OF DEFAULT.

(A) **Terms of Default:** I will be in Default under this Note if any of the following things happen:

(i) If I fail to make any payment or comply with any of the terms of this Note or any other note with the Note Holder now or in the future; or

(ii) If I make any false, incorrect or misleading representation or warranty at any time during the application process; or

(iii) If I die; or

(iv) If I become involved in any bankruptcy or insolvency proceeding; or

(v) If the collateral described in Section 6 or any schedule to this Note is used in violation of any law or regulation or if a judgment or lien is filed or levied against me or the collateral or the collateral is impaired, damaged, or removed from the custody of the Note Holder; or

(vi) If I fail to abide by the term(s) of any Security Instrument or other documents described in Section 6 which secure payment of this Note.

(B) **Notice of Default:** If I am in Default, then the entire Principal balance, accrued interest, fees, and collection costs permitted to be collected under applicable law will be immediately due and payable. At its option or if required by law, the Note Holder may send me a written notice informing me of said Default and acceleration. If I make any payment after the Note Holder has demanded payment of the entire balance due, my payment will be applied to the unpaid balance due under this Note. The unpaid balance consists of the Principal Amount remaining due, plus accrued finance charges, unpaid Late Charges, collection costs, and all other amounts due to the Note Holder under this Note. The Note Holder shall also have other rights and remedies provided by law. If the net proceeds of collateral sold do not pay my indebtedness in full, I will pay the Note Holder the difference, plus interest at the Note Interest Rate until the unpaid balance is paid in full. Any Default of this Note will also constitute an event of Default of any separate Mortgage, Deed of Trust or Security Deed securing this Note ("Security Instrument") or Pledge Agreement securing this Note. Upon Default, the Note Holder may proceed to enforce the terms of this Note or enforce any rights that it may have under the Security Instrument or Pledge Agreement.

(C) **No Waiver by Note Holder:** Even if, at a time when I am in Default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in Default at a later time. Any failure to enforce any provision of this Note by the Note Holder shall not constitute any waiver of such rights of the Note Holder to subsequently enforce such rights or remedies.

(D) **Payment of the Note Holder's Costs and Expenses:** If the Note Holder has required me to pay immediately in full as described above, and I fail to do so and such failure causes the Note Holder to incur additional expenses, the Note Holder will have the right to a refund of all of its costs and expenses to the extent not prohibited by the law governing this Note. Those expenses include, for example, reasonable attorneys' fees for an attorney who is not the Note Holder's salaried employee, foreclosure fees and court costs. In no event shall these expenses exceed fifteen percent (15%) of the unpaid balance plus Court Costs.

6. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT. In addition to the protections given to the Note Holder under this Note, a separate Security Instrument(s), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Subject to applicable law, I understand that this loan is subject to repayment in full in the event the Property securing this debt is sold, conveyed or otherwise transferred.

If in addition to a Security Instrument, I pledge securities, cash accounts or other liquid collateral (the "Other Collateral") as Other Collateral for this Note, then I grant to the Note Holder a perfected security interest in such Other Collateral and all additions or replacements to, or proceeds of as is more fully described in the separate Collateral Pledge Agreement (the "Pledge Agreement") executed as of the same date as this Note. The Pledge Agreement describes the Other Collateral in detail and protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. The Pledge Agreement also describes how and under what conditions I may also be required to make immediate payment in full of all amounts that I owe under this Note. I agree to these conditions. If the Other Collateral includes securities, I agree to deliver immediately to the Note Holder, fully endorsed, any certificates for shares representing any stock dividend, stock split or right to subscribe. I further pledge and agree to deliver to the Note Holder, upon demand, additional Other Collateral satisfactory to the Note Holder and in accordance with all margin requirements. If I do not provide the Note Holder with a perfected security interest in the Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest, I will be responsible for such expenses.

If I do not provide or assist the Note Holder in obtaining a perfected security interest in the Property or Other Collateral and the Note Holder incurs any expenses, including attorney's fees, in order to obtain a perfected security interest in such Property or Other Collateral, to the extent not otherwise prohibited by the law governing this Note, I agree that the Note Holder may add the amount of such expenses to the Principal and that such expenses will accrue interest at the Note Interest Rate until paid in full.

7. PREPAYMENT.

(A) Subject to the order of application of payments described in Section 3, I have the right to make payments of Principal at any time before they are due. A prepayment of all unpaid Principal is known as a "full prepayment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment."

(B) If I make a partial prepayment, my next due date may be advanced. If I make a payment that is more than the amount that is due, the amount in excess of the amount due is called an "Excess Payment." If I make an Excess Payment, the Note Holder will assume that I want to reduce or skip my next scheduled payment or payments. If the Excess Payment is less than or equal to the next scheduled payment, the next scheduled payment will be reduced by the amount of the Excess Payment. If the Excess Payment exceeds the amount of my next scheduled payment, the number of payments that may be skipped will be determined by subtracting each subsequently scheduled payment from the Excess Payment. So long as the remaining portion of the Excess Payment exceeds the next scheduled payment amount, that payment may be skipped. When the remaining portion of the Excess Payment is equal to or less than my next scheduled payment, that remaining portion will be used to reduce the amount of the next scheduled payment. If I want the Note Holder to handle an Excess Payment differently, I will tell the Note Holder in writing. I understand that interest will continue to accrue on the outstanding principal balance and that if I want maximum interest savings from Excess Payments, I should continue to make payments on or before the scheduled due date.

8. BORROWER'S WAIVERS. I waive my rights to require the Note Holder to do certain things. Those things are: (a) to demand payment of amounts due (known as "presentment"); (b) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (c) to obtain an official certification of non-payment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "Guarantors," "Sureties," "Co-Signers" and "Endorsers."

9. GIVING OF NOTICES.

(A) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address contained in this Note. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

(B) Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address provided to me by the Note Holder. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

10. PAYMENT IN FULL. I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL," WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, NATIONAL ASSOCIATION, SPECIAL PAYOFFS, PO BOX 10723, ROANOKE, VA 24022. ACCEPTANCE OF ANY PAYMENT SENT TO THE SPECIAL HANDLING ADDRESS DOES NOT WAIVE THE NOTE HOLDER'S RIGHT TO SUBSEQUENTLY REJECT SUCH PAYMENT IN ACCORDANCE WITH APPLICABLE LAW.

11. EXTENSIONS AND MODIFICATIONS. All Guarantors, Sureties, Co-Signers, Endorsers and I consent to any and all extensions of time, renewals, waivers or modifications which may be granted or consented to by the Note Holder as to the time of payment or any other provision of this Note. If in its sole discretion, the Note Holder permits an extension, renewal or modification to this Note, I agree to pay a charge not to exceed an amount permitted by the law governing this Note. All Guarantors, Sureties, Co-Signers, Endorsers and Makers hereby waive presentment, notice of dishonor, and protest hereof. This Note is the joint and several obligation of each Maker and shall be binding upon them and their heirs, successors and assigns.

12. INSURANCE REQUIREMENTS. I agree to purchase property/hazard insurance insuring the Property against loss and as required by the Security Instrument. I acknowledge that I may obtain property/hazard insurance from any insurance company of my choice, subject to the Note Holder's right of approval which shall not be unreasonably withheld. Unless I provide the Note Holder with evidence of the insurance coverage required by my agreement with the Note Holder, the Note Holder may purchase insurance at my expense to protect the Note Holder's interests in the Property. This insurance may, but need not, protect my interests. The coverage that the Note Holder purchases may not pay any claim that I make or any claim that is made against me in connection with the Property. I may later cancel any insurance purchased by the Note Holder, but only after providing the Note Holder with evidence that I have obtained insurance as required by our agreement. If the Note Holder purchases insurance for the Property, I will be responsible for the costs of the insurance, including interest and any other charges the Note Holder may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added to the Principal and will accrue interest at the Note Interest Rate. I understand that the costs of the insurance obtained by the Note Holder may be more than the cost of insurance I may be able to obtain on my own.

13. RESPONSIBILITY OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each of us is jointly and severally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any Guarantor, Surety, Co-Signer or Endorser of this Note (as described in Section 8 above) jointly and severally guarantee the payment, when due, to any Note Holder hereof of all amounts from time to time owing on this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. I and any Guarantor, Surety, Co-Signer or Endorser of this Note further agree that the failure by the Note Holder to perfect any security interest granted by this Note shall not affect my liability or the liability of any Guarantor hereon.

14. GOVERNING LAW. This Note shall be governed by federal law and, to the extent not preempted by federal law, the laws of the State where the Property securing this loan is located. If the Property securing this debt is located in Maryland, to the extent this Note is governed by Maryland law, this Note is governed by Md. Code Ann., Commercial Law §12-1001 et. seq. and applicable federal law.

15. GENERAL PROVISIONS. I agree that I may not sell, assign or otherwise transfer my rights or obligations under this Note and that such action will be void. Any person who takes over my rights or obligations under this Note by operation of law will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of any Guarantor, Surety, Co-Signer or Endorser of this Note is also obligated to keep all of the promises made in this Note. This Note is intended by the Note Holder and me as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in writing signed by the Note Holder and me. This Note benefits the Note Holder, its successors and assigns, and binds me and my heirs, personal representatives and assigns. If any provision of this Note shall for any reason be held to be invalid or unenforceable, such determination shall not affect the enforceability of the remaining provisions of this Note. Headings are for convenience of reference only and shall not affect the construction of this Note or any other document associated with this loan.

16. SAVINGS AND COMPLIANCE. It is the intention of you and me to comply with applicable law. In each and every instance, our rights shall be limited by applicable law (to the extent such laws may not be effectively waived), construed so as to comply with such laws, and our rights may not be exercised except to the extent permitted by applicable law. No part of this agreement, nor any charge or receipt by you, is supposed to permit you to impose interest or other amounts in excess of lawful amounts. If an excess occurs, you will apply it as a credit or otherwise refund it and the rate or amount involved will automatically be reduced to the maximum lawful rate or amount. To the extent permitted by law, for purposes of determining your compliance with law, you may calculate charges by amortizing, prorating, allocating and spreading any such charges.

17. DOCUMENTARY TAX. For loans secured by real property located in Florida, the state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

NOTICE TO BORROWER:

1. CAUTION: IT IS IMPORTANT THAT THE BORROWER THOROUGHLY READS THIS NOTE BEFORE THE BORROWER SIGNS IT.
2. THIS NOTE IS SECURED BY EITHER A FIRST OR SUBORDINATE LIEN ON REAL PROPERTY.
3. THIS NOTE MAY PROVIDE FOR THE PAYMENT OF A PENALTY IF THE BORROWER WISHES TO REPAY THIS NOTE PRIOR TO THE DATE PROVIDED FOR REPAYMENT IN THIS NOTE.
4. THE BORROWER IS ENTITLED TO A COPY OF THIS NOTE.
5. DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES.
6. THE BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

For Texas residents only: NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS _____ PERCENT PER YEAR.

By signing and sealing this Note, I agree under seal to the terms set forth above.

Chad Kurtz by Helen R. Roper
his attorney in fact [SEAL]
Borrower CHAD KURTZ by Helen R. Roper, his Attorney-in-Fact

_____[SEAL]
Borrower

Any Guarantor, Surety, Co-Signer or Endorser of this Note acknowledges receipt and execution of the Co-Signer's Notice.

_____[SEAL]
Guarantor - Co-Signer

_____[SEAL]
Guarantor - Co-Signer

FOR OFFICE USE ONLY
Endorsement. Pay to the Order of _____
Without Recourse _____
By: _____ Name: _____ Title: _____

EXHIBIT

E

BK: 41
RC: 3036090

LOC:

LN TP: 96
127710/00

Date: 03/16/07

Ref. No. 0704500432
Acct. No.

Note

BORROWER(S):
SPENCER LEE MORGAN3055 GABLE BROOK DR
CHATTANOOGA, TN 37421Amount Financed \$ 130279.30

1. **BORROWER(S) PROMISE TO PAY.** In return for a loan that I have received, the undersigned Borrower(s) (hereinafter referred to as "I," "me," or "my") jointly and severally promise to pay to Wachovia Bank, National Association, a national banking association organized and existing under the law of the United States of America ("Lender"), the sum of \$ 130279.30 (this amount will be called "Principal"), plus daily simple interest ("Interest") beginning on the date that Principal is advanced. The Principal may include points, origination fees and other amounts permitted by applicable law. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note and who is entitled to receive payments under this Note will be called the "Note Holder."

2. **INTEREST.** Interest will accrue on the entire Principal balance outstanding at any time. Notwithstanding anything to the contrary, I do not agree to pay and the Note Holder does not intend to charge any interest at a rate that is higher than the maximum rate of interest that could be charged under applicable law for the extension of credit that is agreed to under this Note (either before or after maturity). If any notice of interest accrual is sent and is in error, and if the Note Holder actually collects more interest than allowed by law or this Note, the Note Holder agrees to refund any such excess interest.

I agree to pay interest on the unpaid Principal balance of this Note owing after maturity, and until paid in full at the same rate in effect before maturity. I agree that any loan origination fee paid to the Note Holder is earned as of the date of this Note.

Interest accrues on the Principal remaining unpaid from time to time, until paid in full. The Interest Rate, as defined in this Section 2 below, will be charged at a rate of 1/365th of the Interest Rate for each day, or 1/366th of the Interest Rate for each day in any leap year, applied against that day's outstanding Principal balance. The dollar amount of the finance charge and the payments disclosed to me for this credit transaction are based upon my payments being received by the Note Holder on the date payments are due. If my payments are received after the due date, even if received before the date a Late Charge as permitted by Section 4 applies, I may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of Principal. This is a result of the accrual of daily interest.

To the extent that any fees or charges are added to the Principal balance, they will thereafter bear interest and I agree to pay this interest. I understand that in the event my first payment due date is more than one month from the date of this Note, one or more of my initial payments may not pay all of the interest owed on the date of the payment and therefore may not reduce the outstanding Principal balance.

If the governing law which applies to this Note sets maximum loan charges and is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial payment.

Check One:

☒ Fixed Rate:I agree to pay interest on the outstanding Principal balance at a fixed annual rate of 6.89 % ("Interest Rate").☐ Adjustable Rate:

(A) Interest Rate: I agree to pay interest on the outstanding Principal balance at the initial annual rate of N/A % ("Interest Rate") until the first Change Date as defined in Paragraph (B) below. Thereafter, the Interest Rate I pay may change as of each Change Date and will be calculated pursuant to Paragraph (D) below. My initial annual rate may not be related to the formula used to determine later rates.

(B) Date Definitions:

(i) Change Date: Each date on which the Interest Rate may change is called the Change Date. The Interest Rate may change _____ and every _____ month(s) thereafter.

(ii) Index Date: The 25th day of each month is an "Index Date." If the Index is not published on the 25th day of the month, then the Index Date shall be the first day prior to the 25th day of the month on which the Index is published.

(iii) Look-back Date: The date that is 30 days prior to a Change Date is called the "Look-back Date."

(C) The Index: Check One:

☐ The "Index" is the "Prime Rate" as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one Prime Rate published on an Index Date, then the Note Holder will use the higher of such prime rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of the Prime Rate.

- ☐ The "Index" is the average of interbank offered rates for _____ month U.S. dollar-denominated deposits in the London market ("LIBOR") as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one LIBOR published on an Index Date, then the Note Holder will use the higher of such LIBOR rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of LIBOR.
- (D) Calculation of New Interest Rate: The new annual interest rate that will be applicable beginning on each Change Date will be determined as follows:

Check One:

- ☐ The new annual interest rate will be equal to the index published on the Index Date for the calendar month immediately preceding the Look-back Date for that Change Date, rounded down to the nearest .01%, plus _____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.
- ☐ The new annual interest rate will be equal to the index published on the Index Date for the calendar month immediately preceding that Change Date, rounded down to the nearest .01%, plus _____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.

- (E) Limits on Interest Rate Changes: My interest rate will never be greater than _____% or less than 0%.

☐ If this box is checked, the interest rate will be subject to the additional limitations on increases. The interest rate I am required to pay at the first Change Date will never be greater than _____%. Thereafter increases will be subject to an additional limitation on each Change Date such that the interest rate I pay will never be increased on any single Change Date by more than 2% from the interest rate I have been paying for the preceding 12 months.

☐ If this box is checked, there will be no additional limitation on increases in my interest rate.

- (F) Notice of Changes: The Note Holder will deliver or mail to me a notice of any changes in my interest rate as required by applicable law. The notice will include information about any changes to my payment amount.

3. PAYMENTS.

(A) Payment Options and Schedule:

Check One:

- ☒ Interest Payments: I will pay accrued interest beginning on 04/15/07 as follows: check one:
☒ monthly or ☐ quarterly ("Interest Payments"). The amount of each interest payment will vary depending upon the amount of principal outstanding, the date principal payments or installment payments are received and if Section 2 of this Note provides for an Adjustable Rate, the interest rate then in effect. In addition, I will make the following Payments:

Check One:

☒ Principal Reduction Payments and/or a Balloon Payment: In addition to the interest payments, I will make principal payments as set forth in the Payment Schedule below:

☐ Installment Payments: For purposes of this Section 3, the "Payment Change Date" is the first payment due date that is at least 28 days after the "Anniversary Date." The Anniversary Date is the date that is _____ year(s) after the Note Date. Beginning on the Payment Change Date, in place of interest payments, I will make installment payments of principal and interest. On the Anniversary Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal balance in full over the period of time ending on the Maturity Date as defined in Paragraph (D) with interest at the rate set in accordance with Section 2. The result of this calculation will be my new payment amount. The Note Holder will give me notice of this new payment amount. This payment amount is estimated in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, this payment amount may change. On each subsequent Change Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount beginning on the first payment due date which is at least 28 days after the Change Date. I will pay my new payment amount until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

☐ Installment Payments or Installment Payments with a Balloon Payment: I will pay the unpaid principal and interest in installment payments as set forth in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, the payment amounts, including the final payment, as set forth in the Payment Schedule may change. On each Change Date, the Note Holder will determine the ☐ monthly ☐ quarterly ☐ semi-annual or ☐ annual payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount. I will pay my new payment amount beginning on the first payment due date after the Change Date until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

Payment Schedule:

Number of Payments	Payment Amount	Frequency	Start/Due Date	Number of Payments	Payment Amount	Frequency	Start/Due Date
80	\$Interest Only	M	04/15/07		\$		
1	\$130279.30	M	03/15/12		\$		
Frequency Legend: M = Monthly Q = Quarterly S = Semi Annually A = Annually							

(B) **Place of Payments:** I will make my payments in U.S. funds payable to the Note Holder at the address provided to me by the Note Holder or at a different address if required by the Note Holder.

(C) **Application of Payments:** Unless otherwise prohibited by the law governing this Note, each payment I make on this Note will first reduce the amount of accrued unpaid interest, then any optional insurance premiums due, then any applicable unpaid charges and then unpaid Principal. I will make payments until I have paid all of the Principal and interest and any other fees or charges that I may owe under the terms of this Note.

(D) **Maturity Date:** If on 03/15/12, I still owe any amount under this Note, I will pay those amounts in full on that date which is called the "Maturity Date."

(E) **Optional Credit Insurance:** If I have selected optional credit insurance offered by the Note Holder in connection with this loan, the payment amount(s) shown in the Payment Schedule include the premiums for the insurance coverage(s) that I have selected. I understand that the actual total premium amount I pay will depend upon my payment record.

I understand that credit life and credit disability (accident and health) insurance are not required, and that I may cancel them at any time by giving written notice to you. If my credit insurance is canceled, no further portion of any payments I make will be applied to credit insurance premiums. At my request, you will adjust my payment amount to reflect the cancellation of the credit insurance. If my credit insurance is cancelled and Section 2 of this Note provides for an Adjustable Rate, on the next Change Date the cancellation of the credit insurance will be considered in determining my new payment amount.

(F) **Balloon Payment:** If the Payment Schedule requires me to make an estimated final payment that is significantly larger than any other payment ("Balloon Payment"), I understand that I will be required to make this Balloon Payment on the Maturity Date. I understand that the Note Holder is not required to refinance any Balloon Payment and that the failure to make the required Balloon Payment on the Due Date constitutes a Default under the terms of this Note.

4. FEES AND CHARGES. In addition to interest and other amounts I may agree to pay, I agree to pay the Note Holder the following additional fees and charges:

(A) **Late Charges:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount.

(B) **Returned Payment Fee:** Unless otherwise limited or prohibited by the law governing this Note, I will pay a charge of up to \$25.00 for each payment (check or automatic payment) that I make that is returned or dishonored for any reason.

(C) **Origination Fee:** If an origination fee or other fee or charge is charged as included on the HUD-1, HUD-1A, or Itemization of Amount Financed prepared in connection with this loan transaction, I agree to pay such fees and charges. Except as otherwise required by law, I agree that such fees and charges are fully earned as of the date of this Note and are nonrefundable upon prepayment.

(D) **Additional Charges:** I agree that if, during the term of this Note, I request other services related to servicing or administering my loan for which the Note Holder has a scheduled charge, I will, to the extent permitted by the law governing this Note, pay the Note Holder the then current fee for such services or request if the Note Holder agrees to perform such service or request. I understand that any such fees are fully earned when charged and are nonrefundable upon prepayment.

5. BORROWER'S FAILURE TO PAY AS REQUIRED AND TERMS OF DEFAULT.

(A) **Terms of Default:** I will be in Default under this Note if any of the following things happen:

- (i) If I fail to make any payment or comply with any of the terms of this Note or any other note with the Note Holder now or in the future; or
- (ii) If I make any false, incorrect or misleading representation or warranty at any time during the application process; or
- (iii) If I die; or
- (iv) If I become involved in any bankruptcy or insolvency proceeding; or
- (v) If the collateral described in Section 6 or any schedule to this Note is used in violation of any law or regulation or if a judgment or lien is filed or levied against me or the collateral or the collateral is impaired, damaged, or removed from the custody of the Note Holder; or
- (vi) If I fail to abide by the term(s) of any Security Instrument or other documents described in Section 6 which secure payment of this Note.

(B) **Notice of Default:** If I am in Default, then the entire Principal balance, accrued interest, fees, and collection costs permitted to be collected under applicable law will be immediately due and payable. At its option or if required by law, the Note Holder may send me a written notice informing me of said Default and acceleration. If I make any payment after the Note Holder has demanded payment of the entire balance due, my payment will be applied to the unpaid balance due under this Note. The unpaid balance consists of the Principal Amount remaining due, plus accrued finance charges, unpaid Late Charges, collection costs, and all other amounts due to the Note Holder under this Note. The Note Holder shall also have other rights and remedies provided by law. If the net proceeds of collateral sold do not pay my indebtedness in full, I will pay the Note Holder the difference, plus interest at the Note Interest Rate until the unpaid balance is paid in full. Any Default of this Note will also constitute an event of Default of any separate Mortgage, Deed of Trust or Security Deed securing this Note ("Security Instrument") or Pledge Agreement securing this Note. Upon Default, the Note Holder may proceed to enforce the terms of this Note or enforce any rights that it may have under the Security Instrument or Pledge Agreement.

(C) **No Waiver by Note Holder:** Even if, at a time when I am in Default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in Default at a later time. Any failure to enforce any provision of this Note by the Note Holder shall not constitute any waiver of such rights of the Note Holder to subsequently enforce such rights or remedies.

(D) Payment of the Note Holder's Costs and Expenses: If the Note Holder has required me to pay immediately in full as described above, and I fail to do so and such failure causes the Note Holder to incur additional expenses, the Note Holder will have the right to a refund of all of its costs and expenses to the extent not prohibited by the law governing this Note. Those expenses include, for example, reasonable attorneys' fees for an attorney who is not the Note Holder's salaried employee, foreclosure fees and court costs. In no event shall these expenses exceed fifteen percent (15%) of the unpaid balance plus Court Costs.

6. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT. In addition to the protections given to the Note Holder under this Note, a separate Security Instrument(s), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Subject to applicable law, I understand that this loan is subject to repayment in full in the event the Property securing this debt is sold, conveyed or otherwise transferred.

If in addition to a Security Instrument, I pledge securities, cash accounts or other liquid collateral (the "Other Collateral") as Other Collateral for this Note, then I grant to the Note Holder a perfected security interest in such Other Collateral and all additions or replacements to, or proceeds of as is more fully described in the separate Collateral Pledge Agreement (the "Pledge Agreement") executed as of the same date as this Note. The Pledge Agreement describes the Other Collateral in detail and protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. The Pledge Agreement also describes how and under what conditions I may also be required to make immediate payment in full of all amounts that I owe under this Note. I agree to these conditions. If the Other Collateral includes securities, I agree to deliver immediately to the Note Holder, fully endorsed, any certificates for shares representing any stock dividend, stock split or right to subscribe. I further pledge and agree to deliver to the Note Holder, upon demand, additional Other Collateral satisfactory to the Note Holder and in accordance with all margin requirements. If I do not provide the Note Holder with a perfected security interest in the Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest, I will be responsible for such expenses.

If I do not provide or assist the Note Holder in obtaining a perfected security interest in the Property or Other Collateral and the Note Holder incurs any expenses, including attorney's fees, in order to obtain a perfected security interest in such Property or Other Collateral, to the extent not otherwise prohibited by the law governing this Note, I agree that the Note Holder may add the amount of such expenses to the Principal and that such expenses will accrue interest at the Note Interest Rate until paid in full.

7. PREPAYMENT.

(A) Subject to the order of application of payments described in Section 3, I have the right to make payments of Principal at any time before they are due without penalty. A prepayment of all unpaid Principal is known as a "full prepayment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment."

(B) If I make a partial prepayment, my next due date may be advanced. If I make a payment that is more than the amount that is due, the amount in excess of the amount due is called an "Excess Payment." If I make an Excess Payment, the Note Holder will assume that I want to reduce or skip my next scheduled payment or payments. If the Excess Payment is less than or equal to the next scheduled payment, the next scheduled payment will be reduced by the amount of the Excess Payment. If the Excess Payment exceeds the amount of my next scheduled payment, the number of payments that may be skipped will be determined by subtracting each subsequently scheduled payment from the Excess Payment. So long as the remaining portion of the Excess Payment exceeds the next scheduled payment amount, that payment may be skipped. When the remaining portion of the Excess Payment is equal to or less than my next scheduled payment, that remaining portion will be used to reduce the amount of the next scheduled payment. If I want the Note Holder to handle an Excess Payment differently, I will tell the Note Holder in writing. I understand that interest will continue to accrue on the outstanding principal balance and that if I want maximum interest savings from Excess Payments, I should continue to make payments on or before the scheduled due date.

8. BORROWER'S WAIVERS. I waive my rights to require the Note Holder to do certain things. Those things are: (a) to demand payment of amounts due (known as "presentment"); (b) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (c) to obtain an official certification of non-payment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "Guarantors," "Sureties," "Co-Signers" and "Endorsers."

9. GIVING OF NOTICES.

(A) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address contained in this Note. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

(B) Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address provided to me by the Note Holder. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

10. PAYMENT IN FULL. I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL" WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, NATIONAL ASSOCIATION, SPECIAL PAYOFFS, P.O. BOX 10723, ROANOKE, VA 24022. ACCEPTANCE OF ANY PAYMENT SENT TO THE SPECIAL HANDLING ADDRESS DOES NOT WAIVE THE NOTE HOLDER'S RIGHT TO SUBSEQUENTLY REJECT SUCH PAYMENT IN ACCORDANCE WITH APPLICABLE LAW.

11. EXTENSIONS AND MODIFICATIONS. All Guarantors, Sureties, Co-Signers, Endorsers and I consent to any and all extensions of time, renewals, waivers or modifications which may be granted or consented to by the Note Holder as to the time of payment or any other provision of this Note. If in its sole discretion, the Note Holder permits an extension, renewal or modification to this Note, I agree to pay a charge not to exceed an amount permitted by the law governing this Note. All Guarantors, Sureties, Co-Signers, Endorsers and Makers hereby waive presentment, notice of dishonor, and protest hereof. This Note is the joint and several obligation of each Maker and shall be binding upon them and their heirs, successors and assigns.

12. INSURANCE REQUIREMENTS. I agree to purchase property/hazard insurance insuring the Property against loss and as required by the Security Instrument. I acknowledge that I may obtain property/hazard insurance from any insurance company of my choice, subject to the Note Holder's right of approval which shall not be unreasonably withheld. Unless I provide the Note Holder with evidence of the insurance coverage required by my agreement with the Note Holder, the Note Holder may purchase insurance at my expense to protect the Note Holder's interests in the Property. This insurance may, but need not, protect my interests. The coverage that the Note Holder purchases may not pay any claim that I make or any claim that is made against me in connection with the Property. I may later cancel any insurance purchased by the Note Holder, but only after providing the Note Holder with evidence that I have obtained insurance as required by our agreement. If the Note Holder purchases insurance for the Property, I will be responsible for the costs of the insurance, including interest and any other charges the Note Holder may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added to the Principal and will accrue interest at the Note Interest Rate. I understand that the costs of the insurance obtained by the Note Holder may be more than the cost of insurance I may be able to obtain on my own.

13. RESPONSIBILITY OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each of us is jointly and severally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any Guarantor, Surety, Co-Signer or Endorser of this Note (as described in Section 8 above) jointly and severally guarantee the payment, when due, to any Note Holder hereof of all amounts from time to time owing on this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. I and any Guarantor, Surety, Co-Signer or Endorser of this Note further agrees that the failure by the Note Holder to perfect any security interest granted by this Note shall not affect my liability or the liability of any Guarantor hereon.

14. GOVERNING LAW. This Note will be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state where the property securing this Note is located. Federal law that governs this Note includes 12 USC 85, which incorporates in part the laws of the State of North Carolina. If the Property securing this debt is located in Maryland, to the extent this Note is governed by Maryland law, this Note is governed by Md. Code Ann., Commercial Law § 12-1001 et. seq. and applicable federal law.

15. GENERAL PROVISIONS. I agree that I may not sell, assign or otherwise transfer my rights or obligations under this Note and that such action will be void. Any person who takes over my rights or obligations under this Note by operation of law will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of any Guarantor, Surety, Co-Signer or Endorser of this Note is also obligated to keep all of the promises made in this Note. This Note is intended by the Note Holder and me as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in writing signed by the Note Holder and me. This Note benefits the Note Holder, its successors and assigns, and binds me and my heirs, personal representatives and assigns. If any provision of this Note shall for any reason be held to be invalid or unenforceable, such determination shall not affect the enforceability of the remaining provisions of this Note. Headings are for convenience of reference only and shall not affect the construction of this Note or any other document associated with this loan.

16. SAVINGS AND COMPLIANCE. It is the intention of you and me to comply with applicable law. In each and every instance, our rights shall be limited by applicable law (to the extent such laws may not be effectively waived), construed so as to comply with such laws, and our rights may not be exercised except to the extent permitted by applicable law. No part of this agreement, nor any charge or receipt by you, is supposed to permit you to impose interest or other amounts in excess of lawful amounts. If an excess occurs, you will apply it as a credit or otherwise refund it and the rate or amount involved will automatically be reduced to the maximum lawful rate or amount. To the extent permitted by law, for purposes of determining your compliance with law, you may calculate charges by amortizing, prorating, allocating and spreading any such charges.

17. DOCUMENTARY TAX. For loans secured by real property located in Florida, the state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

NOTICE TO BORROWER:

1. CAUTION: IT IS IMPORTANT THAT THE BORROWER THOROUGHLY READS THIS NOTE BEFORE THE BORROWER SIGNS IT.
2. THIS NOTE IS SECURED BY EITHER A FIRST OR SUBORDINATE LIEN ON REAL PROPERTY.
3. THE BORROWER IS ENTITLED TO A COPY OF THIS NOTE.
4. DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES.
5. THE BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

For Texas residents only: NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS _____ PERCENT PER YEAR.

By signing and sealing this Note, I agree under seal to the terms set forth above.

Spencer Lee Morgan by Helen R Roper
Helen R Roper [SEAL]
Borrower SPENCER LEE MORGAN by Helen R Roper, his Attorney-in-Fact

_____[SEAL]
Borrower

Any Guarantor, Surety, Co-Signer or Endorser of this Note acknowledges receipt and execution of the Co-Signer's Notice.

_____[SEAL]
Guarantor - Co-Signer

_____[SEAL]
Guarantor - Co-Signer

FOR OFFICE USE ONLY

Endorsement.

Pay to the Order of _____

Without Recourse

By: _____

Name: _____

Title: _____

EXHIBIT F

BK: 41
RC: 3036090

LOC:

LN TP: 96
150300/00

Date: 07/13/07

Ref. No. 0716900332
Acct. No.

Note

BORROWER(S):
ALICIA F O REILLY
RICHARD O REILLY
415 TERRACE BLVD
NEW HYDE PARK, NY 11040

Amount Financed \$ 153147.70

1. BORROWER(S) PROMISE TO PAY. In return for a loan that I have received, the undersigned Borrower(s) (hereinafter referred to as "I," "me," or "my") jointly and severally promise to pay to Wachovia Bank, National Association, a national banking association organized and existing under the law of the United States of America ("Lender"), the sum of \$ 153147.70 (this amount will be called "Principal"), plus daily simple interest ("Interest") beginning on the date that Principal is advanced. The Principal may include points, origination fees and other amounts permitted by applicable law. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note and who is entitled to receive payments under this Note will be called the "Note Holder."

2. INTEREST. Interest will accrue on the entire Principal balance outstanding at any time. Notwithstanding anything to the contrary, I do not agree to pay and the Note Holder does not intend to charge any interest at a rate that is higher than the maximum rate of interest that could be charged under applicable law for the extension of credit that is agreed to under this Note (either before or after maturity). If any notice of interest accrual is sent and is in error, and if the Note Holder actually collects more interest than allowed by law or this Note, the Note Holder agrees to refund any such excess interest.

I agree to pay interest on the unpaid Principal balance of this Note owing after maturity, and until paid in full at the same rate in effect before maturity. I agree that any loan origination fee paid to the Note Holder is earned as of the date of this Note.

Interest accrues on the Principal remaining unpaid from time to time, until paid in full. The Interest Rate, as defined in this Section 2 below, will be charged at a rate of 1/365th of the Interest Rate for each day, or 1/366th of the Interest Rate for each day in any leap year, applied against that day's outstanding Principal balance. The dollar amount of the finance charge and the payments disclosed to me for this credit transaction are based upon my payments being received by the Note Holder on the date payments are due. If my payments are received after the due date, even if received before the date a Late Charge as permitted by Section 4 applies, I may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of Principal. This is a result of the accrual of daily interest.

To the extent that any fees or charges are added to the Principal balance, they will thereafter bear interest and I agree to pay this interest. I understand that in the event my first payment due date is more than one month from the date of this Note, one or more of my initial payments may not pay all of the interest owed on the date of the payment and therefore may not reduce the outstanding Principal balance.

If the governing law which applies to this Note sets maximum loan charges and is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial payment.

Check One:

☒ Fixed Rate:

I agree to pay interest on the outstanding Principal balance at a fixed annual rate of 6.89 % ("Interest Rate").

☐ Adjustable Rate:

(A) Interest Rate: I agree to pay interest on the outstanding Principal balance at the initial annual rate of N/A % ("Interest Rate") until the first Change Date as defined in Paragraph (B) below. Thereafter, the Interest Rate I pay may change as of each Change Date and will be calculated pursuant to Paragraph (D) below. My initial annual rate may not be related to the formula used to determine later rates.

(B) Date Definitions:

(i) Change Date: Each date on which the Interest Rate may change is called the Change Date. The Interest Rate may change _____ and every _____ month(s) thereafter.

(ii) Index Date: The 25th day of each month is an "Index Date." If the Index is not published on the 25th day of the month, then the Index Date shall be the first day prior to the 25th day of the month on which the Index is published.

(iii) Look-back Date: The date that is 30 days prior to a Change Date is called the "Look-back Date."

(C) The Index: Check One:

☐ The "Index" is the "Prime Rate" as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one Prime Rate published on an Index Date, then the Note Holder will use the higher of such prime rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of the Prime Rate.

☐ The "Index" is the average of interbank offered rates for ____ month U.S. dollar-denominated deposits in the London market ("LIBOR") as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one LIBOR published on an Index Date, then the Note Holder will use the higher of such LIBOR rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of LIBOR.

(D) Calculation of New Interest Rate: The new annual interest rate that will be applicable beginning on each Change Date will be determined as follows:

Check One:

☐ The new annual interest rate will be equal to the index published on the Index Date for the calendar month immediately preceding the Look-back Date for that Change Date, rounded down to the nearest .01%, plus ____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.

☐ The new annual interest rate will be equal to the index published on the Index Date for the calendar month immediately preceding that Change Date, rounded down to the nearest .01%, plus ____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.

(E) Limits on Interest Rate Changes: My interest rate will never be greater than ____% or less than 0%.

☐ If this box is checked, the interest rate will be subject to the additional limitations on increases. The interest rate I am required to pay at the first Change Date will never be greater than ____%. Thereafter increases will be subject to an additional limitation on each Change Date such that the interest rate I pay will never be increased on any single Change Date by more than 2% from the interest rate I have been paying for the preceding 12 months.

☐ If this box is checked, there will be no additional limitation on increases in my interest rate.

(F) Notice of Changes: The Note Holder will deliver or mail to me a notice of any changes in my interest rate as required by applicable law. The notice will include information about any changes to my payment amount.

3. PAYMENTS.

(A) Payment Options and Schedule:

Check One:

☒ Interest Payments: I will pay accrued interest beginning on 08/12/07 as follows; check one:
☒ monthly or ☐ quarterly ("Interest Payments"). The amount of each interest payment will vary depending upon the amount of principal outstanding, the date principal payments or installment payments are received and if Section 2 of this Note provides for an Adjustable Rate, the interest rate then in effect. In addition, I will make the following Payments:

Check One:

☒ Principal Reduction Payments and/or a Balloon Payment: In addition to the interest payments, I will make principal payments as set forth in the Payment Schedule below:

☐ Installment Payments: For purposes of this Section 3, the "Payment Change Date" is the first payment due date that is at least 26 days after the "Anniversary Date." The Anniversary Date is the date that is ____ year(s) after the Note Date. Beginning on the Payment Change Date, in place of interest payments, I will make installment payments of principal and interest. On the Anniversary Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal balance in full over the period of time ending on the Maturity Date as defined in Paragraph (D) with interest at the rate set in accordance with Section 2. The result of this calculation will be my new payment amount. The Note Holder will give me notice of this new payment amount. This payment amount is estimated in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, this payment amount may change. On each subsequent Change Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount beginning on the first payment due date which is at least 26 days after the Change Date. I will pay my new payment amount until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

☐ Installment Payments or Installment Payments with a Balloon Payment: I will pay the unpaid principal and interest in installment payments as set forth in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, the payment amounts, including the final payment, as set forth in the Payment Schedule may change. On each Change Date, the Note Holder will determine the ☐ monthly ☐ quarterly ☐ semi-annual or ☐ annual payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount. I will pay my new payment amount beginning on the first payment due date after the Change Date until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

Payment Schedule:

Number of Payments	Payment Amount	Frequency	Start/Due Date	Number of Payments	Payment Amount	Frequency	Start/Due Date
36	\$ Interest Only	M	08/12/07		\$		
-1	\$ 153147.70	M	07/12/10		\$		
Frequency Legend: M = Monthly Q = Quarterly S = Semi Annually A = Annually							

(B) **Place of Payments:** I will make my payments in U.S. funds payable to the Note Holder at the address provided to me by the Note Holder or at a different address if required by the Note Holder.

(C) **Application of Payments:** Unless otherwise prohibited by the law governing this Note, each payment I make on this Note will first reduce the amount of accrued unpaid interest, then any optional insurance premiums due, then any applicable unpaid charges and then unpaid Principal. I will make payments until I have paid all of the Principal and interest and any other fees or charges that I may owe under the terms of this Note.

(D) **Maturity Date:** If on 07/12/10, I still owe any amount under this Note, I will pay those amounts in full on that date which is called the "Maturity Date."

(E) **Optional Credit Insurance:** If I have selected optional credit insurance offered by the Note Holder in connection with this loan, the payment amount(s) shown in the Payment Schedule include the premiums for the insurance coverage(s) that I have selected. I understand that the actual total premium amount I pay will depend upon my payment record.

I understand that credit life and credit disability (accident and health) insurance are not required, and that I may cancel them at any time by giving written notice to you. If my credit insurance is canceled, no further portion of any payments I make will be applied to credit insurance premiums. At my request, you will adjust my payment amount to reflect the cancellation of the credit insurance. If my credit insurance is cancelled and Section 2 of this Note provides for an Adjustable Rate, on the next Change Date the cancellation of the credit insurance will be considered in determining my new payment amount.

(F) **Balloon Payment:** If the Payment Schedule requires me to make an estimated final payment that is significantly larger than any other payment ("Balloon Payment"), I understand that I will be required to make this Balloon Payment on the Maturity Date. I understand that the Note Holder is not required to refinance any Balloon Payment and that the failure to make the required Balloon Payment on the Due Date constitutes a Default under the terms of this Note.

4. FEES AND CHARGES. In addition to interest and other amounts I may agree to pay, I agree to pay the Note Holder the following additional fees and charges:

(A) **Late Charges:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount.

(B) **Returned Payment Fee:** Unless otherwise limited or prohibited by the law governing this Note, I will pay a charge of up to \$25.00 for each payment (check or automatic payment) that I make that is returned or dishonored for any reason.

(C) **Origination Fee:** If an origination fee or other fee or charge is charged as included on the HUD-1, HUD-1A, or Itemization of Amount Financed prepared in connection with this loan transaction, I agree to pay such fees and charges. Except as otherwise required by law, I agree that such fees and charges are fully earned as of the date of this Note and are nonrefundable upon prepayment.

(D) **Additional Charges:** I agree that if, during the term of this Note, I request other services related to servicing or administering my loan for which the Note Holder has a scheduled charge, I will, to the extent permitted by the law governing this Note, pay the Note Holder the then current fee for such services or request if the Note Holder agrees to perform such service or request. I understand that any such fees are fully earned when charged and are nonrefundable upon prepayment.

5. BORROWER'S FAILURE TO PAY AS REQUIRED AND TERMS OF DEFAULT.

(A) **Terms of Default:** I will be in Default under this Note if any of the following things happen:

(i) If I fail to make any payment or comply with any of the terms of this Note or any other note with the Note Holder now or in the future; or

(ii) If I make any false, incorrect or misleading representation or warranty at any time during the application process; or

(iii) If I die; or

(iv) If I become involved in any bankruptcy or insolvency proceeding; or

(v) If the collateral described in Section 8 or any schedule to this Note is used in violation of any law or regulation or if a judgment or lien is filed or levied against me or the collateral or the collateral is impaired, damaged, or removed from the custody of the Note Holder; or

(vi) If I fail to abide by the term(s) of any Security Instrument or other documents described in Section 8 which secure payment of this Note.

(B) **Notice of Default:** If I am in Default, then the entire Principal balance, accrued interest, fees, and collection costs permitted to be collected under applicable law will be immediately due and payable. At its option or if required by law, the Note Holder may send me a written notice informing me of said Default and acceleration. If I make any payment after the Note Holder has demanded payment of the entire balance due, my payment will be applied to the unpaid balance due under this Note. The unpaid balance consists of the Principal Amount remaining due, plus accrued finance charges, unpaid Late Charges, collection costs, and all other amounts due to the Note Holder under this Note. The Note Holder shall also have other rights and remedies provided by law. If the net proceeds of collateral sold do not pay my indebtedness in full, I will pay the Note Holder the difference, plus interest at the Note Interest Rate until the unpaid balance is paid in full. Any Default of this Note will also constitute an event of Default of any separate Mortgage, Deed of Trust or Security Deed securing this Note ("Security Instrument") or Pledge Agreement securing this Note. Upon Default, the Note Holder may proceed to enforce the terms of this Note or enforce any rights that it may have under the Security Instrument or Pledge Agreement.

(C) **No Waiver by Note Holder:** Even if, at a time when I am in Default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in Default at a later time. Any failure to enforce any provision of this Note by the Note Holder shall not constitute any waiver of such rights of the Note Holder to subsequently enforce such rights or remedies.

(D) Payment of the Note Holder's Costs and Expenses: If the Note Holder has required me to pay immediately in full as described above, and I fail to do so and such failure causes the Note Holder to incur additional expenses, the Note Holder will have the right to a refund of all of its costs and expenses to the extent not prohibited by the law governing this Note. Those expenses include, for example, reasonable attorneys' fees for an attorney who is not the Note Holder's salaried employee, foreclosure fees and court costs. In no event shall these expenses exceed fifteen percent (15%) of the unpaid balance plus Court Costs.

6. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT. In addition to the protections given to the Note Holder under this Note, a separate Security Instrument(s), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Subject to applicable law, I understand that this loan is subject to repayment in full in the event the Property securing this debt is sold, conveyed or otherwise transferred.

If in addition to a Security Instrument, I pledge securities, cash accounts or other liquid collateral (the "Other Collateral") as Other Collateral for this Note, then I grant to the Note Holder a perfected security interest in such Other Collateral and all additions or replacements to, or proceeds of as is more fully described in the separate Collateral Pledge Agreement (the "Pledge Agreement") executed as of the same date as this Note. The Pledge Agreement describes the Other Collateral in detail and protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. The Pledge Agreement also describes how and under what conditions I may also be required to make immediate payment in full of all amounts that I owe under this Note. I agree to these conditions. If the Other Collateral includes securities, I agree to deliver immediately to the Note Holder, fully endorsed, any certificates for shares representing any stock dividend, stock split or right to subscribe. I further pledge and agree to deliver to the Note Holder, upon demand, additional Other Collateral satisfactory to the Note Holder and in accordance with all margin requirements. If I do not provide the Note Holder with a perfected security interest in the Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest, I will be responsible for such expenses.

If I do not provide or assist the Note Holder in obtaining a perfected security interest in the Property or Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest in such Property or Other Collateral, to the extent not otherwise prohibited by the law governing this Note, I agree that the Note Holder may add the amount of such expenses to the Principal and that such expenses will accrue interest at the Note Interest Rate until paid in full.

7. PREPAYMENT.

(A) Subject to the order of application of payments described in Section 3, I have the right to make payments of Principal at any time before they are due without penalty. A prepayment of all unpaid Principal is known as a "full prepayment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment."

(B) If I make a partial prepayment, my next due date may be advanced: If I make a payment that is more than the amount that is due, the amount in excess of the amount due is called an "Excess Payment." If I make an Excess Payment, the Note Holder will assume that I want to reduce or skip my next scheduled payment or payments. If the Excess Payment is less than or equal to the next scheduled payment, the next scheduled payment will be reduced by the amount of the Excess Payment. If the Excess Payment exceeds the amount of my next scheduled payment, the number of payments that may be skipped will be determined by subtracting each subsequently scheduled payment from the Excess Payment. So long as the remaining portion of the Excess Payment exceeds the next scheduled payment amount, that payment may be skipped. When the remaining portion of the Excess Payment is equal to or less than my next scheduled payment, that remaining portion will be used to reduce the amount of the next scheduled payment. If I want the Note Holder to handle an Excess Payment differently, I will tell the Note Holder in writing. I understand that interest will continue to accrue on the outstanding principal balance and that if I want maximum interest savings from Excess Payments, I should continue to make payments on or before the scheduled due date.

8. BORROWER'S WAIVERS. I waive my rights to require the Note Holder to do certain things. Those things are: (a) to demand payment of amounts due (known as "presentment"); (b) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (c) to obtain an official certification of non-payment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "Guarantors," "Sureties," "Co-Signers" and "Endorsers."

9. GIVING OF NOTICES.

(A) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address contained in this Note. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

(B) Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address provided to me by the Note Holder. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

10. PAYMENT IN FULL. I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL" WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, NATIONAL ASSOCIATION, SPECIAL PAYOFFS, PO BOX 10723, ROANOKE, VA 24022. ACCEPTANCE OF ANY PAYMENT SENT TO THE SPECIAL HANDLING ADDRESS DOES NOT WAIVE THE NOTE HOLDER'S RIGHT TO SUBSEQUENTLY REJECT SUCH PAYMENT IN ACCORDANCE WITH APPLICABLE LAW.

11. EXTENSIONS AND MODIFICATIONS. All Guarantors, Sureties, Co-Signers, Endorsers and I consent to any and all extensions of time, renewals, waivers or modifications which may be granted or consented to by the Note Holder as to the time of payment or any other provision of this Note. If in its sole discretion, the Note Holder permits an extension, renewal or modification to this Note, I agree to pay a charge not to exceed an amount permitted by the law governing this Note. All Guarantors, Sureties, Co-Signers, Endorsers and Makers hereby waive presentment, notice of dishonor, and protest hereof. This Note is the joint and several obligation of each Maker and shall be binding upon them and their heirs, successors and assigns.

12. INSURANCE REQUIREMENTS. I agree to purchase property/hazard insurance insuring the Property against loss and as required by the Security Instrument. I acknowledge that I may obtain property/hazard insurance from any insurance company of my choice, subject to the Note Holder's right of approval which shall not be unreasonably withheld. Unless I provide the Note Holder with evidence of the insurance coverage required by my agreement with the Note Holder, the Note Holder may purchase insurance at my expense to protect the Note Holder's interests in the Property. This insurance may, but need not, protect my interests. The coverage that the Note Holder purchases may not pay any claim that I make or any claim that is made against me in connection with the Property. I may later cancel any insurance purchased by the Note Holder, but only after providing the Note Holder with evidence that I have obtained insurance as required by our agreement. If the Note Holder purchases insurance for the Property, I will be responsible for the costs of the insurance, including interest and any other charges the Note Holder may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added to the Principal and will accrue interest at the Note Interest Rate. I understand that the costs of the insurance obtained by the Note Holder may be more than the cost of insurance I may be able to obtain on my own.

13. RESPONSIBILITY OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each of us is jointly and severally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any Guarantor, Surety, Co-Signer or Endorser of this Note (as described in Section 8 above) jointly and severally guarantee the payment, when due, to any Note Holder hereof of all amounts from time to time owing on this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. I and any Guarantor, Surety, Co-Signer or Endorser of this Note further agree that the failure by the Note Holder to perfect any security interest granted by this Note shall not affect my liability or the liability of any Guarantor hereon.

14. GOVERNING LAW. This Note will be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state where the property securing this Note is located. Federal law that governs this Note includes 12 USC 85, which incorporates in part the laws of the State of North Carolina. If the Property securing this debt is located in Maryland, to the extent this Note is governed by Maryland law, this Note is governed by *Md. Code Ann., Commercial Law §12-1001 et. seq.* and applicable federal law.

15. GENERAL PROVISIONS. I agree that I may not sell, assign or otherwise transfer my rights or obligations under this Note and that such action will be void. Any person who takes over my rights or obligations under this Note by operation of law will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of any Guarantor, Surety, Co-Signer or Endorser of this Note is also obligated to keep all of the promises made in this Note. This Note is intended by the Note Holder and me as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in writing signed by the Note Holder and me. This Note benefits the Note Holder, its successors and assigns, and binds me and my heirs, personal representatives and assigns. If any provision of this Note shall for any reason be held to be invalid or unenforceable, such determination shall not affect the enforceability of the remaining provisions of this Note. Headings are for convenience of reference only and shall not affect the construction of this Note or any other document associated with this loan.

16. SAVINGS AND COMPLIANCE. It is the intention of you and me to comply with applicable law. In each and every instance, our rights shall be limited by applicable law (to the extent such laws may not be effectively waived), construed so as to comply with such laws, and our rights may not be exercised except to the extent permitted by applicable law. No part of this agreement, nor any charge or receipt by you, is supposed to permit you to impose interest or other amounts in excess of lawful amounts. If an excess occurs, you will apply it as a credit or otherwise refund it and the rate or amount involved will automatically be reduced to the maximum lawful rate or amount. To the extent permitted by law, for purposes of determining your compliance with law, you may calculate charges by amortizing, prorating, allocating and spreading any such charges.

17. DOCUMENTARY TAX. For loans secured by real property located in Florida, the state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

NOTICE TO BORROWER:

1. CAUTION: IT IS IMPORTANT THAT THE BORROWER THOROUGHLY READS THIS NOTE BEFORE THE BORROWER SIGNS IT.
2. THIS NOTE IS SECURED BY EITHER A FIRST OR SUBORDINATE LIEN ON REAL PROPERTY.
3. THE BORROWER IS ENTITLED TO A COPY OF THIS NOTE.
4. DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES.
5. THE BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

For Texas residents only: NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS _____ PERCENT PER YEAR.

By signing and sealing this Note, I agree under seal to the terms set forth above.

Alicia F. O'Reilly by Helen R. Roper
her attorney in fact [SEAL]

Borrower ALICIA F O'REILLY by Helen R. Roper, her Attorney-in-Fact

Richard O'Reilly by Helen R. Roper
his attorney in fact [SEAL]

Borrower RICHARD O'REILLY by Helen R. Roper, his Attorney-in-Fact

Any Guarantor, Surety, Co-Signer or Endorser of this Note acknowledges receipt and execution of the Co-Signer's Notice.

_____[SEAL]
Guarantor - Co-Signer

_____[SEAL]
Guarantor - Co-Signer

FOR OFFICE USE ONLY

Endorsement.

Pay to the Order of _____

Without Recourse

By: _____
Name: _____
Title: _____

EXHIBIT G

BK: 41
RC: 3036090

LOC:

LN TP: 96
126000/00

Date: 07/11/07

Ref. No. 0717100506
Acct. No.

Note

BORROWER(S):
DANIEL RYAN
SUSAN M RYAN
25335 PINEROW COURT
ELBURN, IL 60119

Amount Financed \$ 128493.00

1. **BORROWER(S) PROMISE TO PAY.** In return for a loan that I have received, the undersigned Borrower(s) (hereinafter referred to as "I," "me," or "my") jointly and severally promise to pay to Wachovia Bank, National Association, a national banking association organized and existing under the law of the United States of America ("Lender"), the sum of \$ 128493.00 (this amount will be called "Principal"), plus daily simple interest ("Interest") beginning on the date that Principal is advanced. The Principal may include points, origination fees and other amounts permitted by applicable law. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note and who is entitled to receive payments under this Note will be called the "Note Holder."

2. **INTEREST.** Interest will accrue on the entire Principal balance outstanding at any time. Notwithstanding anything to the contrary, I do not agree to pay and the Note Holder does not intend to charge any interest at a rate that is higher than the maximum rate of interest that could be charged under applicable law for the extension of credit that is agreed to under this Note (either before or after maturity). If any notice of interest accrual is sent and is in error, and if the Note Holder actually collects more interest than allowed by law or this Note, the Note Holder agrees to refund any such excess interest.

I agree to pay interest on the unpaid Principal balance of this Note owing after maturity, and until paid in full at the same rate in effect before maturity. I agree that any loan origination fee paid to the Note Holder is earned as of the date of this Note.

Interest accrues on the Principal remaining unpaid from time to time, until paid in full. The Interest Rate, as defined in this Section 2 below, will be charged at a rate of 1/365th of the Interest Rate for each day, or 1/366th of the Interest Rate for each day in any leap year, applied against that day's outstanding Principal balance. The dollar amount of the finance charge and the payments disclosed to me for this credit transaction are based upon my payments being received by the Note Holder on the date payments are due. If my payments are received after the due date, even if received before the date a Late Charge as permitted by Section 4 applies, I may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of Principal. This is a result of the accrual of daily interest.

To the extent that any fees or charges are added to the Principal balance, they will thereafter bear interest and I agree to pay this interest. I understand that in the event my first payment due date is more than one month from the date of this Note, one or more of my initial payments may not pay all of the interest owed on the date of the payment and therefore may not reduce the outstanding Principal balance.

If the governing law which applies to this Note sets maximum loan charges and is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial payment.

Check One:

☒ Fixed Rate:I agree to pay interest on the outstanding Principal balance at a fixed annual rate of 7.14 % ("Interest Rate").☐ Adjustable Rate:

(A) Interest Rate: I agree to pay interest on the outstanding Principal balance at the initial annual rate of N/A % ("Interest Rate") until the first Change Date as defined in Paragraph (B) below. Thereafter, the Interest Rate I pay may change as of each Change Date and will be calculated pursuant to Paragraph (D) below. My initial annual rate may not be related to the formula used to determine later rates.

(B) Date Definitions:

(i) Change Date: Each date on which the Interest Rate may change is called the Change Date. The Interest Rate may change _____ and every _____ month(s) thereafter.

(ii) Index Date: The 25th day of each month is an "Index Date." If the Index is not published on the 25th day of the month, then the Index Date shall be the first day prior to the 25th day of the month on which the Index is published.

(iii) Look-back Date: The date that is 30 days prior to a Change Date is called the "Look-back Date."

(C) The Index: Check One:

☐ The "Index" is the "Prime Rate" as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one Prime Rate published on an Index Date, then the Note Holder will use the higher of such prime rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of the Prime Rate.

- ☐ The "Index" is the average of interbank offered rates for _____ month U.S. dollar-denominated deposits in the London market ("LIBOR") as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one LIBOR published on an Index Date, then the Note Holder will use the higher of such LIBOR rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of LIBOR.
- (D) Calculation of New Interest Rate: The new annual Interest Rate that will be applicable beginning on each Change Date will be determined as follows:

Check One:

☐ The new annual Interest Rate will be equal to the Index published on the Index Date for the calendar month immediately preceding the Look-back Date for that Change Date, rounded down to the nearest .01%, plus _____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new Interest Rate will become effective on each Change Date.

☐ The new annual Interest Rate will be equal to the Index published on the Index Date for the calendar month immediately preceding that Change Date, rounded down to the nearest .01%, plus _____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new Interest Rate will become effective on each Change Date.

- (E) Limits on Interest Rate Changes: My Interest Rate will never be greater than _____% or less than 0%.

☐ If this box is checked, the Interest Rate will be subject to the additional limitations on increases. The Interest Rate I am required to pay at the first Change Date will never be greater than _____%. Thereafter increases will be subject to an additional limitation on each Change Date such that the Interest Rate I pay will never be increased on any single Change Date by more than 2% from the Interest Rate I have been paying for the preceding 12 months.

☐ If this box is checked, there will be no additional limitation on increases in my Interest Rate.

- (F) Notice of Changes: The Note Holder will deliver or mail to me a notice of any changes in my Interest Rate as required by applicable law. The notice will include information about any changes to my payment amount.

3. PAYMENTS.**(A) Payment Options and Schedule:****Check One:**

☒ Interest Payments: I will pay accrued interest beginning on 09/10/07 as follows; check one:
☒ monthly or ☐ quarterly ("Interest Payments"). The amount of each Interest Payment will vary depending upon the amount of principal outstanding, the date principal payments or installment payments are received and if Section 2 of this Note provides for an Adjustable Rate, the Interest Rate then in effect. In addition, I will make the following Payments:

Check One:

☒ Principal Reduction Payments and/or a Balloon Payment: In addition to the Interest Payments, I will make Principal Payments as set forth in the Payment Schedule below.

☐ Installment Payments: For purposes of this Section 3, the "Payment Change Date" is the first payment due date that is at least 26 days after the "Anniversary Date." The Anniversary Date is the date that is _____ year(s) after the Note Date. Beginning on the Payment Change Date, in place of Interest Payments, I will make installment payments of Principal and Interest. On the Anniversary Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal balance in full over the of a period of time ending on the Maturity Date as defined in Paragraph (D) with interest at the rate set in accordance with Section 2. The result of this calculation will be my new payment amount. The Note Holder will give me notice of this new payment amount. This payment amount is estimated in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, this payment amount may change. On each subsequent Change Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new Interest Rate. The result of this calculation will be the new payment amount beginning on the first payment due date which is at least 26 days after the Change Date. I will pay my new payment amount until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

☐ Installment Payments or Installment Payments with a Balloon Payment: I will pay the unpaid Principal and Interest in installment payments as set forth in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, the payment amounts, including the final payment, as set forth in the Payment Schedule may change. On each Change Date, the Note Holder will determine the ☐ monthly ☐ quarterly ☐ semi-annual or ☐ annual payment amount that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new Interest Rate. The result of this calculation will be the new payment amount. I will pay my new payment amount beginning on the first payment due date after the Change Date until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

Payment Schedule:

Number of Payments	Payment Amount	Frequency	Start/Due Date	Number of Payments	Payment Amount	Frequency	Start/Due Date
60	\$ Interest Only	M	08/10/07		\$		
1	\$ 128493.00	M	07/10/12		\$		
Frequency Legend: M = Monthly Q = Quarterly S = Semi Annually A = Annually							

(B) **Place of Payments:** I will make my payments in U.S. funds payable to the Note Holder at the address provided to me by the Note Holder or at a different address if required by the Note Holder.

(C) **Application of Payments:** Unless otherwise prohibited by the law governing this Note, each payment I make on this Note will first reduce the amount of accrued unpaid interest, then any optional insurance premiums due, then any applicable unpaid charges and then unpaid Principal. I will make payments until I have paid all of the Principal and interest and any other fees or charges that I may owe under the terms of this Note.

(D) **Maturity Date:** If on 07/10/12, I still owe any amount under this Note, I will pay those amounts in full on that date which is called the "Maturity Date."

(E) **Optional Credit Insurance:** If I have selected optional credit insurance offered by the Note Holder in connection with this loan, the payment amount(s) shown in the Payment Schedule include the premiums for the insurance coverage(s) that I have selected. I understand that the actual total premium amount I pay will depend upon my payment record.

I understand that credit life and credit disability (accident and health) insurance are not required, and that I may cancel them at any time by giving written notice to you. If my credit insurance is canceled, no further portion of any payments I make will be applied to credit insurance premiums. At my request, you will adjust my payment amount to reflect the cancellation of the credit insurance. If my credit insurance is cancelled and Section 2 of this Note provides for an Adjustable Rate, on the next Change Date the cancellation of the credit insurance will be considered in determining my new payment amount.

(F) **Balloon Payment:** If the Payment Schedule requires me to make an estimated final payment that is significantly larger than any other payment ("Balloon Payment"), I understand that I will be required to make this Balloon Payment on the Maturity Date. I understand that the Note Holder is not required to refinance any Balloon Payment and that the failure to make the required Balloon Payment on the Due Date constitutes a Default under the terms of this Note.

4. FEES AND CHARGES. In addition to interest and other amounts I may agree to pay, I agree to pay the Note Holder the following additional fees and charges:

(A) **Late Charges:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount.

(B) **Returned Payment Fee:** Unless otherwise limited or prohibited by the law governing this Note, I will pay a charge of up to \$25.00 for each payment (check or automatic payment) that I make that is returned or dishonored for any reason.

(C) **Origination Fee:** If an origination fee or other fee or charge is charged as included on the HUD-1, HUD-1A, or Itemization of Amount Financed prepared in connection with this loan transaction, I agree to pay such fees and charges. Except as otherwise required by law, I agree that such fees and charges are fully earned as of the date of this Note and are nonrefundable upon prepayment.

(D) **Additional Charges:** I agree that if, during the term of this Note, I request other services related to servicing or administering my loan for which the Note Holder has a scheduled charge, I will, to the extent permitted by the law governing this Note, pay the Note Holder the then current fee for such services or request if the Note Holder agrees to perform such service or request. I understand that any such fees are fully earned when charged and are nonrefundable upon prepayment.

5. BORROWER'S FAILURE TO PAY AS REQUIRED AND TERMS OF DEFAULT.

(A) **Terms of Default:** I will be in Default under this Note if any of the following things happen:

- (i) if I fail to make any payment or comply with any of the terms of this Note or any other note with the Note Holder now or in the future; or
- (ii) if I make any false, incorrect or misleading representation or warranty at any time during the application process; or
- (iii) if I die; or
- (iv) if I become involved in any bankruptcy or insolvency proceeding; or
- (v) if the collateral described in Section 6 or any schedule to this Note is used in violation of any law or regulation or if a judgment or lien is filed or levied against me or the collateral or the collateral is impaired, damaged, or removed from the custody of the Note Holder; or
- (vi) if I fail to abide by the term(s) of any Security Instrument or other documents described in Section 6 which secure payment of this Note.

(B) **Notice of Default:** If I am in Default, then the entire Principal balance, accrued interest, fees, and collection costs permitted to be collected under applicable law will be immediately due and payable. At its option or if required by law, the Note Holder may send me a written notice informing me of said Default and acceleration. If I make any payment after the Note Holder has demanded payment of the entire balance due, my payment will be applied to the unpaid balance due under this Note. The unpaid balance consists of the Principal Amount remaining due, plus accrued finance charges, unpaid Late Charges, collection costs, and all other amounts due to the Note Holder under this Note. The Note Holder shall also have other rights and remedies provided by law. If the net proceeds of collateral sold do not pay my indebtedness in full, I will pay the Note Holder the difference, plus interest at the Note Interest Rate until the unpaid balance is paid in full. Any Default of this Note will also constitute an event of Default of any separate Mortgage, Deed of Trust or Security Deed securing this Note ("Security Instrument") or Pledge Agreement securing this Note. Upon Default, the Note Holder may proceed to enforce the terms of this Note or enforce any rights that it may have under the Security Instrument or Pledge Agreement.

(C) **No Waiver by Note Holder:** Even if, at a time when I am in Default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in Default at a later time. Any failure to enforce any provision of this Note by the Note Holder shall not constitute any waiver of such rights of the Note Holder to subsequently enforce such rights or remedies.

(D) Payment of the Note Holder's Costs and Expenses: If the Note Holder has required me to pay immediately in full as described above, and I fail to do so and such failure causes the Note Holder to incur additional expenses, the Note Holder will have the right to a refund of all of its costs and expenses to the extent not prohibited by the law governing this Note. Those expenses include, for example, reasonable attorneys' fees for an attorney who is not the Note Holder's salaried employee, foreclosure fees and court costs. In no event shall these expenses exceed fifteen percent (15%) of the unpaid balance plus Court Costs.

6. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT. In addition to the protections given to the Note Holder under this Note, a separate Security instrument(s), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Subject to applicable law, I understand that this loan is subject to repayment in full in the event the Property securing this debt is sold, conveyed or otherwise transferred.

If in addition to a Security Instrument, I pledge securities, cash accounts or other liquid collateral (the "Other Collateral") as Other Collateral for this Note, then I grant to the Note Holder a perfected security interest in such Other Collateral and all additions or replacements to, or proceeds of as is more fully described in the separate Collateral Pledge Agreement (the "Pledge Agreement") executed as of the same date as this Note. The Pledge Agreement describes the Other Collateral in detail and protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. The Pledge Agreement also describes how and under what conditions I may also be required to make immediate payment in full of all amounts that I owe under this Note. I agree to these conditions. If the Other Collateral includes securities, I agree to deliver immediately to the Note Holder, fully endorsed, any certificates for shares representing any stock dividend, stock split or right to subscribe. I further pledge and agree to deliver to the Note Holder, upon demand, additional Other Collateral satisfactory to the Note Holder and in accordance with all margin requirements. If I do not provide the Note Holder with a perfected security interest in the Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest, I will be responsible for such expenses.

If I do not provide or assist the Note Holder in obtaining a perfected security interest in the Property or Other Collateral and the Note Holder incurs any expenses, including attorney's fees, in order to obtain a perfected security interest in such Property or Other Collateral, to the extent not otherwise prohibited by the law governing this Note, I agree that the Note Holder may add the amount of such expenses to the Principal and that such expenses will accrue interest at the Note Interest Rate until paid in full.

7. PREPAYMENT.

(A) Subject to the order of application of payments described in Section 3, I have the right to make payments of Principal at any time before they are due without penalty. A prepayment of all unpaid Principal is known as a "full prepayment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment."

(B) If I make a partial prepayment, my next due date may be advanced. If I make a payment that is more than the amount that is due, the amount in excess of the amount due is called an "Excess Payment." If I make an Excess Payment, the Note Holder will assume that I want to reduce or skip my next scheduled payment or payments. If the Excess Payment is less than or equal to the next scheduled payment, the next scheduled payment will be reduced by the amount of the Excess Payment. If the Excess Payment exceeds the amount of my next scheduled payment, the number of payments that may be skipped will be determined by subtracting each subsequently scheduled payment from the Excess Payment. So long as the remaining portion of the Excess Payment exceeds the next scheduled payment amount, that payment may be skipped. When the remaining portion of the Excess Payment is equal to or less than my next scheduled payment, that remaining portion will be used to reduce the amount of the next scheduled payment. If I want the Note Holder to handle an Excess Payment differently, I will tell the Note Holder in writing. I understand that interest will continue to accrue on the outstanding principal balance and that if I want maximum interest savings from Excess Payments, I should continue to make payments on or before the scheduled due date.

8. BORROWER'S WAIVERS. I waive my rights to require the Note Holder to do certain things. Those things are: (a) to demand payment of amounts due (known as "presentment"); (b) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (c) to obtain an official certification of non-payment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "Guarantors," "Sureties," "Co-Signers" and "Endorsers."

9. GIVING OF NOTICES.

(A) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address contained in this Note. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

(B) Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address provided to me by the Note Holder. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

10. PAYMENT IN FULL. I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL" WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, NATIONAL ASSOCIATION, SPECIAL PAYOFFS, PO BOX 10723, ROANOKE, VA 24022. ACCEPTANCE OF ANY PAYMENT SENT TO THE SPECIAL HANDLING ADDRESS DOES NOT WAIVE THE NOTE HOLDER'S RIGHT TO SUBSEQUENTLY REJECT SUCH PAYMENT IN ACCORDANCE WITH APPLICABLE LAW.

11. EXTENSIONS AND MODIFICATIONS. All Guarantors, Sureties, Co-Signers, Endorsers and I consent to any and all extensions of time, renewals, waivers or modifications which may be granted or consented to by the Note Holder as to the time of payment or any other provision of this Note. If in its sole discretion, the Note Holder permits an extension, renewal or modification to this Note, I agree to pay a charge not to exceed an amount permitted by the law governing this Note. All Guarantors, Sureties, Co-Signers, Endorsers and Makers hereby waive presentment, notice of dishonor, and protest hereof. This Note is the joint and several obligation of each Maker and shall be binding upon them and their heirs, successors and assigns.

12. INSURANCE REQUIREMENTS. I agree to purchase property/hazard insurance insuring the Property against loss and as required by the Security Instrument. I acknowledge that I may obtain property/hazard insurance from any insurance company of my choice, subject to the Note Holder's right of approval which shall not be unreasonably withheld. Unless I provide the Note Holder with evidence of the insurance coverage required by my agreement with the Note Holder, the Note Holder may purchase insurance at my expense to protect the Note Holder's interests in the Property. This insurance may, but need not, protect my interests. The coverage that the Note Holder purchases may not pay any claim that I make or any claim that is made against me in connection with the Property. I may later cancel any insurance purchased by the Note Holder, but only after providing the Note Holder with evidence that I have obtained insurance as required by our agreement. If the Note Holder purchases insurance for the Property, I will be responsible for the costs of the insurance, including interest and any other charges the Note Holder may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added to the Principal and will accrue interest at the Note Interest Rate. I understand that the costs of the insurance obtained by the Note Holder may be more than the cost of insurance I may be able to obtain on my own.

13. RESPONSIBILITY OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each of us is jointly and severally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any Guarantor, Surety, Co-Signer or Endorser of this Note (as described in Section 3 above) jointly and severally guarantee the payment, when due, to any Note Holder hereof of all amounts from time to time owing on this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. I and any Guarantor, Surety, Co-Signer or Endorser of this Note further agrees that the failure by the Note Holder to perfect any security interest granted by this Note shall not affect my liability or the liability of any Guarantor hereon.

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4. DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES.
5. THE BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

For Texas residents only: NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS _____ PERCENT PER YEAR.

By signing and sealing this Note, I agree under seal to the terms set forth above.

Daniel Ryan by Helen R. Roper

his attorney in fact [SEAL]

Borrower DANIEL RYAN by Helen R. Roper, his Attorney-in-Fact

Susan M Ryan by Helen R. Roper

her attorney in fact [SEAL]

Borrower SUSAN M RYAN by Helen R. Roper, her Attorney-in-Fact

Any Guarantor, Surety, Co-Signer or Endorser of this Note acknowledges receipt and execution of the Co-Signer's Notice.

_____[SEAL]
Guarantor - Co-Signer

_____[SEAL]
Guarantor - Co-Signer

FOR OFFICE USE ONLY

Endorsement.

Pay to the Order of _____

Without Recourse

By: _____

Name: _____

Title: _____

EXHIBIT H

BK: 41
RC: 3036090

LOC:

LN TP: 96
108000/00

Date: 07/26/07

Ref. No. 0717600435
Acct. No.

Note

BORROWER(S):
GENNADY SHMUKLER

9440 DOMINION WAY
ALPHARETTA, GA 30022

Amount Financed \$ 110326.00

1. **BORROWER(S) PROMISE TO PAY.** In return for a loan that I have received, the undersigned Borrower(s) (hereinafter referred to as "I," "me," or "my") jointly and severally promise to pay to Wachovia Bank, National Association, a national banking association organized and existing under the law of the United States of America ("Lender"), the sum of \$ 110326.00 (this amount will be called "Principal"), plus daily simple interest ("Interest") beginning on the date that Principal is advanced. The Principal may include points, origination fees and other amounts permitted by applicable law. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note and who is entitled to receive payments under this Note will be called the "Note Holder."

2. **INTEREST.** Interest will accrue on the entire Principal balance outstanding at any time. Notwithstanding anything to the contrary, I do not agree to pay and the Note Holder does not intend to charge any interest at a rate that is higher than the maximum rate of interest that could be charged under applicable law for the extension of credit that is agreed to under this Note (either before or after maturity). If any notice of interest accrual is sent and is in error, and if the Note Holder actually collects more interest than allowed by law or this Note, the Note Holder agrees to refund any such excess interest.

I agree to pay interest on the unpaid Principal balance of this Note owing after maturity, and until paid in full at the same rate in effect before maturity. I agree that any loan origination fee paid to the Note Holder is earned as of the date of this Note.

Interest accrues on the Principal remaining unpaid from time to time, until paid in full. The Interest Rate, as defined in this Section 2 below, will be charged at a rate of 1/365th of the Interest Rate for each day, or 1/366th of the Interest Rate for each day in any leap year, applied against that day's outstanding Principal balance. The dollar amount of the finance charge and the payments disclosed to me for this credit transaction are based upon my payments being received by the Note Holder on the date payments are due. If my payments are received after the due date, even if received before the date a Late Charge as permitted by Section 4 applies, I may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of Principal. This is a result of the accrual of daily interest.

To the extent that any fees or charges are added to the Principal balance, they will thereafter bear interest and I agree to pay this interest. I understand that in the event my first payment due date is more than one month from the date of this Note, one or more of my initial payments may not pay all of the interest owed on the date of the payment and therefore may not reduce the outstanding Principal balance.

If the governing law which applies to this Note sets maximum loan charges and is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial payment.

Check One:

☒ Fixed Rate:

I agree to pay interest on the outstanding Principal balance at a fixed annual rate of 7.39 % ("Interest Rate").

☐ Adjustable Rate:

(A) Interest Rate: I agree to pay interest on the outstanding Principal balance at the initial annual rate of N/A % ("Interest Rate") until the first Change Date as defined in Paragraph (B) below. Thereafter, the interest rate I pay may change as of each Change Date and will be calculated pursuant to Paragraph (D) below. My initial annual rate may not be related to the formula used to determine later rates.

(B) Date Definitions:

(i) Change Date: Each date on which the interest rate may change is called the Change Date. The interest rate may change _____ and every _____ month(s) thereafter.

(ii) Index Date: The 25th day of each month is an "Index Date." If the index is not published on the 25th day of the month, then the Index Date shall be the first day prior to the 25th day of the month on which the index is published.

(iii) Look-back Date: The date that is 30 days prior to a Change Date is called the "Look-back Date."

(C) The Index: Check One:

☐ The "Index" is the "Prime Rate" as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one Prime Rate published on an Index Date, then the Note Holder will use the higher of such prime rates. If this index ceases to exist, the Note Holder may substitute another index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of the Prime Rate.

- ☐ The "Index" is the average of interbank offered rates for ____ month U.S. dollar-denominated deposits in the London market ("LIBOR") as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one LIBOR published on an Index Date, then the Note Holder will use the higher of such LIBOR rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of LIBOR.
- (D) Calculation of New Interest Rate: The new annual Interest Rate that will be applicable beginning on each Change Date will be determined as follows:

Check One:

☐ The new annual Interest Rate will be equal to the Index published on the Index Date for the calendar month immediately preceding the Look-back Date for that Change Date, rounded down to the nearest .01%, plus ____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new Interest Rate will become effective on each Change Date.

☐ The new annual Interest Rate will be equal to the Index published on the Index Date for the calendar month immediately preceding that Change Date, rounded down to the nearest .01%, plus ____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new Interest Rate will become effective on each Change Date.

- (E) Limits on Interest Rate Changes: My Interest Rate will never be greater than ____% or less than 0%.

☐ If this box is checked, the Interest Rate will be subject to the additional limitations on increases. The Interest Rate I am required to pay at the first Change Date will never be greater than ____%. Thereafter increases will be subject to an additional limitation on each Change Date such that the Interest Rate I pay will never be increased on any single Change Date by more than 2% from the Interest Rate I have been paying for the preceding 12 months.

☐ If this box is checked, there will be no additional limitation on increases in my Interest Rate.

- (F) Notice of Changes: The Note Holder will deliver or mail to me a notice of any changes in my Interest Rate as required by applicable law. The notice will include information about any changes to my payment amount.

3. PAYMENTS.

(A) Payment Options and Schedule:

Check One:

☒ Interest Payments: I will pay accrued interest beginning on 08/25/07 as follows: check one:
☒ monthly or ☐ quarterly ("Interest Payments"). The amount of each Interest Payment will vary depending upon the amount of principal outstanding, the date principal payments or installment payments are received and if Section 2 of this Note provides for an Adjustable Rate, the Interest Rate then in effect. In addition, I will make the following Payments:

Check One:

☒ Principal Reduction Payments and/or a Balloon Payment: In addition to the Interest Payments, I will make Principal Payments as set forth in the Payment Schedule below:

☐ Installment Payments: For purposes of this Section 3, the "Payment Change Date" is the first payment due date that is at least 28 days after the "Anniversary Date." The Anniversary Date is the date that is ____ year(s) after the Note Date. Beginning on the Payment Change Date, in place of Interest Payments, I will make installment payments of Principal and interest. On the Anniversary Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal balance in full over the of a period of time ending on the Maturity Date as defined in Paragraph (D) with interest at the rate set in accordance with Section 2. The result of this calculation will be my new payment amount. The Note Holder will give me notice of this new payment amount. This payment amount is estimated in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, this payment amount may change. On each subsequent Change Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new Interest Rate. The result of this calculation will be the new payment amount beginning on the first payment due date which is at least 28 days after the Change Date. I will pay my new payment amount until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

☐ Installment Payments or Installment Payments with a Balloon Payment: I will pay the unpaid Principal and interest in installment payments as set forth in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, the payment amounts, including the final payment, as set forth in the Payment Schedule may change. On each Change Date, the Note Holder will determine the ☐ monthly ☐ quarterly ☐ semi-annual or ☐ annual payment amount that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new Interest Rate. The result of this calculation will be the new payment amount. I will pay my new payment amount beginning on the first payment due date after the Change Date until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

Payment Schedule:

Number of Payments	Payment Amount	Frequency	Start/Due Date	Number of Payments	Payment Amount	Frequency	Start/Due Date
80	\$Interest Only	M	08/25/07		\$		
1	\$110328.00	M	07/25/12		\$		
Frequency Legend: M = Monthly Q = Quarterly S = Semi Annually A = Annually							

(B) **Place of Payments:** I will make my payments in U.S. funds payable to the Note Holder at the address provided to me by the Note Holder or at a different address if required by the Note Holder.

(C) **Application of Payments:** Unless otherwise prohibited by the law governing this Note, each payment I make on this Note will first reduce the amount of accrued unpaid interest, then any optional insurance premiums due, then any applicable unpaid charges and then unpaid Principal. I will make payments until I have paid all of the Principal and interest and any other fees or charges that I may owe under the terms of this Note.

(D) **Maturity Date:** If on 07/25/12, I still owe any amount under this Note, I will pay those amounts in full on that date which is called the "Maturity Date."

(E) **Optional Credit Insurance:** If I have selected optional credit insurance offered by the Note Holder in connection with this loan, the payment amount(s) shown in the Payment Schedule include the premiums for the insurance coverage(s) that I have selected. I understand that the actual total premium amount I pay will depend upon my payment record.

I understand that credit life and credit disability (accident and health) insurance are not required, and that I may cancel them at any time by giving written notice to you. If my credit insurance is canceled, no further portion of any payments I make will be applied to credit insurance premiums. At my request, you will adjust my payment amount to reflect the cancellation of the credit insurance. If my credit insurance is cancelled and Section 2 of this Note provides for an Adjustable Rate, on the next Change Date the cancellation of the credit insurance will be considered in determining my new payment amount.

(F) **Balloon Payment:** If the Payment Schedule requires me to make an estimated final payment that is significantly larger than any other payment ("Balloon Payment"), I understand that I will be required to make this Balloon Payment on the Maturity Date. I understand that the Note Holder is not required to refinance any Balloon Payment and that the failure to make the required Balloon Payment on the Due Date constitutes a Default under the terms of this Note.

4. FEES AND CHARGES. In addition to interest and other amounts I may agree to pay, I agree to pay the Note Holder the following additional fees and charges:

(A) **Late Charges:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount.

(B) **Returned Payment Fee:** Unless otherwise limited or prohibited by the law governing this Note, I will pay a charge of up to \$25.00 for each payment (check or automatic payment) that I make that is returned or dishonored for any reason.

(C) **Origination Fee:** If an origination fee or other fee or charge is charged as included on the HUD-1, HUD-1A, or Itemization of Amount Financed prepared in connection with this loan transaction, I agree to pay such fees and charges. Except as otherwise required by law, I agree that such fees and charges are fully earned as of the date of this Note and are nonrefundable upon prepayment.

(D) **Additional Charges:** I agree that if, during the term of this Note, I request other services related to servicing or administering my loan for which the Note Holder has a scheduled charge, I will, to the extent permitted by the law governing this Note, pay the Note Holder the then current fee for such services or request. If the Note Holder agrees to perform such service or request, I understand that any such fees are fully earned when charged and are nonrefundable upon prepayment.

5. BORROWER'S FAILURE TO PAY AS REQUIRED AND TERMS OF DEFAULT.

(A) **Terms of Default:** I will be in Default under this Note if any of the following things happen:

- (i) If I fail to make any payment or comply with any of the terms of this Note or any other note with the Note Holder now or in the future; or
- (ii) If I make any false, incorrect or misleading representation or warranty at any time during the application process; or
- (iii) If I die; or
- (iv) If I become involved in any bankruptcy or insolvency proceeding; or
- (v) If the collateral described in Section 6 or any schedule to this Note is used in violation of any law or regulation or if a judgment or lien is filed or levied against me or the collateral or the collateral is impaired, damaged, or removed from the custody of the Note Holder; or
- (vi) If I fail to abide by the term(s) of any Security Instrument or other documents described in Section 6 which secure payment of this Note.

(B) **Notice of Default:** If I am in Default, then the entire Principal balance, accrued interest, fees, and collection costs permitted to be collected under applicable law will be immediately due and payable. At its option or if required by law, the Note Holder may send me a written notice informing me of said Default and acceleration. If I make any payment after the Note Holder has demanded payment of the entire balance due, my payment will be applied to the unpaid balance due under this Note. The unpaid balance consists of the Principal Amount remaining due, plus accrued finance charges, unpaid late charges, collection costs, and all other amounts due to the Note Holder under this Note. The Note Holder shall also have other rights and remedies provided by law. If the net proceeds of collateral sold do not pay my indebtedness in full, I will pay the Note Holder the difference, plus interest at the Note Interest Rate until the unpaid balance is paid in full. Any Default of this Note will also constitute an event of Default of any separate Mortgage, Deed of Trust or Security Deed securing this Note ("Security Instrument") or Pledge Agreement securing this Note. Upon Default, the Note Holder may proceed to enforce the terms of this Note or enforce any rights that it may have under the Security Instrument or Pledge Agreement.

(C) **No Waiver by Note Holder:** Even if, at a time when I am in Default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in Default at a later time. Any failure to enforce any provision of this Note by the Note Holder shall not constitute any waiver of such rights of the Note Holder to subsequently enforce such rights or remedies.

(D) Payment of the Note Holder's Costs and Expenses: If the Note Holder has required me to pay immediately in full as described above, and I fail to do so and such failure causes the Note Holder to incur additional expenses, the Note Holder will have the right to a refund of all of its costs and expenses to the extent not prohibited by the law governing this Note. Those expenses include, for example, reasonable attorneys' fees for an attorney who is not the Note Holder's salaried employee, foreclosure fees and court costs. In no event shall these expenses exceed fifteen percent (15%) of the unpaid balance plus Court Costs.

6. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT. In addition to the protections given to the Note Holder under this Note, a separate Security Instrument(s), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Subject to applicable law, I understand that this loan is subject to repayment in full in the event the Property securing this debt is sold, conveyed or otherwise transferred.

If in addition to a Security Instrument, I pledge securities, cash accounts or other liquid collateral (the "Other Collateral") as Other Collateral for this Note, then I grant to the Note Holder a perfected security interest in such Other Collateral and all additions or replacements to, or proceeds of as is more fully described in the separate Collateral Pledge Agreement (the "Pledge Agreement") executed as of the same date as this Note. The Pledge Agreement describes the Other Collateral in detail and protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. The Pledge Agreement also describes how and under what conditions I may also be required to make immediate payment in full of all amounts that I owe under this Note. I agree to these conditions. If the Other Collateral includes securities, I agree to deliver immediately to the Note Holder, fully endorsed, any certificates for shares representing any stock dividend, stock split or right to subscribe. I further pledge and agree to deliver to the Note Holder, upon demand, additional Other Collateral satisfactory to the Note Holder and in accordance with all margin requirements. If I do not provide the Note Holder with a perfected security interest in the Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest, I will be responsible for such expenses.

If I do not provide or assist the Note Holder in obtaining a perfected security interest in the Property or Other Collateral and the Note Holder incurs any expenses, including attorney's fees, in order to obtain a perfected security interest in such Property or Other Collateral, to the extent not otherwise prohibited by the law governing this Note, I agree that the Note Holder may add the amount of such expenses to the Principal and that such expenses will accrue interest at the Note Interest Rate until paid in full.

7. PREPAYMENT.

(A) Subject to the order of application of payments described in Section 3, I have the right to make payments of Principal at any time before they are due without penalty. A prepayment of all unpaid Principal is known as a "full prepayment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment."

(B) If I make a partial prepayment, my next due date may be advanced. If I make a payment that is more than the amount that is due, the amount in excess of the amount due is called an "Excess Payment." If I make an Excess Payment, the Note Holder will assume that I want to reduce or skip my next scheduled payment or payments. If the Excess Payment is less than or equal to the next scheduled payment, the next scheduled payment will be reduced by the amount of the Excess Payment. If the Excess Payment exceeds the amount of my next scheduled payment, the number of payments that may be skipped will be determined by subtracting each subsequently scheduled payment from the Excess Payment. So long as the remaining portion of the Excess Payment exceeds the next scheduled payment amount, that payment may be skipped. When the remaining portion of the Excess Payment is equal to or less than my next scheduled payment, that remaining portion will be used to reduce the amount of the next scheduled payment. If I want the Note Holder to handle an Excess Payment differently, I will tell the Note Holder in writing. I understand that interest will continue to accrue on the outstanding principal balance and that if I want maximum interest savings from Excess Payments, I should continue to make payments on or before the scheduled due date.

8. BORROWER'S WAIVERS. I waive my rights to require the Note Holder to do certain things. Those things are: (a) to demand payment of amounts due (known as "presentment"); (b) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (c) to obtain an official certification of non-payment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "Guarantors," "Sureties," "Co-Signers" and "Endorsers."

9. GIVING OF NOTICES.

(A) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address contained in this Note. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

(B) Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address provided to me by the Note Holder. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

10. PAYMENT IN FULL. I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL" WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, NATIONAL ASSOCIATION, SPECIAL PAYOFFS, PO BOX 10723, ROANOKE, VA 24022. ACCEPTANCE OF ANY PAYMENT SENT TO THE SPECIAL HANDLING ADDRESS DOES NOT WAIVE THE NOTE HOLDER'S RIGHT TO SUBSEQUENTLY REJECT SUCH PAYMENT IN ACCORDANCE WITH APPLICABLE LAW.

11. EXTENSIONS AND MODIFICATIONS. All Guarantors, Sureties, Co-Signers, Endorsers and I consent to any and all extensions of time, renewals, waivers or modifications which may be granted or consented to by the Note Holder as to the time of payment or any other provision of this Note. If in its sole discretion, the Note Holder permits an extension, renewal or modification to this Note, I agree to pay a charge not to exceed an amount permitted by the law governing this Note. All Guarantors, Sureties, Co-Signers, Endorsers and Makers hereby waive presentment, notice of dishonor, and protest hereof. This Note is the joint and several obligation of each Maker and shall be binding upon them and their heirs, successors and assigns.

12. INSURANCE REQUIREMENTS. I agree to purchase property/hazard insurance insuring the Property against loss and as required by the Security Instrument. I acknowledge that I may obtain property/hazard insurance from any insurance company of my choice, subject to the Note Holder's right of approval which shall not be unreasonably withheld. Unless I provide the Note Holder with evidence of the insurance coverage required by my agreement with the Note Holder, the Note Holder may purchase insurance at my expense to protect the Note Holder's interests in the Property. This insurance may, but need not, protect my interests. The coverage that the Note Holder purchases may not pay any claim that I make or any claim that is made against me in connection with the Property. I may later cancel any insurance purchased by the Note Holder, but only after providing the Note Holder with evidence that I have obtained insurance as required by our agreement. If the Note Holder purchases insurance for the Property, I will be responsible for the costs of the insurance, including interest and any other charges the Note Holder may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added to the Principal and will accrue interest at the Note Interest Rate. I understand that the costs of the insurance obtained by the Note Holder may be more than the cost of insurance I may be able to obtain on my own.

13. RESPONSIBILITY OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each of us is jointly and severally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any Guarantor, Surety, Co-Signer or Endorser of this Note (as described in Section 8 above) jointly and severally guarantee the payment, when due, to any Note Holder hereof of all amounts from time to time owing on this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. I and any Guarantor, Surety, Co-Signer or Endorser of this Note further agrees that the failure by the Note Holder to perfect any security interest granted by this Note shall not affect my liability or the liability of any Guarantor hereon.

14. GOVERNING LAW. This Note will be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state where the property securing this Note is located. Federal law that governs this Note includes 12 USC 85, which incorporates in part the laws of the State of North Carolina. If the Property securing this debt is located in Maryland, to the extent this Note is governed by Maryland law, this Note is governed by *Md. Code Ann., Commercial Law §12-1001 et. seq.* and applicable federal law.

15. GENERAL PROVISIONS. I agree that I may not sell, assign or otherwise transfer my rights or obligations under this Note and that such action will be void. Any person who takes over my rights or obligations under this Note by operation of law will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of any Guarantor, Surety, Co-Signer or Endorser of this Note is also obligated to keep all of the promises made in this Note. This Note is intended by the Note Holder and me as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in writing signed by the Note Holder and me. This Note benefits the Note Holder, its successors and assigns, and binds me and my heirs, personal representatives and assigns. If any provision of this Note shall for any reason be held to be invalid or unenforceable, such determination shall not affect the enforceability of the remaining provisions of this Note. Headings are for convenience of reference only and shall not affect the construction of this Note or any other document associated with this loan.

16. SAVINGS AND COMPLIANCE. It is the intention of you and me to comply with applicable law. In each and every instance, our rights shall be limited by applicable law (to the extent such laws may not be effectively waived), construed so as to comply with such laws, and our rights may not be exercised except to the extent permitted by applicable law. No part of this agreement, nor any charge or receipt by you, is supposed to permit you to impose interest or other amounts in excess of lawful amounts. If an excess occurs, you will apply it as a credit or otherwise refund it and the rate or amount involved will automatically be reduced to the maximum lawful rate or amount. To the extent permitted by law, for purposes of determining your compliance with law, you may calculate charges by amortizing, prorating, allocating and spreading any such charges.

17. DOCUMENTARY TAX. For loans secured by real property located in Florida, the state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

NOTICE TO BORROWER:

1. CAUTION: IT IS IMPORTANT THAT THE BORROWER THOROUGHLY READS THIS NOTE BEFORE THE BORROWER SIGNS IT.
2. THIS NOTE IS SECURED BY EITHER A FIRST OR SUBORDINATE LIEN ON REAL PROPERTY.
3. THE BORROWER IS ENTITLED TO A COPY OF THIS NOTE.
4. DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES.
5. THE BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

For Texas residents only: NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS _____ PERCENT PER YEAR.

By signing and sealing this Note, I agree under seal to the terms set forth above.

Genrady Shmukler by Helen R. Roper

his attorney in fact [SEAL]

Borrower GENRADY SHMUKLER by Helen R. Roper, his Attorney-in-Fact

_____[SEAL]
Borrower

Any Guarantor, Surety, Co-Signer or Endorser of this Note acknowledges receipt and execution of the Co-Signer's Notice.

_____[SEAL]
Guarantor - Co-Signer

_____[SEAL]
Guarantor - Co-Signer

FOR OFFICE USE ONLY

Endorsement.

Pay to the Order of _____

Without Recourse

By: _____
Name: _____
Title: _____

EXHIBIT

I

BK: 41
RC: 3036090

LOC:

LN TP: 96
266310/00

Date: 02/13/07

Ref. No. 0701900608
Acct. No.

Note

BORROWER(S):
JOANNA C SCHMUFF
MICHAEL V SCHMUFF
1918 DELAWARE AVE
WILMINGTON, DE 19806

Amount Financed \$ 270518.70

1. BORROWER(S) PROMISE TO PAY. In return for a loan that I have received, the undersigned Borrower(s) (hereinafter referred to as "I," "me," or "my") jointly and severally promise to pay to Wachovia Bank, National Association, a national banking association organized and existing under the law of the United States of America ("Lender"), the sum of **\$ 270518.70** (this amount will be called "Principal"), plus daily simple interest ("Interest") beginning on the date that Principal is advanced. The Principal may include points, origination fees and other amounts permitted by applicable law. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note and who is entitled to receive payments under this Note will be called the "Note Holder."

2. INTEREST. Interest will accrue on the entire Principal balance outstanding at any time. Notwithstanding anything to the contrary, I do not agree to pay and the Note Holder does not intend to charge any interest at a rate that is higher than the maximum rate of interest that could be charged under applicable law for the extension of credit that is agreed to under this Note (either before or after maturity). If any notice of interest accrual is sent and is in error, and if the Note Holder actually collects more interest than allowed by law or this Note, the Note Holder agrees to refund any such excess interest.

I agree to pay interest on the unpaid Principal balance of this Note owing after maturity, and until paid in full at the same rate in effect before maturity. I agree that any loan origination fee paid to the Note Holder is earned as of the date of this Note.

Interest accrues on the Principal remaining unpaid from time to time, until paid in full. The Interest Rate, as defined in this Section 2 below, will be charged at a rate of 1/365th of the Interest Rate for each day, or 1/366th of the Interest Rate for each day in any leap year, applied against that day's outstanding Principal balance. The dollar amount of the finance charge and the payments disclosed to me for this credit transaction are based upon my payments being received by the Note Holder on the date payments are due. If my payments are received after the due date, even if received before the date a Late Charge as permitted by Section 4 applies, I may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of Principal. This is a result of the accrual of daily interest.

If the governing law which applies to this Note sets maximum loan charges and is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial payment.

Check One:

☒ **Fixed Rate:**

I agree to pay interest on the outstanding Principal balance at a fixed annual rate of 6.74 % ("Interest Rate").

☐ **Adjustable Rate:**

(A) **Interest Rate:** I agree to pay interest on the outstanding Principal balance at the initial annual rate of N/A % ("Interest Rate") until the first Change Date as defined in Paragraph (B) below. Thereafter, the Interest Rate I pay may change as of each Change Date and will be calculated pursuant to Paragraph (D) below. My initial annual rate may not be related to the formula used to determine later rates.

(B) **Date Definitions:**

(i) **Change Date:** Each date on which the Interest Rate may change is called the Change Date. The Interest Rate may change _____ and every _____ month(s) thereafter.

(ii) **Index Date:** The 25th day of each month is an "Index Date." If the Index is not published on the 25th day of the month, then the Index Date shall be the first day prior to the 25th day of the month on which the Index is published.

(iii) **Look-back Date:** The date that is 30 days prior to a Change Date is called the "Look-back Date."

(C) **The Index:** Check One:

☐ The "Index" is the "Prime Rate" as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one Prime Rate published on an Index Date, then the Note Holder will use the higher of such prime rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of the Prime Rate.

☐ The "Index" is the average of interbank offered rates for _____ month U.S. dollar-denominated deposits in the London market ("LIBOR") as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one LIBOR published on an Index Date, then the Note Holder will use the higher of such LIBOR rates. If this index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of LIBOR.

(D) **Calculation of New Interest Rate:** The new annual interest rate that will be applicable beginning on each Change Date will be determined as follows:

Check One:

- ☐ The new annual interest rate will be equal to the index published on the index date for the calendar month immediately preceding the Look-back Date for that Change Date, rounded down to the nearest .01%, plus _____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.
- ☐ The new annual interest rate will be equal to the index published on the index date for the calendar month immediately preceding that Change Date, rounded down to the nearest .01%, plus _____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.
- (E) **Limits on Interest Rate Changes:** My interest rate will never be greater than _____% or less than 0%.
- ☐ If this box is checked, the interest rate will be subject to the additional limitations on increases. The interest rate I am required to pay at the first Change Date will never be greater than _____%. Thereafter increases will be subject to an additional limitation on each Change Date such that the interest rate I pay will never be increased on any single Change Date by more than 2% from the interest rate I have been paying for the preceding 12 months.
- ☐ If this box is checked, there will be no additional limitation on increases in my interest rate.
- (F) **Notice of Changes:** The Note Holder will deliver or mail to me a notice of any changes in my interest rate as required by applicable law. The notice will include information about any changes to my payment amount.

3. PAYMENTS.

(A) Payment Options and Schedule:

Check One:

- ☒ **Interest Payments:** I will pay accrued interest beginning on 03/15/07 as follows: check one:
- ☒ monthly or ☐ quarterly ("Interest Payments"). The amount of each interest payment will vary depending upon the amount of principal outstanding, the date principal payments or installment payments are received and if Section 2 of this Note provides for an Adjustable Rate, the interest rate then in effect. In addition, I will make the following Payments:

Check One:

- ☒ **Principal Reduction Payments and/or a Balloon Payment:** In addition to the interest payments, I will make principal payments as set forth in the Payment Schedule below:
- ☐ **Installment Payments:** For purposes of this Section 3, the "Payment Change Date" is the first payment due date that is at least 26 days after the "Anniversary Date." The Anniversary Date is the date that is _____ year(s) after the Note Date. Beginning on the Payment Change Date, in place of interest payments, I will make installment payments of principal and interest. On the Anniversary Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal balance in full over the period of time ending on the Maturity Date as defined in Paragraph (D) with interest at the rate set in accordance with Section 2. The result of this calculation will be my new payment amount. The Note Holder will give me notice of this new payment amount. This payment amount is estimated in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, this payment amount may change. On each subsequent Change Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount beginning on the first payment due date which is at least 26 days after the Change Date. I will pay my new payment amount until the payment amount changes again or until the Maturity Date as described in Paragraph (D).
- ☐ **Installment Payments or Installment Payments with a Balloon Payment:** I will pay the unpaid principal and interest in installment payments as set forth in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, the payment amounts, including the final payment, as set forth in the Payment Schedule may change. On each Change Date, the Note Holder will determine the ☐ monthly ☐ quarterly ☐ semi-annual or ☐ annual payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount. I will pay my new payment amount beginning on the first payment due date after the Change Date until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

Payment Schedule:

Number of Payments	Payment Amount	Frequency	Start/Due Date	Number of Payments	Payment Amount	Frequency	Start/Due Date
60	\$ Interest Only	M	03/15/07		\$		
1	\$ 270518.70	M	02/15/12		\$		

Frequency Legend: M = Monthly Q = Quarterly S = Semi-Annually A = Annually

(B) **Place of Payments:** I will make my payments in U.S. funds payable to the Note Holder at the address provided to me by the Note Holder or at a different address if required by the Note Holder.

(C) **Application of Payments:** Unless otherwise prohibited by the law governing this Note, each payment I make on this Note will first reduce the amount of accrued unpaid interest, then any optional insurance premiums due, then any applicable unpaid charges and then unpaid Principal. I will make payments until I have paid all of the Principal and interest and any other fees or charges that I may owe under the terms of this Note.

(D) **Maturity Date:** If on 02/15/12, I still owe any amount under this Note, I will pay those amounts in full on that date which is called the "Maturity Date."

(E) **Optional Credit Insurance:** If I have selected optional credit insurance offered by the Note Holder in connection with this loan, the payment amount(s) shown in the Payment Schedule include the premiums for the insurance coverage(s) that I have selected. I understand that the actual total premium amount I pay will depend upon my payment record.

I understand that credit life and credit disability (accident and health) insurance are not required, and that I may cancel them at any time by giving written notice to you. If my credit insurance is canceled, no further portion of any payments I make will be applied to credit insurance premiums. At my request, you will adjust my payment amount to reflect the cancellation of the credit insurance. If my credit insurance is cancelled and Section 2 of this Note provides for an Adjustable Rate, on the next Change Date the cancellation of the credit insurance will be considered in determining my new payment amount.

(F) **Balloon Payment:** If the Payment Schedule requires me to make a final payment that is significantly larger than any other payment ("Balloon Payment"), I understand that I may be required to make this Balloon Payment on the Maturity Date. I understand that the law governing this Note may provide me with a right to refinance any Balloon Payment. If I have a right to refinance any Balloon Payment, the Note Holder will advise me as to whether I have a limited right to refinance and the terms surrounding such refinance. Otherwise, I understand that the Balloon Payment disclosed above will be due and payable on the Due Date disclosed above.

4. FEES AND CHARGES. In addition to interest and other amounts I may agree to pay, I agree to pay the Note Holder the following additional fees and charges:

(A) **Late Charges:** The following late charges will apply to the extent the Note is governed by the laws of the jurisdiction referenced in the subsection header or text:

(i) **Alabama:** If a payment is not received in full within 10 days of the date it is due, I will pay a late charge equal to 5% of the unpaid portion of the scheduled payment amount or \$10.00, whichever is greater. However, the late charge will never be greater than \$100.00.

(ii) **Connecticut:** If a payment is not received in full within 10 days of the date it is due, I will pay a late charge equal to 5% of the unpaid portion of the scheduled payment amount or \$10.00, whichever is less.

(iii) **Delaware:** If a payment is not received in full within 10 days of the date it is due, I will pay a late charge equal to 5% of the scheduled payment amount.

(iv) **District of Columbia, Florida, Georgia, Maryland, Tennessee, Texas, or Virginia:** If a payment is not received in full within 10 days of the date it is due, I will pay a late charge equal to 5% of the unpaid portion of the scheduled payment amount.

(v) **Mississippi:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount or \$5.00, whichever is greater. However, the late charge will never be greater than \$50.00.

(vi) **New Jersey:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 5% of the unpaid portion of the scheduled payment amount.

(vii) **North Carolina:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount.

(viii) **Pennsylvania:** If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 5% of the scheduled payment amount.

(ix) **South Carolina:** If a payment is not received in full within 10 days of the date it is due, I will pay a late charge equal to 5% of the unpaid portion of the scheduled payment amount. However, the late charge will never be less than \$5.80 or more than \$14.50. These amounts may change so as to always be the maximum amount allowed by law.

(B) **Returned Payment Fee:** Unless otherwise limited or prohibited by the law governing this Note, I will pay a charge of up to \$25.00 for each payment (check or automatic payment) that I make that is returned or dishonored for any reason.

(C) **Prepayment Charge:** If this Note is governed by the laws of Connecticut, Delaware, Florida, Georgia, Tennessee or Virginia, and I prepay this Note in full at any time prior to the expiration of 2/3rds of the term of this Note, I will pay a prepayment penalty of \$100.00. If this Note is governed by Maryland law and Lender will be secured in the first lien position as of the date of this Note, and if I make a full prepayment of the Principal at any time prior to the expiration of 2/3rds of the term of this Note, I will pay a prepayment penalty of \$100.00. If this Note is governed by the laws of a jurisdiction other than those referenced in this subsection above, I will not have to pay a prepayment penalty.

(D) **Origination Fee:** If an origination fee or other fee or charge is charged as included on the HUD-1, HUD-1A, or Itemization of Amount Financed prepared in connection with this loan transaction, I agree to pay such fees and charges. Except as otherwise required by law, I agree that such fees and charges are fully earned as of the date of this Note and are nonrefundable upon prepayment.

(E) **Additional Charges:** I agree that if, during the term of this Note, I request other services related to servicing or administering my loan for which the Note Holder has a scheduled charge, I will, to the extent permitted by the law governing this Note, pay the Note Holder the then current fee for such services or request if the Note Holder agrees to perform such service or request. I understand that any such fees are fully earned when charged and are nonrefundable upon prepayment.

5. BORROWER'S FAILURE TO PAY AS REQUIRED AND TERMS OF DEFAULT.

(A) **Terms of Default:** I will be in Default under this Note if any of the following things happen:

(i) If I fail to make any payment or comply with any of the terms of this Note or any other note with the Note Holder now or in the future; or

(ii) If I make any false, incorrect or misleading representation or warranty at any time during the application process; or

(iii) If I die; or

(iv) If I become involved in any bankruptcy or insolvency proceeding; or

(v) If the collateral described in Section 6 or any schedule to this Note is used in violation of any law or regulation or if a judgment or lien is filed or levied against me or the collateral or the collateral is impaired, damaged, or removed from the custody of the Note Holder; or

(vi) If I fail to abide by the term(s) of any Security Instrument or other documents described in Section 6 which secure payment of this Note.

(B) **Notice of Default:** If I am in Default, then the entire Principal balance, accrued interest, fees, and collection costs permitted to be collected under applicable law will be immediately due and payable. At its option or if required by law, the Note Holder may send me a written notice informing me of said Default and acceleration. If I make any payment after the Note Holder has demanded payment of the entire balance due, my payment will be applied to the unpaid balance due under this Note. The unpaid balance consists of the Principal Amount remaining due, plus accrued finance charges, unpaid Late Charges, collection costs, and all other amounts due to the Note Holder under this Note. The Note Holder shall also have other rights and remedies provided by law. If the net proceeds of collateral sold do not pay my indebtedness in full, I will pay the Note Holder the difference, plus interest at the Note Interest Rate until the unpaid balance is paid in full. Any Default of this Note will also constitute an event of Default of any separate Mortgage, Deed of Trust or Security Deed securing this Note ("Security Instrument") or Pledge Agreement securing this Note. Upon Default, the Note Holder may proceed to enforce the terms of this Note or enforce any rights that it may have under the Security Instrument or Pledge Agreement.

(C) **No Waiver by Note Holder:** Even if, at a time when I am in Default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in Default at a later time. Any failure to enforce any provision of this Note by the Note Holder shall not constitute any waiver of such rights of the Note Holder to subsequently enforce such rights or remedies.

(D) **Payment of the Note Holder's Costs and Expenses:** If the Note Holder has required me to pay immediately in full as described above, and I fail to do so and such failure causes the Note Holder to incur additional expenses, the Note Holder will have the right to a refund of all of its costs and expenses to the extent not prohibited by the law governing this Note. Those expenses include, for example, reasonable attorneys' fees for an attorney who is not the Note Holder's salaried employee, foreclosure fees and court costs. In no event shall these expenses exceed fifteen percent (15%) of the unpaid balance plus Court Costs.

6. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT. In addition to the protections given to the Note Holder under this Note, a separate Security Instrument(s), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Subject to applicable law, I understand that this loan is subject to repayment in full in the event the Property securing this debt is sold, conveyed or otherwise transferred.

If in addition to a Security Instrument, I pledge securities, cash accounts or other liquid collateral (the "Other Collateral") as Other Collateral for this Note, then I grant to the Note Holder a perfected security interest in such Other Collateral and all additions or replacements to, or proceeds of as is more fully described in the separate Collateral Pledge Agreement (the "Pledge Agreement") executed as of the same date as this Note. The Pledge Agreement describes the Other Collateral in detail and protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. The Pledge Agreement also describes how and under what conditions I may also be required to make immediate payment in full of all amounts that I owe under this Note. I agree to these conditions. If the Other Collateral includes securities, I agree to deliver immediately to the Note Holder, fully endorsed, any certificates for shares representing any stock dividend, stock split or right to subscribe. I further pledge and agree to deliver to the Note Holder, upon demand, additional Other Collateral satisfactory to the Note Holder and in accordance with all margin requirements. If I do not provide the Note Holder with a perfected security interest in the Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest, I will be responsible for such expenses.

If I do not provide or assist the Note Holder in obtaining a perfected security interest in the Property or Other Collateral and the Note Holder incurs any expenses, including attorney's fees, in order to obtain a perfected security interest in such Property or Other Collateral, to the extent not otherwise prohibited by the law governing this Note, I agree that the Note Holder may add the amount of such expenses to the Principal and that such expenses will accrue interest at the Note Interest Rate until paid in full.

7. PREPAYMENT.

(A) Subject to the order of application of payments described in Section 3, I have the right to make payments of Principal at any time before they are due. A prepayment of all unpaid Principal is known as a "full prepayment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment."

(B) If I make a partial prepayment, my next due date may be advanced. If I make a payment that is more than the amount that is due, the amount in excess of the amount due is called an "Excess Payment." If I make an Excess Payment, the Note Holder will assume that I want to reduce or skip my next scheduled payment or payments. If the Excess Payment is less than or equal to the next scheduled payment, the next scheduled payment will be reduced by the amount of the Excess Payment. If the Excess Payment exceeds the amount of my next scheduled payment, the number of payments that may be skipped will be determined by subtracting each subsequently scheduled payment from the Excess Payment. So long as the remaining portion of the Excess Payment exceeds the next scheduled payment amount, that payment may be skipped. When the remaining portion of the Excess Payment is equal to or less than my next scheduled payment, that remaining portion will be used to reduce the amount of the next scheduled payment. If I want the Note Holder to handle an Excess Payment differently, I will tell the Note Holder in writing. I understand that interest will continue to accrue on the outstanding principal balance and that if I want maximum interest savings from Excess Payments, I should continue to make payments on or before the scheduled due date.

8. BORROWER'S WAIVERS. I waive my rights to require the Note Holder to do certain things. Those things are: (a) to demand payment of amounts due (known as "presentment"); (b) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (c) to obtain an official certification of non-payment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "Guarantors," "Sureties," "Co-Signers" and "Endorsers."

9. GIVING OF NOTICES.

(A) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address contained in this Note. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

(B) Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address provided to me by the Note Holder. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

10. PAYMENT IN FULL. I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL" WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, NATIONAL ASSOCIATION, SPECIAL PAYOFFS, PO BOX 10723, ROANOKE, VA 24022. ACCEPTANCE OF ANY PAYMENT SENT TO THE SPECIAL HANDLING ADDRESS DOES NOT WAIVE THE NOTE HOLDER'S RIGHT TO SUBSEQUENTLY REJECT SUCH PAYMENT IN ACCORDANCE WITH APPLICABLE LAW.

11. EXTENSIONS AND MODIFICATIONS. All Guarantors, Sureties, Co-Signers, Endorsers and I consent to any and all extensions of time, renewals, waivers or modifications which may be granted or consented to by the Note Holder as to the time of payment or any other provision of this Note. If in its sole discretion, the Note Holder permits an extension, renewal or modification to this Note, I agree to pay a charge not to exceed an amount permitted by the law governing this Note. All Guarantors, Sureties, Co-Signers, Endorsers and Makers hereby waive presentment, notice of dishonor, and protest hereof. This Note is the joint and several obligation of each Maker and shall be binding upon them and their heirs, successors and assigns.

12. INSURANCE REQUIREMENTS. I agree to purchase property/hazard insurance insuring the Property against loss and as required by the Security Instrument. I acknowledge that I may obtain property/hazard insurance from any insurance company of my choice, subject to the Note Holder's right of approval which shall not be unreasonably withheld. Unless I provide the Note Holder with evidence of the insurance coverage required by my agreement with the Note Holder, the Note Holder may purchase insurance at my expense to protect the Note Holder's interests in the Property. This insurance may, but need not, protect my interests. The coverage that the Note Holder purchases may not pay any claim that I make or any claim that is made against me in connection with the Property. I may later cancel any insurance purchased by the Note Holder, but only after providing the Note Holder with evidence that I have obtained insurance as required by our agreement. If the Note Holder purchases insurance for the Property, I will be responsible for the costs of the insurance, including interest and any other charges the Note Holder may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added to the Principal and will accrue interest at the Note Interest Rate. I understand that the costs of the insurance obtained by the Note Holder may be more than the cost of insurance I may be able to obtain on my own.

13. RESPONSIBILITY OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each of us is jointly and severally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any Guarantor, Surety, Co-Signer or Endorser of this Note (as described in Section 8 above) jointly and severally guarantee the payment, when due, to any Note Holder hereof of all amounts from time to time owing on this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. I and any Guarantor, Surety, Co-Signer or Endorser of this Note further agree that the failure by the Note Holder to perfect any security interest granted by this Note shall not affect my liability or the liability of any Guarantor hereon.

14. GOVERNING LAW. This Note shall be governed by federal law and, to the extent not preempted by federal law, the laws of the State where the Property securing this loan is located. If the Property securing this debt is located in Maryland, to the extent this Note is governed by Maryland law, this Note is governed by Md. Code Ann., Commercial Law §12-1001 et. seq. and applicable federal law.

15. GENERAL PROVISIONS. I agree that I may not sell, assign or otherwise transfer my rights or obligations under this Note and that such action will be void. Any person who takes over my rights or obligations under this Note by operation of law will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of any Guarantor, Surety, Co-Signer or Endorser of this Note is also obligated to keep all of the promises made in this Note. This Note is intended by the Note Holder and me as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in writing signed by the Note Holder and me. This Note benefits the Note Holder, its successors and assigns, and binds me and my heirs, personal representatives and assigns. If any provision of this Note shall for any reason be held to be invalid or unenforceable, such determination shall not affect the enforceability of the remaining provisions of this Note. Headings are for convenience of reference only and shall not affect the construction of this Note or any other document associated with this loan.

16. SAVINGS AND COMPLIANCE. It is the intention of you and me to comply with applicable law. In each and every instance, our rights shall be limited by applicable law (to the extent such laws may not be effectively waived), construed so as to comply with such laws, and our rights may not be exercised except to the extent permitted by applicable law. No part of this agreement, nor any charge or receipt by you, is supposed to permit you to impose interest or other amounts in excess of lawful amounts. If an excess occurs, you will apply it as a credit or otherwise refund it and the rate or amount involved will automatically be reduced to the maximum lawful rate or amount. To the extent permitted by law, for purposes of determining your compliance with law, you may calculate charges by amortizing, prorating, allocating and spreading any such charges.

17. DOCUMENTARY TAX. For loans secured by real property located in Florida, the state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

NOTICE TO BORROWER:

1. CAUTION: IT IS IMPORTANT THAT THE BORROWER THOROUGHLY READS THIS NOTE BEFORE THE BORROWER SIGNS IT.
2. THIS NOTE IS SECURED BY EITHER A FIRST OR SUBORDINATE LIEN ON REAL PROPERTY.
3. THIS NOTE MAY PROVIDE FOR THE PAYMENT OF A PENALTY IF THE BORROWER WISHES TO REPAY THIS NOTE PRIOR TO THE DATE PROVIDED FOR REPAYMENT IN THIS NOTE.
4. THE BORROWER IS ENTITLED TO A COPY OF THIS NOTE.
5. DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES.
6. THE BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

For Texas residents only: NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS _____ PERCENT PER YEAR.

By signing and sealing this Note, I agree under seal to the terms set forth above.

Joanna C. Schmitt [SEAL]
Borrower JOANNA C SCHMITT

Michael V. Schmitt [SEAL]
Borrower MICHAEL V SCHMITT

Any Guarantor, Surety, Co-Signer or Endorser of this Note acknowledges receipt and execution of the Co-Signer's Notice.

_____[SEAL]
Guarantor - Co-Signer

_____[SEAL]
Guarantor - Co-Signer

FOR OFFICE USE ONLY
Endorsement. Pay to the Order of _____
Without Recourse _____
By: _____ Name: _____ Title: _____

EXHIBIT

J

BK: 41
RC: 3036090

LOC:

LN TP: 88
130410/00

Date: 04/10/07

Ref. No. 0707300062
Acct. No.

Note

BORROWER(S):
MATTHEW A TERRY1687 BETHESDA CT
DUNWOODY, GA 30338

Amount Financed \$ 132743.60

1. BORROWER(S) PROMISE TO PAY. In return for a loan that I have received, the undersigned Borrower(s) (hereinafter referred to as "I," "me," or "my") jointly and severally promise to pay to Wachovia Bank, National Association, a national banking association organized and existing under the law of the United States of America ("Lender"), the sum of \$ 132743.60 (this amount will be called "Principal"), plus daily simple interest ("Interest") beginning on the date that Principal is advanced. The Principal may include points, origination fees and other amounts permitted by applicable law. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note and who is entitled to receive payments under this Note will be called the "Note Holder."

2. INTEREST. Interest will accrue on the entire Principal balance outstanding at any time. Notwithstanding anything to the contrary, I do not agree to pay and the Note Holder does not intend to charge any interest at a rate that is higher than the maximum rate of interest that could be charged under applicable law for the extension of credit that is agreed to under this Note (either before or after maturity). If any notice of interest accrual is sent and is in error, and if the Note Holder actually collects more interest than allowed by law or this Note, the Note Holder agrees to refund any such excess interest.

I agree to pay interest on the unpaid Principal balance of this Note owing after maturity, and until paid in full at the same rate in effect before maturity. I agree that any loan origination fee paid to the Note Holder is earned as of the date of this Note.

Interest accrues on the Principal remaining unpaid from time to time, until paid in full. The Interest Rate, as defined in this Section 2 below, will be charged at a rate of 1/365th of the Interest Rate for each day, or 1/366th of the Interest Rate for each day in any leap year, applied against that day's outstanding Principal balance. The dollar amount of the finance charge and the payments disclosed to me for this credit transaction are based upon my payments being received by the Note Holder on the date payments are due. If my payments are received after the due date, even if received before the date a Late Charge as permitted by Section 4 applies, I may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of Principal. This is a result of the accrual of daily interest.

To the extent that any fees or charges are added to the Principal balance, they will thereafter bear interest and I agree to pay this interest. I understand that in the event my first payment due date is more than one month from the date of this Note, one or more of my initial payments may not pay all of the interest owed on the date of the payment and therefore may not reduce the outstanding Principal balance.

If the governing law which applies to this Note sets maximum loan charges and is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial payment.

Check One:

☒ Fixed Rate:I agree to pay interest on the outstanding Principal balance at a fixed annual rate of 6.74 % ("Interest Rate").☐ Adjustable Rate:

(A) Interest Rate: I agree to pay interest on the outstanding Principal balance at the initial annual rate of N/A % ("Interest Rate") until the first Change Date as defined in Paragraph (B) below. Thereafter, the Interest Rate I pay may change as of each Change Date and will be calculated pursuant to Paragraph (D) below. My initial annual rate may not be related to the formula used to determine later rates.

(B) Date Definitions:

(i) Change Date: Each date on which the Interest Rate may change is called the Change Date. The Interest Rate may change and every month(s) thereafter.

(ii) Index Date: The 25th day of each month is an "Index Date." If the Index is not published on the 25th day of the month, then the Index Date shall be the first day prior to the 25th day of the month on which the Index is published.

(iii) Look-back Date: The date that is 30 days prior to a Change Date is called the "Look-back Date."

(C) The Index: Check One:

☐ The "Index" is the "Prime Rate" as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one Prime Rate published on an Index Date, then the Note Holder will use the higher of such prime rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of the Prime Rate.

- ☐ The "Index" is the average of interbank offered rates for ____ month U.S. dollar-denominated deposits in the London market ("LIBOR") as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one LIBOR published on an Index Date, then the Note Holder will use the higher of such LIBOR rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of LIBOR.
- (D) Calculation of New Interest Rate: The new annual interest rate that will be applicable beginning on each Change Date will be determined as follows:

Check One:

- ☐ The new annual interest rate will be equal to the index published on the Index Date for the calendar month immediately preceding the Look-back Date for that Change Date, rounded down to the nearest .01%, plus ____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.
- ☐ The new annual interest rate will be equal to the index published on the Index Date for the calendar month immediately preceding that Change Date, rounded down to the nearest .01%, plus ____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.
- (E) Limits on Interest Rate Changes: My interest rate will never be greater than ____% or less than 0%.
- ☐ If this box is checked, the interest rate will be subject to the additional limitations on increases. The interest rate I am required to pay at the first Change Date will never be greater than ____%. Thereafter increases will be subject to an additional limitation on each Change Date such that the interest rate I pay will never be increased on any single Change Date by more than 2% from the interest rate I have been paying for the preceding 12 months.
- ☐ If this box is checked, there will be no additional limitation on increases in my interest rate.

(F) Notice of Changes: The Note Holder will deliver or mail to me a notice of any changes in my interest rate as required by applicable law. The notice will include information about any changes to my payment amount.

3. PAYMENTS.

(A) Payment Options and Schedule:

Check One:

- ☒ Interest Payments: I will pay accrued interest beginning on 05/10/07 as follows: check one:
- ☒ monthly or ☐ quarterly ("Interest Payments"). The amount of each interest payment will vary depending upon the amount of principal outstanding, the date principal payments or installment payments are received and if Section 2 of this Note provides for an Adjustable Rate, the interest rate then in effect. In addition, I will make the following Payments:

Check One:

- ☒ Principal Reduction Payments and/or a Balloon Payment: In addition to the interest payments, I will make principal payments as set forth in the Payment Schedule below:
- ☐ Installment Payments: For purposes of this Section 3, the "Payment Change Date" is the first payment due date that is at least 28 days after the "Anniversary Date." The Anniversary Date is the date that is ____ year(s) after the Note Date. Beginning on the Payment Change Date, in place of interest payments, I will make installment payments of principal and interest. On the Anniversary Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal balance in full over the period of time ending on the Maturity Date as defined in Paragraph (D) with interest at the rate set in accordance with Section 2. The result of this calculation will be my new payment amount. The Note Holder will give me notice of this new payment amount. This payment amount is estimated in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, this payment amount may change. On each subsequent Change Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount beginning on the first payment due date which is at least 28 days after the Change Date. I will pay my new payment amount until the payment amount changes again or until the Maturity Date as described in Paragraph (D).
- ☐ Installment Payments or Installment Payments with a Balloon Payment: I will pay the unpaid principal and interest in installment payments as set forth in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, the payment amounts, including the final payment, as set forth in the Payment Schedule may change. On each Change Date, the Note Holder will determine the ☐ monthly ☐ quarterly ☐ semi-annual or ☐ annual payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount. I will pay my new payment amount beginning on the first payment due date after the Change Date until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

Payment Schedule:

Number of Payments	Payment Amount	Frequency	Start/Due Date	Number of Payments	Payment Amount	Frequency	Start/Due Date
48	\$ Interest Only	M	05/10/07		\$		
1	\$132743.80	M	04/10/11		\$		
Frequency Legend: M = Monthly Q = Quarterly S = Semi Annually A = Annually							

(B) Place of Payments: I will make my payments in U.S. funds payable to the Note Holder at the address provided to me by the Note Holder or at a different address if required by the Note Holder.

(C) Application of Payments: Unless otherwise prohibited by the law governing this Note, each payment I make on this Note will first reduce the amount of accrued unpaid interest, then any optional insurance premiums due, then any applicable unpaid charges and then unpaid Principal. I will make payments until I have paid all of the Principal and interest and any other fees or charges that I may owe under the terms of this Note.

(D) Maturity Date: If on 04/10/11, I still owe any amount under this Note, I will pay those amounts in full on that date which is called the "Maturity Date."

(E) Optional Credit Insurance: If I have selected optional credit insurance offered by the Note Holder in connection with this loan, the payment amount(s) shown in the Payment Schedule include the premiums for the insurance coverage(s) that I have selected. I understand that the actual total premium amount I pay will depend upon my payment record.

I understand that credit life and credit disability (accident and health) insurance are not required, and that I may cancel them at any time by giving written notice to you. If my credit insurance is canceled, no further portion of any payments I make will be applied to credit insurance premiums. At my request, you will adjust my payment amount to reflect the cancellation of the credit insurance. If my credit insurance is cancelled and Section 2 of this Note provides for an Adjustable Rate, on the next Change Date the cancellation of the credit insurance will be considered in determining my new payment amount.

(F) Balloon Payment: If the Payment Schedule requires me to make an estimated final payment that is significantly larger than any other payment ("Balloon Payment"), I understand that I will be required to make this Balloon Payment on the Maturity Date. I understand that the Note Holder is not required to refinance any Balloon Payment and that the failure to make the required Balloon Payment on the Due Date constitutes a Default under the terms of this Note.

4. FEES AND CHARGES. In addition to interest and other amounts I may agree to pay, I agree to pay the Note Holder the following additional fees and charges:

(A) Late Charges: If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount.

(B) Returned Payment Fee: Unless otherwise limited or prohibited by the law governing this Note, I will pay a charge of up to \$25.00 for each payment (check or automatic payment) that I make that is returned or dishonored for any reason.

(C) Origination Fee: If an origination fee or other fee or charge is charged as included on the HUD-1, HUD-1A, or Itemization of Amount Financed prepared in connection with this loan transaction, I agree to pay such fees and charges. Except as otherwise required by law, I agree that such fees and charges are fully earned as of the date of this Note and are nonrefundable upon prepayment.

(D) Additional Charges: I agree that if, during the term of this Note, I request other services related to servicing or administering my loan for which the Note Holder has a scheduled charge, I will, to the extent permitted by the law governing this Note, pay the Note Holder the then current fee for such services or request if the Note Holder agrees to perform such service or request. I understand that any such fees are fully earned when charged and are nonrefundable upon prepayment.

5. BORROWER'S FAILURE TO PAY AS REQUIRED AND TERMS OF DEFAULT.

(A) Terms of Default: I will be in Default under this Note if any of the following things happen:

- (i) If I fail to make any payment or comply with any of the terms of this Note or any other note with the Note Holder now or in the future; or
- (ii) If I make any false, incorrect or misleading representation or warranty at any time during the application process; or
- (iii) If I die; or
- (iv) If I become involved in any bankruptcy or insolvency proceeding; or
- (v) If the collateral described in Section 6 or any schedule to this Note is used in violation of any law or regulation or if a judgment or lien is filed or levied against me or the collateral or the collateral is impaired, damaged, or removed from the custody of the Note Holder; or
- (vi) If I fail to abide by the term(s) of any Security Instrument or other documents described in Section 6 which secure payment of this Note.

(B) Notice of Default: If I am in Default, then the entire Principal balance, accrued interest, fees, and collection costs permitted to be collected under applicable law will be immediately due and payable. At its option or if required by law, the Note Holder may send me a written notice informing me of said Default and acceleration. If I make any payment after the Note Holder has demanded payment of the entire balance due, my payment will be applied to the unpaid balance due under this Note. The unpaid balance consists of the Principal Amount remaining due, plus accrued finance charges, unpaid Late Charges, collection costs, and all other amounts due to the Note Holder under this Note. The Note Holder shall also have other rights and remedies provided by law. If the net proceeds of collateral sold do not pay my indebtedness in full, I will pay the Note Holder the difference, plus interest at the Note Interest Rate until the unpaid balance is paid in full. Any Default of this Note will also constitute an event of Default of any separate Mortgage, Deed of Trust or Security Deed securing this Note ("Security Instrument") or Pledge Agreement securing this Note. Upon Default, the Note Holder may proceed to enforce the terms of this Note or enforce any rights that it may have under the Security Instrument or Pledge Agreement.

(C) No Waiver by Note Holder: Even if, at a time when I am in Default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in Default at a later time. Any failure to enforce any provision of this Note by the Note Holder shall not constitute any waiver of such rights of the Note Holder to subsequently enforce such rights or remedies.

(D) **Payment of the Note Holder's Costs and Expenses:** If the Note Holder has required me to pay immediately in full as described above, and I fail to do so and such failure causes the Note Holder to incur additional expenses, the Note Holder will have the right to a refund of all of its costs and expenses to the extent not prohibited by the law governing this Note. Those expenses include, for example, reasonable attorneys' fees for an attorney who is not the Note Holder's salaried employee, foreclosure fees and court costs. In no event shall these expenses exceed fifteen percent (15%) of the unpaid balance plus Court Costs.

6. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT. In addition to the protections given to the Note Holder under this Note, a separate Security Instrument(s), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Subject to applicable law, I understand that this loan is subject to repayment in full in the event the Property securing this debt is sold, conveyed or otherwise transferred.

If in addition to a Security Instrument, I pledge securities, cash accounts or other liquid collateral (the "Other Collateral") as Other Collateral for this Note, then I grant to the Note Holder a perfected security interest in such Other Collateral and all additions or replacements to, or proceeds of as is more fully described in the separate Collateral Pledge Agreement (the "Pledge Agreement") executed as of the same date as this Note. The Pledge Agreement describes the Other Collateral in detail and protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. The Pledge Agreement also describes how and under what conditions I may also be required to make immediate payment in full of all amounts that I owe under this Note. I agree to these conditions. If the Other Collateral includes securities, I agree to deliver immediately to the Note Holder, fully endorsed, any certificates for shares representing any stock dividend, stock split or right to subscribe. I further pledge and agree to deliver to the Note Holder, upon demand, additional Other Collateral satisfactory to the Note Holder and in accordance with all margin requirements. If I do not provide the Note Holder with a perfected security interest in the Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest, I will be responsible for such expenses.

If I do not provide or assist the Note Holder in obtaining a perfected security interest in the Property or Other Collateral and the Note Holder incurs any expenses, including attorney's fees, in order to obtain a perfected security interest in such Property or Other Collateral, to the extent not otherwise prohibited by the law governing this Note, I agree that the Note Holder may add the amount of such expenses to the Principal and that such expenses will accrue interest at the Note Interest Rate until paid in full.

7. PREPAYMENT.

(A) Subject to the order of application of payments described in Section 3, I have the right to make payments of Principal at any time before they are due without penalty. A prepayment of all unpaid Principal is known as a "full prepayment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment."

(B) If I make a partial prepayment, my next due date may be advanced. If I make a payment that is more than the amount that is due, the amount in excess of the amount due is called an "Excess Payment." If I make an Excess Payment, the Note Holder will assume that I want to reduce or skip my next scheduled payment or payments. If the Excess Payment is less than or equal to the next scheduled payment, the next scheduled payment will be reduced by the amount of the Excess Payment. If the Excess Payment exceeds the amount of my next scheduled payment, the number of payments that may be skipped will be determined by subtracting each subsequently scheduled payment from the Excess Payment. So long as the remaining portion of the Excess Payment exceeds the next scheduled payment amount, that payment may be skipped. When the remaining portion of the Excess Payment is equal to or less than my next scheduled payment, that remaining portion will be used to reduce the amount of the next scheduled payment. If I want the Note Holder to handle an Excess Payment differently, I will tell the Note Holder in writing. I understand that interest will continue to accrue on the outstanding principal balance and that if I want maximum interest savings from Excess Payments, I should continue to make payments on or before the scheduled due date.

8. BORROWER'S WAIVERS. I waive my rights to require the Note Holder to do certain things. Those things are: (a) to demand payment of amounts due (known as "presentment"); (b) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (c) to obtain an official certification of non-payment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "Guarantors," "Sureties," "Co-Signers" and "Endorsers."

9. GIVING OF NOTICES.

(A) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address contained in this Note. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

(B) Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address provided to me by the Note Holder. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

10. PAYMENT IN FULL. I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL" WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, NATIONAL ASSOCIATION, SPECIAL PAYOFFS, PO BOX 10723, ROANOKE, VA 24022. ACCEPTANCE OF ANY PAYMENT SENT TO THE SPECIAL HANDLING ADDRESS DOES NOT WAIVE THE NOTE HOLDER'S RIGHT TO SUBSEQUENTLY REJECT SUCH PAYMENT IN ACCORDANCE WITH APPLICABLE LAW.

11. EXTENSIONS AND MODIFICATIONS. All Guarantors, Sureties, Co-Signers, Endorsers and I consent to any and all extensions of time, renewals, waivers or modifications which may be granted or consented to by the Note Holder as to the time of payment or any other provision of this Note. If in its sole discretion, the Note Holder permits an extension, renewal or modification to this Note, I agree to pay a charge not to exceed an amount permitted by the law governing this Note. All Guarantors, Sureties, Co-Signers, Endorsers and Makers hereby waive presentment, notice of dishonor, and protest hereof. This Note is the joint and several obligation of each Maker and shall be binding upon them and their heirs, successors and assigns.

12. INSURANCE REQUIREMENTS. I agree to purchase property/hazard insurance insuring the Property against loss and as required by the Security Instrument. I acknowledge that I may obtain property/hazard insurance from any insurance company of my choice, subject to the Note Holder's right of approval which shall not be unreasonably withheld. Unless I provide the Note Holder with evidence of the insurance coverage required by my agreement with the Note Holder, the Note Holder may purchase insurance at my expense to protect the Note Holder's interests in the Property. This insurance may, but need not, protect my interests. The coverage that the Note Holder purchases may not pay any claim that I make or any claim that is made against me in connection with the Property. I may later cancel any insurance purchased by the Note Holder, but only after providing the Note Holder with evidence that I have obtained insurance as required by our agreement. If the Note Holder purchases insurance for the Property, I will be responsible for the costs of the insurance, including interest and any other charges the Note Holder may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added to the Principal and will accrue interest at the Note Interest Rate. I understand that the costs of the insurance obtained by the Note Holder may be more than the cost of insurance I may be able to obtain on my own.

13. RESPONSIBILITY OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each of us is jointly and severally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any Guarantor, Surety, Co-Signer or Endorser of this Note (as described in Section 8 above) jointly and severally guarantee the payment, when due, to any Note Holder hereof of all amounts from time to time owing on this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. I and any Guarantor, Surety, Co-Signer or Endorser of this Note further agrees that the failure by the Note Holder to perfect any security interest granted by this Note shall not affect my liability or the liability of any Guarantor hereon.

14. GOVERNING LAW. This Note will be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state where the property securing this Note is located. Federal law that governs this Note includes 12 USC 85, which incorporates in part the laws of the State of North Carolina. If the Property securing this debt is located in Maryland, to the extent this Note is governed by Maryland law, this Note is governed by Md. Code Ann., Commercial Law § 12-1001 et. seq. and applicable federal law.

15. GENERAL PROVISIONS. I agree that I may not sell, assign or otherwise transfer my rights or obligations under this Note and that such action will be void. Any person who takes over my rights or obligations under this Note by operation of law will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of any Guarantor, Surety, Co-Signer or Endorser of this Note is also obligated to keep all of the promises made in this Note. This Note is intended by the Note Holder and me as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in writing signed by the Note Holder and me. This Note benefits the Note Holder, its successors and assigns, and binds me and my heirs, personal representatives and assigns. If any provision of this Note shall for any reason be held to be invalid or unenforceable, such determination shall not affect the enforceability of the remaining provisions of this Note. Headings are for convenience of reference only and shall not affect the construction of this Note or any other document associated with this loan.

16. SAVINGS AND COMPLIANCE. It is the intention of you and me to comply with applicable law. In each and every instance, our rights shall be limited by applicable law (to the extent such laws may not be effectively waived), construed so as to comply with such laws, and our rights may not be exercised except to the extent permitted by applicable law. No part of this agreement, nor any charge or receipt by you, is supposed to permit you to impose interest or other amounts in excess of lawful amounts. If an excess occurs, you will apply it as a credit or otherwise refund it and the rate or amount involved will automatically be reduced to the maximum lawful rate or amount. To the extent permitted by law, for purposes of determining your compliance with law, you may calculate charges by amortizing, prorating, allocating and spreading any such charges.

17. DOCUMENTARY TAX. For loans secured by real property located in Florida, the state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

NOTICE TO BORROWER:

1. CAUTION: IT IS IMPORTANT THAT THE BORROWER THOROUGHLY READS THIS NOTE BEFORE THE BORROWER SIGNS IT.
2. THIS NOTE IS SECURED BY EITHER A FIRST OR SUBORDINATE LIEN ON REAL PROPERTY.
3. THE BORROWER IS ENTITLED TO A COPY OF THIS NOTE.
4. DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES.
5. THE BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

For Texas residents only: NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS _____ PERCENT PER YEAR.

By signing and sealing this Note, I agree under seal to the terms set forth above.

Matthew A Terry [SEAL]
Borrower MATTHEW A TERRY

_____[SEAL]
Borrower

Any Guarantor, Surety, Co-Signer or Endorser of this Note acknowledges receipt and execution of the Co-Signer's Notice.

_____[SEAL]
Guarantor - Co-Signer

_____[SEAL]
Guarantor - Co-Signer

FOR OFFICE USE ONLY

Endorsement.

Pay to the Order of _____

Without Recourse

By: _____

Name: _____

Title: _____

EXHIBIT

K

BK: 41
RC: 3036090

LOC:

LN TP: 96
123300/00

Date: 06/25/07

Ref. No. 0718500219
Acct. No.

Note

BORROWER(S):
MATTHEW A TERRY1657 BETHESDA CT
DUNWOODY, GA 30338Amount Financed \$ 125724.70

1. **BORROWER(S) PROMISE TO PAY.** In return for a loan that I have received, the undersigned Borrower(s) (hereinafter referred to as "I," "me," or "my") jointly and severally promise to pay to Wachovia Bank, National Association, a national banking association organized and existing under the law of the United States of America ("Lender"), the sum of \$ 125724.70 (this amount will be called "Principal"), plus daily simple interest ("Interest") beginning on the date that Principal is advanced. The Principal may include points, origination fees and other amounts permitted by applicable law. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note and who is entitled to receive payments under this Note will be called the "Note Holder."

2. **INTEREST.** Interest will accrue on the entire Principal balance outstanding at any time. Notwithstanding anything to the contrary, I do not agree to pay and the Note Holder does not intend to charge any interest at a rate that is higher than the maximum rate of interest that could be charged under applicable law for the extension of credit that is agreed to under this Note (either before or after maturity). If any notice of interest accrual is sent and is in error, and if the Note Holder actually collects more interest than allowed by law or this Note, the Note Holder agrees to refund any such excess interest.

I agree to pay interest on the unpaid Principal balance of this Note owing after maturity, and until paid in full at the same rate in effect before maturity. I agree that any loan origination fee paid to the Note Holder is earned as of the date of this Note.

Interest accrues on the Principal remaining unpaid from time to time, until paid in full. The Interest Rate, as defined in this Section 2 below, will be charged at a rate of 1/365th of the Interest Rate for each day, or 1/366th of the Interest Rate for each day in any leap year, applied against that day's outstanding Principal balance. The dollar amount of the finance charge and the payments disclosed to me for this credit transaction are based upon my payments being received by the Note Holder on the date payments are due. If my payments are received after the due date, even if received before the date a Late Charge as permitted by Section 4 applies, I may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of Principal. This is a result of the accrual of daily interest.

To the extent that any fees or charges are added to the Principal balance, they will thereafter bear interest and I agree to pay this interest. I understand that in the event my first payment due date is more than one month from the date of this Note, one or more of my initial payments may not pay all of the interest owed on the date of the payment and therefore may not reduce the outstanding Principal balance.

If the governing law which applies to this Note sets maximum loan charges and is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial payment.

Check One:

☒ Fixed Rate:I agree to pay interest on the outstanding Principal balance at a fixed annual rate of 6.89 % ("Interest Rate").☐ Adjustable Rate:

(A) **Interest Rate:** I agree to pay interest on the outstanding Principal balance at the initial annual rate of N/A % ("Interest Rate") until the first Change Date as defined in Paragraph (B) below. Thereafter, the Interest Rate I pay may change as of each Change Date and will be calculated pursuant to Paragraph (D) below. My initial annual rate may not be related to the formula used to determine later rates.

(B) **Date Definitions:**

- (i) **Change Date:** Each date on which the Interest Rate may change is called the Change Date. The Interest Rate may change _____ and every _____ month(s) thereafter.
- (ii) **Index Date:** The 25th day of each month is an "Index Date." If the Index is not published on the 25th day of the month, then the Index Date shall be the first day prior to the 25th day of the month on which the Index is published.
- (iii) **Look-back Date:** The date that is 30 days prior to a Change Date is called the "Look-back Date."

(C) **The Index:** Check One:

☐ The "Index" is the "Prime Rate" as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one Prime Rate published on an Index Date, then the Note Holder will use the higher of such prime rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of the Prime Rate.

☐ The "Index" is the average of interbank offered rates for _____ month U.S. dollar-denominated deposits in the London market ("LIBOR") as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one LIBOR published on an Index Date, then the Note Holder will use the higher of such LIBOR rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of LIBOR.

(D) Calculation of New Interest Rate: The new annual interest rate that will be applicable beginning on each Change Date will be determined as follows:

Check One:

☐ The new annual interest rate will be equal to the index published on the Index Date for the calendar month immediately preceding the Look-back Date for that Change Date, rounded down to the nearest .01%, plus _____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.

☐ The new annual interest rate will be equal to the index published on the Index Date for the calendar month immediately preceding that Change Date, rounded down to the nearest .01%, plus _____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new interest rate will become effective on each Change Date.

(E) Limits on Interest Rate Changes: My interest rate will never be greater than _____% or less than 0%.

☐ If this box is checked, the interest rate will be subject to the additional limitations on increases. The interest rate I am required to pay at the first Change Date will never be greater than _____%. Thereafter increases will be subject to an additional limitation on each Change Date such that the interest rate I pay will never be increased on any single Change Date by more than 2% from the interest rate I have been paying for the preceding 12 months.

☐ If this box is checked, there will be no additional limitation on increases in my interest rate.

(F) Notice of Changes: The Note Holder will deliver or mail to me a notice of any changes in my interest rate as required by applicable law. The notice will include information about any changes to my payment amount.

3. PAYMENTS.

(A) Payment Options and Schedule:

Check One:

☒ Interest Payments: I will pay accrued interest beginning on 07/25/07 as follows: check one:
☒ monthly or ☐ quarterly ("Interest Payments"). The amount of each interest payment will vary depending upon the amount of principal outstanding, the date principal payments or installment payments are received and if Section 2 of this Note provides for an Adjustable Rate, the interest rate then in effect. In addition, I will make the following Payments:

Check One:

☒ Principal Reduction Payments and/or a Balloon Payment: In addition to the interest payments, I will make principal payments as set forth in the Payment Schedule below:

☐ Installment Payments: For purposes of this Section 3, the "Payment Change Date" is the first payment due date that is at least 26 days after the "Anniversary Date." The Anniversary Date is the date that is _____ year(s) after the Note Date. Beginning on the Payment Change Date, in place of interest payments, I will make installment payments of principal and interest. On the Anniversary Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal balance in full over the period of time ending on the Maturity Date as defined in Paragraph (D) with interest at the rate set in accordance with Section 2. The result of this calculation will be my new payment amount. The Note Holder will give me notice of this new payment amount. This payment amount is estimated in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, this payment amount may change. On each subsequent Change Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount beginning on the first payment due date which is at least 26 days after the Change Date. I will pay my new payment amount until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

☐ Installment Payments or Installment Payments with a Balloon Payment: I will pay the unpaid principal and interest in installment payments as set forth in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, the payment amounts, including the final payment, as set forth in the Payment Schedule may change. On each Change Date, the Note Holder will determine the ☐ monthly ☐ quarterly ☐ semi-annual or ☐ annual payment amount that would be sufficient to repay the unpaid principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new interest rate. The result of this calculation will be the new payment amount. I will pay my new payment amount beginning on the first payment due date after the Change Date until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

Payment Schedule:

Number of Payments	Payment Amount	Frequency	Start/Due Date	Number of Payments	Payment Amount	Frequency	Start/Due Date
80	\$Interest Only	M	07/25/07		\$		
1	\$126724.70	M	08/25/12		\$		
Frequency Legend: M = Monthly Q = Quarterly S = Semi Annually A = Annually							

(B) Place of Payments: I will make my payments in U.S. funds payable to the Note Holder at the address provided to me by the Note Holder or at a different address if required by the Note Holder.

(C) Application of Payments: Unless otherwise prohibited by the law governing this Note, each payment I make on this Note will first reduce the amount of accrued unpaid interest, then any optional insurance premiums due, then any applicable unpaid charges and then unpaid Principal. I will make payments until I have paid all of the Principal and interest and any other fees or charges that I may owe under the terms of this Note.

(D) Maturity Date: If on 08/25/12, I still owe any amount under this Note, I will pay those amounts in full on that date which is called the "Maturity Date."

(E) Optional Credit Insurance: If I have selected optional credit insurance offered by the Note Holder in connection with this loan, the payment amount(s) shown in the Payment Schedule include the premiums for the insurance coverage(s) that I have selected. I understand that the actual total premium amount I pay will depend upon my payment record.

I understand that credit life and credit disability (accident and health) insurance are not required, and that I may cancel them at any time by giving written notice to you. If my credit insurance is canceled, no further portion of any payments I make will be applied to credit insurance premiums. At my request, you will adjust my payment amount to reflect the cancellation of the credit insurance. If my credit insurance is cancelled and Section 2 of this Note provides for an Adjustable Rate, on the next Change Date the cancellation of the credit insurance will be considered in determining my new payment amount.

(F) Balloon Payment: If the Payment Schedule requires me to make an estimated final payment that is significantly larger than any other payment ("Balloon Payment"), I understand that I will be required to make this Balloon Payment on the Maturity Date. I understand that the Note Holder is not required to refinance any Balloon Payment and that the failure to make the required Balloon Payment on the Due Date constitutes a Default under the terms of this Note.

4. FEES AND CHARGES. In addition to interest and other amounts I may agree to pay, I agree to pay the Note Holder the following additional fees and charges:

(A) Late Charges: If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount.

(B) Returned Payment Fee: Unless otherwise limited or prohibited by the law governing this Note, I will pay a charge of up to \$25.00 for each payment (check or automatic payment) that I make that is returned or dishonored for any reason.

(C) Origination Fee: If an origination fee or other fee or charge is charged as included on the HUD-1, HUD-1A, or Itemization of Amount Financed prepared in connection with this loan transaction, I agree to pay such fees and charges. Except as otherwise required by law, I agree that such fees and charges are fully earned as of the date of this Note and are nonrefundable upon prepayment.

(D) Additional Charges: I agree that if, during the term of this Note, I request other services related to servicing or administering my loan for which the Note Holder has a scheduled charge, I will, to the extent permitted by the law governing this Note, pay the Note Holder the then current fee for such services or request if the Note Holder agrees to perform such service or request. I understand that any such fees are fully earned when charged and are nonrefundable upon prepayment.

5. BORROWER'S FAILURE TO PAY AS REQUIRED AND TERMS OF DEFAULT.

(A) Terms of Default: I will be in Default under this Note if any of the following things happen:

(i) If I fail to make any payment or comply with any of the terms of this Note or any other note with the Note Holder now or in the future; or

(ii) If I make any false, incorrect or misleading representation or warranty at any time during the application process; or

(iii) If I die; or

(iv) If I become involved in any bankruptcy or insolvency proceeding; or

(v) If the collateral described in Section 8 or any schedule to this Note is used in violation of any law or regulation or if a judgment or lien is filed or levied against me or the collateral or the collateral is impaired, damaged, or removed from the custody of the Note Holder; or

(vi) If I fail to abide by the term(s) of any Security Instrument or other documents described in Section 8 which secure payment of this Note.

(B) Notice of Default: If I am in Default, then the entire Principal balance, accrued interest, fees, and collection costs permitted to be collected under applicable law will be immediately due and payable. At its option or if required by law, the Note Holder may send me a written notice informing me of said Default and acceleration. If I make any payment after the Note Holder has demanded payment of the entire balance due, my payment will be applied to the unpaid balance due under this Note. The unpaid balance consists of the Principal Amount remaining due, plus accrued finance charges, unpaid Late Charges, collection costs, and all other amounts due to the Note Holder under this Note. The Note Holder shall also have other rights and remedies provided by law. If the net proceeds of collateral sold do not pay my indebtedness in full, I will pay the Note Holder the difference, plus interest at the Note Interest Rate until the unpaid balance is paid in full. Any Default of this Note will also constitute an event of Default of any separate Mortgage, Deed of Trust or Security Deed securing this Note ("Security Instrument") or Pledge Agreement securing this Note. Upon Default, the Note Holder may proceed to enforce the terms of this Note or enforce any rights that it may have under the Security Instrument or Pledge Agreement.

(C) No Waiver by Note Holder: Even if, at a time when I am in Default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in Default at a later time. Any failure to enforce any provision of this Note by the Note Holder shall not constitute any waiver of such rights of the Note Holder to subsequently enforce such rights or remedies.

(D) **Payment of the Note Holder's Costs and Expenses:** If the Note Holder has required me to pay immediately in full as described above, and I fail to do so and such failure causes the Note Holder to incur additional expenses, the Note Holder will have the right to a refund of all of its costs and expenses to the extent not prohibited by the law governing this Note. Those expenses include, for example, reasonable attorneys' fees for an attorney who is not the Note Holder's salaried employee, foreclosure fees and court costs. In no event shall these expenses exceed fifteen percent (15%) of the unpaid balance plus Court Costs.

6. **THIS NOTE IS SECURED BY A SECURITY INSTRUMENT.** In addition to the protections given to the Note Holder under this Note, a separate Security Instrument(s), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Subject to applicable law, I understand that this loan is subject to repayment in full in the event the Property securing this debt is sold, conveyed or otherwise transferred.

If in addition to a Security Instrument, I pledge securities, cash accounts or other liquid collateral (the "Other Collateral") as Other Collateral for this Note, then I grant to the Note Holder a perfected security interest in such Other Collateral and all additions or replacements to, or proceeds of as is more fully described in the separate Collateral Pledge Agreement (the "Pledge Agreement") executed as of the same date as this Note. The Pledge Agreement describes the Other Collateral in detail and protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. The Pledge Agreement also describes how and under what conditions I may also be required to make immediate payment in full of all amounts that I owe under this Note. I agree to these conditions. If the Other Collateral includes securities, I agree to deliver immediately to the Note Holder, fully endorsed, any certificates for shares representing any stock dividend, stock split or right to subscribe. I further pledge and agree to deliver to the Note Holder, upon demand, additional Other Collateral satisfactory to the Note Holder and in accordance with all margin requirements. If I do not provide the Note Holder with a perfected security interest in the Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest, I will be responsible for such expenses.

If I do not provide or assist the Note Holder in obtaining a perfected security interest in the Property or Other Collateral and the Note Holder incurs any expenses, including attorney's fees, in order to obtain a perfected security interest in such Property or Other Collateral, to the extent not otherwise prohibited by the law governing this Note, I agree that the Note Holder may add the amount of such expenses to the Principal and that such expenses will accrue interest at the Note Interest Rate until paid in full.

7. **PREPAYMENT.**

(A) Subject to the order of application of payments described in Section 3, I have the right to make payments of Principal at any time before they are due without penalty. A prepayment of all unpaid Principal is known as a "full prepayment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment."

(B) If I make a partial prepayment, my next due date may be advanced. If I make a payment that is more than the amount that is due, the amount in excess of the amount due is called an "Excess Payment." If I make an Excess Payment, the Note Holder will assume that I want to reduce or skip my next scheduled payment or payments. If the Excess Payment is less than or equal to the next scheduled payment, the next scheduled payment will be reduced by the amount of the Excess Payment. If the Excess Payment exceeds the amount of my next scheduled payment, the number of payments that may be skipped will be determined by subtracting each subsequently scheduled payment from the Excess Payment. So long as the remaining portion of the Excess Payment exceeds the next scheduled payment amount, that payment may be skipped. When the remaining portion of the Excess Payment is equal to or less than my next scheduled payment, that remaining portion will be used to reduce the amount of the next scheduled payment. If I want the Note Holder to handle an Excess Payment differently, I will tell the Note Holder in writing. I understand that interest will continue to accrue on the outstanding principal balance and that if I want maximum interest savings from Excess Payments, I should continue to make payments on or before the scheduled due date.

8. **BORROWER'S WAIVERS.** I waive my rights to require the Note Holder to do certain things. Those things are: (a) to demand payment of amounts due (known as "presentment"); (b) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (c) to obtain an official certification of non-payment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "Guarantors," "Sureties," "Co-Signers" and "Endorsers."

9. **GIVING OF NOTICES.**

(A) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address contained in this Note. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

(B) Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address provided to me by the Note Holder. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

10. **PAYMENT IN FULL. I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL" WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, NATIONAL ASSOCIATION, SPECIAL PAYOFFS, PO BOX 10723, ROANOKE, VA 24022. ACCEPTANCE OF ANY PAYMENT SENT TO THE SPECIAL HANDLING ADDRESS DOES NOT WAIVE THE NOTE HOLDER'S RIGHT TO SUBSEQUENTLY REJECT SUCH PAYMENT IN ACCORDANCE WITH APPLICABLE LAW.**

11. **EXTENSIONS AND MODIFICATIONS.** All Guarantors, Sureties, Co-Signers, Endorsers and I consent to any and all extensions of time, renewals, waivers or modifications which may be granted or consented to by the Note Holder as to the time of payment or any other provision of this Note. If in its sole discretion, the Note Holder permits an extension, renewal or modification to this Note, I agree to pay a charge not to exceed an amount permitted by the law governing this Note. All Guarantors, Sureties, Co-Signers, Endorsers and Makers hereby waive presentment, notice of dishonor, and protest hereof. This Note is the joint and several obligation of each Maker and shall be binding upon them and their heirs, successors and assigns.

12. INSURANCE REQUIREMENTS. I agree to purchase property/hazard insurance insuring the Property against loss and as required by the Security Instrument. I acknowledge that I may obtain property/hazard insurance from any insurance company of my choice, subject to the Note Holder's right of approval which shall not be unreasonably withheld. Unless I provide the Note Holder with evidence of the insurance coverage required by my agreement with the Note Holder, the Note Holder may purchase insurance at my expense to protect the Note Holder's interests in the Property. This insurance may, but need not, protect my interests. The coverage that the Note Holder purchases may not pay any claim that I make or any claim that is made against me in connection with the Property. I may later cancel any insurance purchased by the Note Holder, but only after providing the Note Holder with evidence that I have obtained insurance as required by our agreement. If the Note Holder purchases insurance for the Property, I will be responsible for the costs of the insurance, including interest and any other charges the Note Holder may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added to the Principal and will accrue interest at the Note Interest Rate. I understand that the costs of the insurance obtained by the Note Holder may be more than the cost of insurance I may be able to obtain on my own.

13. RESPONSIBILITY OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each of us is jointly and severally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any Guarantor, Surety, Co-Signer or Endorser of this Note (as described in Section 8 above) jointly and severally guarantees the payment, when due, to any Note Holder hereof of all amounts from time to time owing on this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. I and any Guarantor, Surety, Co-Signer or Endorser of this Note further agrees that the failure by the Note Holder to perfect any security interest granted by this Note shall not affect my liability or the liability of any Guarantor hereon.

14. GOVERNING LAW. This Note will be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state where the property securing this Note is located. Federal law that governs this Note includes 12 USC 85, which incorporates in part the laws of the State of North Carolina. If the Property securing this debt is located in Maryland, to the extent this Note is governed by Maryland law, this Note is governed by Md. Code Ann., Commercial Law § 12-1001 et. seq. and applicable federal law.

15. GENERAL PROVISIONS. I agree that I may not sell, assign or otherwise transfer my rights or obligations under this Note and that such action will be void. Any person who takes over my rights or obligations under this Note by operation of law will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of any Guarantor, Surety, Co-Signer or Endorser of this Note is also obligated to keep all of the promises made in this Note. This Note is intended by the Note Holder and me as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in writing signed by the Note Holder and me. This Note benefits the Note Holder, its successors and assigns, and binds me and my heirs, personal representatives and assigns. If any provision of this Note shall for any reason be held to be invalid or unenforceable, such determination shall not affect the enforceability of the remaining provisions of this Note. Headings are for convenience of reference only and shall not affect the construction of this Note or any other document associated with this loan.

16. SAVINGS AND COMPLIANCE. It is the intention of you and me to comply with applicable law. In each and every instance, our rights shall be limited by applicable law (to the extent such laws may not be effectively waived), construed so as to comply with such laws, and our rights may not be exercised except to the extent permitted by applicable law. No part of this agreement, nor any charge or receipt by you, is supposed to permit you to impose interest or other amounts in excess of lawful amounts. If an excess occurs, you will apply it as a credit or otherwise refund it and the rate or amount involved will automatically be reduced to the maximum lawful rate or amount. To the extent permitted by law, for purposes of determining your compliance with law, you may calculate charges by amortizing, prorating, allocating and spreading any such charges.

17. DOCUMENTARY TAX. For loans secured by real property located in Florida, the state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

NOTICE TO BORROWER:

1. CAUTION: IT IS IMPORTANT THAT THE BORROWER THOROUGHLY READS THIS NOTE BEFORE THE BORROWER SIGNS IT.
2. THIS NOTE IS SECURED BY EITHER A FIRST OR SUBORDINATE LIEN ON REAL PROPERTY.
3. THE BORROWER IS ENTITLED TO A COPY OF THIS NOTE.
4. DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES.
5. THE BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

For Texas residents only: NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS _____ PERCENT PER YEAR.

By signing and sealing this Note, I agree under seal to the terms set forth above.

Matthew A Terry [SEAL]
Borrower MATTHEW A TERRY

_____[SEAL]
Borrower

Any Guarantor, Surety, Co-Signer or Endorser of this Note acknowledges receipt and execution of the Co-Signer's Notice.

_____[SEAL]
Guarantor - Co-Signer

_____[SEAL]
Guarantor - Co-Signer

FOR OFFICE USE ONLY

Endorsement.

Pay to the Order of _____

Without Recourse

By: _____

Name: _____

Title: _____

EXHIBIT L

BK: 41
RC: 3036090

LOC:

LN TP: 96
130410/00

Date: 04/11/07

Ref. No. 0707900263
Acct. No.

Note

BORROWER(S):
KATHRYN M. TILLMAN
VALERIE ANN LOWE
1218 PRATERLANE
TOWNVILLE, SC 29689

Amount Financed \$ 133012.60

1. BORROWER(S) PROMISE TO PAY. In return for a loan that I have received, the undersigned Borrower(s) (hereinafter referred to as "I," "me," or "my") jointly and severally promise to pay to Wachovia Bank, National Association, a national banking association organized and existing under the law of the United States of America ("Lender"), the sum of \$ 133012.60 (this amount will be called "Principal"), plus daily simple interest ("Interest") beginning on the date that Principal is advanced. The Principal may include points, origination fees and other amounts permitted by applicable law. I understand that the Lender may transfer this Note. The Lender or anyone who takes this Note and who is entitled to receive payments under this Note will be called the "Note Holder."

2. INTEREST. Interest will accrue on the entire Principal balance outstanding at any time. Notwithstanding anything to the contrary, I do not agree to pay and the Note Holder does not intend to charge any interest at a rate that is higher than the maximum rate of interest that could be charged under applicable law for the extension of credit that is agreed to under this Note (either before or after maturity). If any notice of interest accrual is sent and is in error, and if the Note Holder actually collects more interest than allowed by law or this Note, the Note Holder agrees to refund any such excess interest.

I agree to pay interest on the unpaid Principal balance of this Note owing after maturity, and until paid in full at the same rate in effect before maturity. I agree that any loan origination fee paid to the Note Holder is earned as of the date of this Note.

Interest accrues on the Principal remaining unpaid from time to time, until paid in full. The interest rate, as defined in this Section 2 below, will be charged at a rate of 1/365th of the interest rate for each day, or 1/366th of the interest rate for each day in any leap year, applied against that day's outstanding Principal balance. The dollar amount of the finance charge and the payments disclosed to me for this credit transaction are based upon my payments being received by the Note Holder on the date payments are due. If my payments are received after the due date, even if received before the date a Late Charge as permitted by Section 4 applies, I may owe additional and substantial money at the end of the credit transaction and there may be little or no reduction of Principal. This is a result of the accrual of daily interest.

To the extent that any fees or charges are added to the Principal balance, they will thereafter bear interest and I agree to pay this interest. I understand that in the event my first payment due date is more than one month from the date of this Note, one or more of my initial payments may not pay all of the interest owed on the date of the payment and therefore may not reduce the outstanding Principal balance.

If the governing law which applies to this Note sets maximum loan charges and is finally interpreted so that the interest and other charges collected or to be collected in connection with this loan exceed the permitted limits, then: (a) any such interest or other charge shall be reduced by the amount necessary to reduce the interest or other charge to the permitted limit and (b) any sums already collected from me which exceeded permitted limits will be refunded to me. The Note Holder may choose to make this refund by reducing the Principal I owe under this Note or by making a direct payment to me. If a refund reduces Principal, the reduction will be treated as a partial payment.

Check One:☒ **Fixed Rate:**I agree to pay interest on the outstanding Principal balance at a fixed annual rate of 6.89 % ("Interest Rate").☐ **Adjustable Rate:**

(A) Interest Rate: I agree to pay interest on the outstanding Principal balance at the initial annual rate of N/A % ("Interest Rate") until the first Change Date as defined in Paragraph (B) below. Thereafter, the interest rate I pay may change as of each Change Date and will be calculated pursuant to Paragraph (D) below. My initial annual rate may not be related to the formula used to determine later rates.

(B) Date Definitions:

(i) Change Date: Each date on which the interest rate may change is called the Change Date. The interest rate may change _____ and every _____ month(s) thereafter.

(ii) Index Date: The 25th day of each month is an "Index Date." If the index is not published on the 25th day of the month, then the Index Date shall be the first day prior to the 25th day of the month on which the index is published.

(iii) Look-back Date: The date that is 30 days prior to a Change Date is called the "Look-back Date."

(C) The Index: Check One:

☐ The "Index" is the "Prime Rate" as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one Prime Rate published on an Index Date, then the Note Holder will use the higher of such prime rates. If this index ceases to exist, the Note Holder may substitute another index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of the Prime Rate.

☐ The "Index" is the average of interbank offered rates for ____ month U.S. dollar-denominated deposits in the London market ("LIBOR") as published on the Index Date in the "Money Rates" section of *The Wall Street Journal*, Eastern Edition. If there is more than one LIBOR published on an Index Date, then the Note Holder will use the higher of such LIBOR rates. If this Index ceases to exist, the Note Holder may substitute another Index (and Margin, as described in Paragraph (D) below) which movement approximates the movement of LIBOR.

(D) Calculation of New Interest Rate: The new annual Interest Rate that will be applicable beginning on each Change Date will be determined as follows:

Check One:

☐ The new annual Interest Rate will be equal to the Index published on the Index Date for the calendar month immediately preceding the Look-back Date for that Change Date, rounded down to the nearest .01%, plus ____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new Interest Rate will become effective on each Change Date.

☐ The new annual Interest Rate will be equal to the Index published on the Index Date for the calendar month immediately preceding that Change Date, rounded down to the nearest .01%, plus ____ percentage point(s) ("Margin"). Subject to any applicable limitations set forth in Paragraph (E), this new Interest Rate will become effective on each Change Date.

(E) Limits on Interest Rate Changes: My Interest Rate will never be greater than ____% or less than 0%.

☐ If this box is checked, the Interest Rate will be subject to the additional limitations on increases. The Interest Rate I am required to pay at the first Change Date will never be greater than ____%. Thereafter increases will be subject to an additional limitation on each Change Date such that the Interest Rate I pay will never be increased on any single Change Date by more than 2% from the Interest Rate I have been paying for the preceding 12 months.

☐ If this box is checked, there will be no additional limitation on increases in my Interest Rate.

(F) Notice of Changes: The Note Holder will deliver or mail to me a notice of any changes in my Interest Rate as required by applicable law. The notice will include information about any changes to my payment amount.

3. PAYMENTS.

(A) Payment Options and Schedule:

Check One:

☒ Interest Payments: I will pay accrued interest beginning on 05/11/07 as follows: check one:
☒ monthly or ☐ quarterly ("Interest Payments"). The amount of each Interest Payment will vary depending upon the amount of principal outstanding, the date principal payments or installment payments are received and if Section 2 of this Note provides for an Adjustable Rate, the Interest Rate then in effect. In addition, I will make the following Payments:

Check One:

☒ Principal Reduction Payments and/or a Balloon Payment: In addition to the Interest Payments, I will make Principal Payments as set forth in the Payment Schedule below:

☐ Installment Payments: For purposes of this Section 3, the "Payment Change Date" is the first payment due date that is at least 26 days after the "Anniversary Date." The Anniversary Date is the date that is ____ year(s) after the Note Date. Beginning on the Payment Change Date, in place of Interest Payments, I will make installment payments of Principal and Interest. On the Anniversary Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid principal balance in full over the of a period of time ending on the Maturity Date as defined in Paragraph (D) with interest at the rate set in accordance with Section 2. The result of this calculation will be my new payment amount. The Note Holder will give me notice of this new payment amount. This payment amount is estimated in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, this payment amount may change. On each subsequent Change Date, the Note Holder will determine the ☐ monthly or ☐ quarterly payment amount that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new Interest Rate. The result of this calculation will be the new payment amount beginning on the first payment due date which is at least 26 days after the Change Date. I will pay my new payment amount until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

☐ Installment Payments or Installment Payments with a Balloon Payment: I will pay the unpaid Principal and Interest in installment payments as set forth in the Payment Schedule below. If Section 2 of this Note provides for an Adjustable Rate, the payment amounts, including the final payment, as set forth in the Payment Schedule may change. On each Change Date, the Note Holder will determine the ☐ monthly ☐ quarterly ☐ semi-annual or ☐ annual payment amount that would be sufficient to repay the unpaid Principal that I am expected to owe at the Change Date in full over the remaining portion of a period of time ending on the Maturity Date as defined in Paragraph (D), below, at my new Interest Rate. The result of this calculation will be the new payment amount. I will pay my new payment amount beginning on the first payment due date after the Change Date until the payment amount changes again or until the Maturity Date as described in Paragraph (D).

Payment Schedule:

Number of Payments	Payment Amount	Frequency	Start/Due Date	Number of Payments	Payment Amount	Frequency	Start/Due Date
60	\$ Interest Only	M	05/11/07		\$		
1	\$133012.60	M	04/11/12		\$		
Frequency Legend: M = Monthly Q = Quarterly S = Semi Annually A = Annually							

(B) Place of Payments: I will make my payments in U.S. funds payable to the Note Holder at the address provided to me by the Note Holder or at a different address if required by the Note Holder.

(C) Application of Payments: Unless otherwise prohibited by the law governing this Note, each payment I make on this Note will first reduce the amount of accrued unpaid interest, then any optional insurance premiums due, then any applicable unpaid charges and then unpaid Principal. I will make payments until I have paid all of the Principal and interest and any other fees or charges that I may owe under the terms of this Note.

(D) Maturity Date: If on 04/11/12, I still owe any amount under this Note, I will pay those amounts in full on that date which is called the "Maturity Date."

(E) Optional Credit Insurance: If I have selected optional credit insurance offered by the Note Holder in connection with this loan, the payment amount(s) shown in the Payment Schedule include the premiums for the insurance coverage(s) that I have selected. I understand that the actual total premium amount I pay will depend upon my payment record.

I understand that credit life and credit disability (accident and health) insurance are not required, and that I may cancel them at any time by giving written notice to you. If my credit insurance is canceled, no further portion of any payments I make will be applied to credit insurance premiums. At my request, you will adjust my payment amount to reflect the cancellation of the credit insurance. If my credit insurance is cancelled and Section 2 of this Note provides for an Adjustable Rate, on the next Change Date the cancellation of the credit insurance will be considered in determining my new payment amount.

(F) Balloon Payment: If the Payment Schedule requires me to make an estimated final payment that is significantly larger than any other payment ("Balloon Payment"), I understand that I will be required to make this Balloon Payment on the Maturity Date. I understand that the Note Holder is not required to refinance any Balloon Payment and that the failure to make the required Balloon Payment on the Due Date constitutes a Default under the terms of this Note.

4. FEES AND CHARGES. In addition to interest and other amounts I may agree to pay, I agree to pay the Note Holder the following additional fees and charges:

(A) Late Charges: If a payment is not received in full within 15 days of the date it is due, I will pay a late charge equal to 4% of the unpaid portion of the scheduled payment amount.

(B) Returned Payment Fee: Unless otherwise limited or prohibited by the law governing this Note, I will pay a charge of up to \$25.00 for each payment (check or automatic payment) that I make that is returned or dishonored for any reason.

(C) Origination Fee: If an origination fee or other fee or charge is charged as included on the HUD-1, HUD-1A, or Itemization of Amount Financed prepared in connection with this loan transaction, I agree to pay such fees and charges. Except as otherwise required by law, I agree that such fees and charges are fully earned as of the date of this Note and are nonrefundable upon prepayment.

(D) Additional Charges: I agree that if, during the term of this Note, I request other services related to servicing or administering my loan for which the Note Holder has a scheduled charge, I will, to the extent permitted by the law governing this Note, pay the Note Holder the then current fee for such services or request if the Note Holder agrees to perform such service or request. I understand that any such fees are fully earned when charged and are nonrefundable upon prepayment.

5. BORROWER'S FAILURE TO PAY AS REQUIRED AND TERMS OF DEFAULT.

(A) Terms of Default: I will be in Default under this Note if any of the following things happen:

- (i) If I fail to make any payment or comply with any of the terms of this Note or any other note with the Note Holder now or in the future; or
- (ii) If I make any false, incorrect or misleading representation or warranty at any time during the application process; or
- (iii) If I die; or
- (iv) If I become involved in any bankruptcy or insolvency proceeding; or
- (v) If the collateral described in Section 6 or any schedule to this Note is used in violation of any law or regulation or if a judgment or lien is filed or levied against me or the collateral or the collateral is impaired, damaged, or removed from the custody of the Note Holder; or
- (vi) If I fail to abide by the term(s) of any Security Instrument or other documents described in Section 6 which secure payment of this Note.

(B) Notice of Default: If I am in Default, then the entire Principal balance, accrued interest, fees, and collection costs permitted to be collected under applicable law will be immediately due and payable. At its option or if required by law, the Note Holder may send me a written notice informing me of said Default and acceleration. If I make any payment after the Note Holder has demanded payment of the entire balance due, my payment will be applied to the unpaid balance due under this Note. The unpaid balance consists of the Principal Amount remaining due, plus unpaid balance due, unpaid Late Charges, collection costs, and all other amounts due to the Note Holder accrued finance charges, unpaid Late Charges, collection costs, and all other amounts due to the Note Holder under this Note. The Note Holder shall also have other rights and remedies provided by law. If the net proceeds of collateral sold do not pay my indebtedness in full, I will pay the Note Holder the difference, plus interest at the Note Interest Rate until the unpaid balance is paid in full. Any Default of this Note will also constitute an event of Default of any separate Mortgage, Deed of Trust or Security Deed securing this Note ("Security Instrument") or Pledge Agreement securing this Note. Upon Default, the Note Holder may proceed to enforce the terms of this Note or enforce any rights that it may have under the Security Instrument or Pledge Agreement.

(C) No Waiver by Note Holder: Even if, at a time when I am in Default, the Note Holder does not require me to pay immediately in full as described above, the Note Holder will still have the right to do so if I am in Default at a later time. Any failure to enforce any provision of this Note by the Note Holder shall not constitute any waiver of such rights of the Note Holder to subsequently enforce such rights or remedies.

(D) Payment of the Note Holder's Costs and Expenses: If the Note Holder has required me to pay immediately in full as described above, and I fail to do so and such failure causes the Note Holder to incur additional expenses, the Note Holder will have the right to a refund of all of its costs and expenses to the extent not prohibited by the law governing this Note. Those expenses include, for example, reasonable attorneys' fees for an attorney who is not the Note Holder's salaried employee, foreclosure fees and court costs. In no event shall these expenses exceed fifteen percent (15%) of the unpaid balance plus Court Costs.

6. THIS NOTE IS SECURED BY A SECURITY INSTRUMENT. In addition to the protections given to the Note Holder under this Note, a separate Security Instrument(s), on real property (the "Property") described in the Security Instrument and dated the same date as this Note, protects the Note Holder from possible losses that might result if I do not keep the promises that I make in this Note. The Security Instrument describes how and under what conditions I may also be required to make immediate payment in full of all amounts I owe under this Note. I agree to these conditions. Subject to applicable law, I understand that this loan is subject to repayment in full in the event the Property securing this debt is sold, conveyed or otherwise transferred.

If in addition to a Security Instrument, I pledge securities, cash accounts or other liquid collateral (the "Other Collateral") as Other Collateral for this Note, then I grant to the Note Holder a perfected security interest in such Other Collateral and all additions or replacements to, or proceeds of as is more fully described in the separate Collateral Pledge Agreement (the "Pledge Agreement") executed as of the same date as this Note. The Pledge Agreement describes the Other Collateral in detail and protects the Note Holder from possible losses which might result if I do not keep the promises that I make in this Note. The Pledge Agreement also describes how and under what conditions I may also be required to make immediate payment in full of all amounts that I owe under this Note. I agree to these conditions. If the Other Collateral includes securities, I agree to deliver immediately to the Note Holder, fully endorsed, any certificates for shares representing any stock dividend, stock split or right to subscribe. I further pledge and agree to deliver to the Note Holder, upon demand, additional Other Collateral satisfactory to the Note Holder and in accordance with all margin requirements. If I do not provide the Note Holder with a perfected security interest in the Other Collateral and the Note Holder incurs any expenses, including attorneys' fees, in order to obtain a perfected security interest, I will be responsible for such expenses.

If I do not provide or assist the Note Holder in obtaining a perfected security interest in the Property or Other Collateral and the Note Holder incurs any expenses, including attorney's fees, in order to obtain a perfected security interest in such Property or Other Collateral, to the extent not otherwise prohibited by the law governing this Note, I agree that the Note Holder may add the amount of such expenses to the Principal and that such expenses will accrue interest at the Note Interest Rate until paid in full.

7. PREPAYMENT.

(A) Subject to the order of application of payments described in Section 3, I have the right to make payments of Principal at any time before they are due without penalty. A prepayment of all unpaid Principal is known as a "full prepayment." A prepayment of only part of the unpaid Principal is known as a "partial prepayment."

(B) If I make a partial prepayment, my next due date may be advanced. If I make a payment that is more than the amount that is due, the amount in excess of the amount due is called an "Excess Payment." If I make an Excess Payment, the Note Holder will assume that I want to reduce or skip my next scheduled payment or payments. If the Excess Payment is less than or equal to the next scheduled payment, the next scheduled payment will be reduced by the amount of the Excess Payment. If the Excess Payment exceeds the amount of my next scheduled payment, the number of payments that may be skipped will be determined by subtracting each subsequently scheduled payment from the Excess Payment. So long as the remaining portion of the Excess Payment exceeds the next scheduled payment amount, that payment may be skipped. When the remaining portion of the Excess Payment is equal to or less than my next scheduled payment, that remaining portion will be used to reduce the amount of the next scheduled payment. If I want the Note Holder to handle an Excess Payment differently, I will tell the Note Holder in writing. I understand that interest will continue to accrue on the outstanding principal balance and that if I want maximum interest savings from Excess Payments, I should continue to make payments on or before the scheduled due date.

8. BORROWER'S WAIVERS. I waive my rights to require the Note Holder to do certain things. Those things are: (a) to demand payment of amounts due (known as "presentment"); (b) to give notice that amounts due have not been paid (known as "notice of dishonor"); and (c) to obtain an official certification of non-payment (known as "protest"). Anyone else who agrees to keep the promises made in this Note, or who agrees to make payments to the Note Holder if I fail to keep my promises under this Note, or who signs this Note to transfer it to someone else, also waives these rights. These persons are known as "Guarantors," "Sureties," "Co-Signers" and "Endorsers."

9. GIVING OF NOTICES.

(A) Any notice that must be given to me under this Note will be given by delivering it or by mailing it by first class mail addressed to me at the address contained in this Note. A notice will be delivered or mailed to me at a different address if I give the Note Holder a notice of my different address.

(B) Any notice that must be given to the Note Holder under this Note will be given by mailing it by first class mail to the Note Holder at the address provided to me by the Note Holder. A notice will be mailed to the Note Holder at a different address if I am given a notice of that different address.

10. PAYMENT IN FULL. I AGREE THAT THE NOTE HOLDER MAY ACCEPT PAYMENTS MARKED "PAID IN FULL" WITHOUT ANY LOSS OF THE NOTE HOLDER'S RIGHTS UNDER THIS NOTE UNLESS I SEND THEM FOR SPECIAL HANDLING TO WACHOVIA BANK, NATIONAL ASSOCIATION, SPECIAL PAYOFFS, PO BOX 10723, ROANOKE, VA 24022. ACCEPTANCE OF ANY PAYMENT SENT TO THE SPECIAL HANDLING ADDRESS DOES NOT WAIVE THE NOTE HOLDER'S RIGHT TO SUBSEQUENTLY REJECT SUCH PAYMENT IN ACCORDANCE WITH APPLICABLE LAW.

11. EXTENSIONS AND MODIFICATIONS. All Guarantors, Sureties, Co-Signers, Endorsers and I consent to any and all extensions of time, renewals, waivers or modifications which may be granted or consented to by the Note Holder as to the time of payment or any other provision of this Note. If in its sole discretion, the Note Holder permits an extension, renewal or modification to this Note, I agree to pay a charge not to exceed an amount permitted by the law governing this Note. All Guarantors, Sureties, Co-Signers, Endorsers and Makers hereby waive presentment, notice of dishonor, and protest hereof. This Note is the joint and several obligation of each Maker and shall be binding upon them and their heirs, successors and assigns.

063957 (Rev 05)

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(1/07) Multi-State Real Estate Note

12. INSURANCE REQUIREMENTS. I agree to purchase property/hazard insurance insuring the Property against loss and as required by the Security Instrument. I acknowledge that I may obtain property/hazard insurance from any insurance company of my choice, subject to the Note Holder's right of approval which shall not be unreasonably withheld. Unless I provide the Note Holder with evidence of the insurance coverage required by my agreement with the Note Holder, the Note Holder may purchase insurance at my expense to protect the Note Holder's interests in the Property. This insurance may, but need not, protect my interests. The coverage that the Note Holder purchases may not pay any claim that I make or any claim that is made against me in connection with the Property. I may later cancel any insurance purchased by the Note Holder, but only after providing the Note Holder with evidence that I have obtained insurance as required by our agreement. If the Note Holder purchases insurance for the Property, I will be responsible for the costs of the insurance, including interest and any other charges the Note Holder may impose in connection with the placement of the insurance, until the effective date of the cancellation or expiration of the insurance. The costs of the insurance will be added to the Principal and will accrue interest at the Note Interest Rate. I understand that the costs of the insurance obtained by the Note Holder may be more than the cost of insurance I may be able to obtain on my own.

13. RESPONSIBILITY OF PERSONS UNDER THIS NOTE. If more than one person signs this Note, each of us is jointly and severally obligated to pay the full amount owed and to keep all of the promises made in this Note. Any Guarantor, Surety, Co-Signer or Endorser of this Note (as described in Section 8 above) jointly and severally guarantee the payment, when due, to any Note Holder hereof of all amounts from time to time owing on this Note. The Note Holder may enforce its rights under this Note against each of us individually or against all of us together. This means that any one of us may be required to pay all of the amounts owed under this Note. I and any Guarantor, Surety, Co-Signer or Endorser of this Note further agrees that the failure by the Note Holder to perfect any security interest granted by this Note shall not affect my liability or the liability of any Guarantor hereon.

14. GOVERNING LAW. This Note will be governed by and interpreted in accordance with federal law and, except as preempted by federal law, the laws of the state where the property securing this Note is located. Federal law that governs this Note includes 12 USC 85, which incorporates in part the laws of the State of North Carolina. If the Property securing this debt is located in Maryland, to the extent this Note is governed by Maryland law, this Note is governed by Md. Code Ann., Commercial Law §12-1001 et. seq. and applicable federal law.

15. GENERAL PROVISIONS. I agree that I may not sell, assign or otherwise transfer my rights or obligations under this Note and that such action will be void. Any person who takes over my rights or obligations under this Note by operation of law will have all of my rights and must keep all of my promises made in this Note. Any person who takes over the rights or obligations of any Guarantor, Surety, Co-Signer or Endorser of this Note is also obligated to keep all of the promises made in this Note. This Note is intended by the Note Holder and me as a complete and exclusive statement of its terms, there being no conditions to the enforceability of this Note. This Note may not be supplemented or modified except in writing signed by the Note Holder and me. This Note benefits the Note Holder, its successors and assigns, and binds me and my heirs, personal representatives and assigns. If any provision of this Note shall for any reason be held to be invalid or unenforceable, such determination shall not affect the enforceability of the remaining provisions of this Note. Headings are for convenience of reference only and shall not affect the construction of this Note or any other document associated with this loan.

16. SAVINGS AND COMPLIANCE. It is the intention of you and me to comply with applicable law. In each and every instance, our rights shall be limited by applicable law (to the extent such laws may not be effectively waived), construed so as to comply with such laws, and our rights may not be exercised except to the extent permitted by applicable law. No part of this agreement, nor any charge or receipt by you, is supposed to permit you to impose interest or other amounts in excess of lawful amounts. If an excess occurs, you will apply it as a credit or otherwise refund it and the rate or amount involved will automatically be reduced to the maximum lawful rate or amount. To the extent permitted by law, for purposes of determining your compliance with law, you may calculate charges by amortizing, prorating, allocating and spreading any such charges.

17. DOCUMENTARY TAX. For loans secured by real property located in Florida, the state documentary tax due on this Note has been paid on the mortgage securing this indebtedness.

NOTICE TO BORROWER:

1. CAUTION: IT IS IMPORTANT THAT THE BORROWER THOROUGHLY READS THIS NOTE BEFORE THE BORROWER SIGNS IT.
2. THIS NOTE IS SECURED BY EITHER A FIRST OR SUBORDINATE LIEN ON REAL PROPERTY.
3. THE BORROWER IS ENTITLED TO A COPY OF THIS NOTE.
4. DO NOT SIGN THIS NOTE IF IT CONTAINS ANY BLANK SPACES.
5. THE BORROWER ACKNOWLEDGES RECEIPT OF A COMPLETED COPY OF THIS NOTE.

For Texas residents only: NOTICE TO CONSUMER: UNDER TEXAS LAW, IF YOU CONSENT TO THIS AGREEMENT, YOU MAY BE SUBJECT TO A FUTURE RATE AS HIGH AS _____ PERCENT PER YEAR.

By signing and sealing this Note, I agree under seal to the terms set forth above.

Kathryn M Tillman by Helen Roper her attorney in fact (SEAL)
Borrower KATHRYN M TILLMAN by Helen R. Roper, her Attorney-in-Fact

Valerie Ann Lowe by Helen Roper her attorney in fact (SEAL)
Borrower VALERIE ANN LOWE by Helen R. Roper, her Attorney-in-Fact

Any Guarantor, Surety, Co-Signer or Endorser of this Note acknowledges receipt and execution of the Co-Signer's Notice.

[SEAL]
Guarantor - Co-Signer

[SEAL]
Guarantor - Co-Signer

FOR OFFICE USE ONLY

Endorsement.

Pay to the Order of _____

Without Recourse

By: _____
Name: _____
Title: _____

CERTIFICATE OF SERVICE

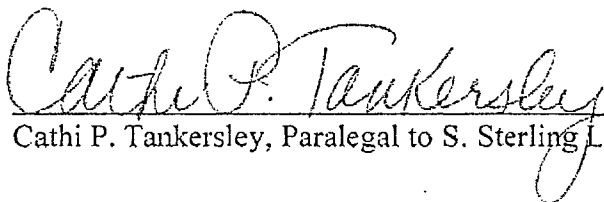
The undersigned hereby certifies that, on the 22nd day of December, 2011, she mailed a copy of **Wachovia Bank, N.A.'s Answer and Counterclaim**, the by depositing same in the United States Mail, first-class, proper postage affixed, and/or via electronic mail upon the parties whose names appear below:

Lisa A. Reynolds, Esquire
Anderson & Segui, LLC
37 ½ Broad Street
Charleston, SC 29402
lreynolds@arlawsc.com

David S. Cobb, Esquire
Turner Padgett Graham & Laney, P.A.
40 Calhoun Street
Charleston, SC 29401-3500
dcobb@turnerpadgett.com

Robert W. Maring, Esquire
Maring & Moody,
1130 Highmarket Street
Georgetown, SC 29440-3532
rm@maringlawfirm.com

F. Cordes Ford, IV, Esquire
Womble Carlyle Sandridge & Rice, LLP
5 Exchange Street
Charleston, SC 29402
cford@wcsr.com


Cathi P. Tankersley, Paralegal to S. Sterling Laney, III

STATE OF SOUTH CAROLINA
COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-27-00011

JEFFREY H. ANDERS AND MAUREEN ANDERS,
MICHAEL K. CALLAHAN AND AMY CALLAHAN,
MELINDA A. CAVICCHIA, MICHAEL B. CIULIS,
STEPHEN KIPA AND KIMBERLY A. K. KIPA,
CHAD KURTZ, SPENCER L. MORGAN,
RICHARD O'REILLY AND ALICIA F. O'REILLY,
DANIEL RYAN AND SUSAN RYAN,
GENNADY SHMUKLER, MICHAEL SCHMUFF AND
JOANNE SCHMUFF, MATTHEW TERRY,
KATHRYN M. TILLMAN, VALERIE A. LOWE,
TACG PROPERTIES, LLC, MACKAY MARSH, LLC

Plaintiffs,

vs.

THE SETTINGS OF MACKAY POINT, LLC,
THE SETTINGS DEVELOPMENT COMPANIES,
LLC, BRANCH BANKING AND TRUST CO.,
WACHOVIA BANK, N.A., BOND SAFEGUARD
INSURANCE COMPANY, AND JASPER COUNTY,

Defendants.

**PLAINTIFFS' REPLY TO
DEFENDANT WACHOVIA
BANK, N.A.'S ANSWER AND
COUNTERCLAIM**

FILED
2012 JAN 24 AM 9:29
MARGARET BOSTICK
CLERK OF COURT
JASPER COUNTY SC

**TO: DEFENDANT WACHOVIA BANK, NA AND ITS ATTORNEY STERLING
LANEY, III**

The Plaintiffs fully answer the Counterclaim of the Defendant as follows:

1. Each and every allegation in the Counterclaim which is not hereinafter specifically admitted is denied.

AS TO THE TWENTY-SIXTH DEFENSE

(Response to Allegations of Counterclaim)

(Breach of Contract)

2. Plaintiffs Jeffrey H. Anders and Maureen R. Anders admit Paragraph 216 of the Counterclaim.

3. Plaintiffs admit so much of Paragraph 217 which states that on February 28, 2007, they gave a promissory note (the "Anders Note") in the amount of \$128,457.10 to Wachovia, but deny the validity of said Note and therefore deny the remaining allegations contained therein.

4. Plaintiffs deny Paragraph 218 of the Counterclaim.

5. Plaintiffs deny Paragraph 219 of the Counterclaim.

6. Plaintiffs deny Paragraph 220 of the Counterclaim.

7. Plaintiffs deny Paragraph 221 of the Counterclaim.

8. Plaintiffs deny Paragraph 222 of the Counterclaim.

9. Plaintiffs deny Paragraph 223 of the Counterclaim.

10. Plaintiffs deny Paragraph 224 of the Counterclaim.

11. Plaintiffs deny Paragraph 225 of the Counterclaim.

12. Plaintiff Melinda A. Cavicchia admits of Paragraph 226 of the Counterclaim.

13. Plaintiff admits so much of Paragraph 227 which states that on July 19, 2007, she gave a promissory note (the "Cavicchia Note") in the amount of \$157,703.20 to Wachovia, but denies the validity of said Note and therefore denies the remaining allegations contained therein.

14. Plaintiff denies Paragraph 228 of the Counterclaim.

15. Plaintiff denies Paragraph 229 of the Counterclaim.

16. Plaintiff denies Paragraph 230 of the Counterclaim.

17. Plaintiff denies Paragraph 231 of the Counterclaim.

18. Plaintiff denies Paragraph 232 of the Counterclaim.

19. Plaintiff denies Paragraph 233 of the Counterclaim.

20. Plaintiff denies Paragraph 234 of the Counterclaim.

21. Plaintiff denies Paragraph 235 of the Counterclaim.

22. Plaintiff Michael A. Ciulis admits Paragraph 236 of the Counterclaim.

23. Plaintiff admits so much of Paragraph 237 which states that on March 8, 2007, he gave a promissory note (the "Ciulis Note") in the amount of \$210,192.20 to Wachovia, but denies the validity of said Note and therefore denies the remaining allegations contained therein.

24. Plaintiff denies Paragraph 238 of the Counterclaim.
25. Plaintiff denies Paragraph 239 of the Counterclaim.
26. Plaintiff denies Paragraph 240 of the Counterclaim.
27. Plaintiff denies Paragraph 241 of the Counterclaim.
28. Plaintiff denies Paragraph 242 of the Counterclaim.
29. Plaintiff denies Paragraph 243 of the Counterclaim.
30. Plaintiff denies Paragraph 244 of the Counterclaim.
31. Plaintiff denies Paragraph 245 of the Counterclaim.
32. Plaintiff Chad Kurtz admits Paragraph 246 of the Counterclaim.
33. Plaintiff admits so much of Paragraph 247 which states that on January 1, 2006, he gave a promissory note (the "Kurtz Note") in the amount of \$149,423.40 to Wachovia, but denies the validity of said Note and therefore denies the remaining allegations contained therein.

34. Plaintiff denies Paragraph 248 of the Counterclaim.
35. Plaintiff denies Paragraph 249 of the Counterclaim.
36. Plaintiff denies Paragraph 250 of the Counterclaim.
37. Plaintiff denies Paragraph 251 of the Counterclaim.
38. Plaintiff denies Paragraph 252 of the Counterclaim.
39. Plaintiff denies Paragraph 253 of the Counterclaim.
40. Plaintiff denies Paragraph 254 of the Counterclaim.
41. Plaintiff denies Paragraph 255 of the Counterclaim.
42. Plaintiff Spencer L. Morgan admits Paragraph 256 of the Counterclaim.
43. Plaintiff admits so much of Paragraph 257 which states that on March 16, 2007, he gave a promissory note (the "Morgan Note") in the amount of \$130,279.30 to Wachovia, but denies the validity of said Note and therefore denies the remaining allegations contained therein.

44. Plaintiff denies Paragraph 258 of the Counterclaim.
45. Plaintiff denies Paragraph 259 of the Counterclaim.
46. Plaintiff denies Paragraph 260 of the Counterclaim.
47. Plaintiff denies Paragraph 261 of the Counterclaim.

48. Plaintiff denies Paragraph 262 of the Counterclaim.
49. Plaintiff denies Paragraph 263 of the Counterclaim.
50. Plaintiff denies Paragraph 264 of the Counterclaim.
51. Plaintiff denies Paragraph 265 of the Counterclaim.
52. Plaintiffs Richard O'Reilly and Alicia F. O'Reilly admit Paragraph 266 of the Counterclaim.

53. Plaintiffs admit so much of Paragraph 267 which states that on July 13, 2007, they gave a promissory note (the "O'Reilly Note") in the amount of \$153,147.70 to Wachovia, but deny the validity of said Note and therefore deny the remaining allegations contained therein.

54. Plaintiffs deny Paragraph 268 of the Counterclaim.
55. Plaintiffs deny Paragraph 269 of the Counterclaim.
56. Plaintiffs deny Paragraph 270 of the Counterclaim.
57. Plaintiffs deny Paragraph 271 of the Counterclaim.
58. Plaintiffs deny Paragraph 272 of the Counterclaim.
59. Plaintiffs deny Paragraph 273 of the Counterclaim.
60. Plaintiffs deny Paragraph 274 of the Counterclaim.
61. Plaintiffs deny Paragraph 275 of the Counterclaim.
62. Plaintiffs Daniel Ryan and Susan Ryan admit Paragraph 276 of the Counterclaim.

63. Plaintiffs admit so much of Paragraph 277 which states that on July 11, 2007, they gave a promissory note (the "Ryan Note") in the amount of \$128,493.00 to Wachovia, but deny the validity of said Note and therefore deny the remaining allegations contained therein.

64. Plaintiffs deny Paragraph 278 of the Counterclaim.
65. Plaintiffs deny Paragraph 279 of the Counterclaim.
66. Plaintiffs deny Paragraph 280 of the Counterclaim.
67. Plaintiffs deny Paragraph 281 of the Counterclaim.
68. Plaintiffs deny Paragraph 282 of the Counterclaim.
69. Plaintiffs deny Paragraph 283 of the Counterclaim.

70. Plaintiffs deny Paragraph 284 of the Counterclaim.
71. Plaintiffs deny Paragraph 285 of the Counterclaim.
72. Plaintiff Gennady Shmukler admits Paragraph 286 of the Counterclaim.
73. Plaintiff admits so much of Paragraph 287 which states that on July 26, 2007, they gave a promissory note (the "Shmukler Note") in the amount of \$110,326.00 to Wachovia, but deny the validity of said Note and therefore deny the remaining allegations contained therein.

74. Plaintiff denies Paragraph 288 of the Counterclaim.
75. Plaintiff denies Paragraph 289 of the Counterclaim.
76. Plaintiff denies Paragraph 290 of the Counterclaim.
77. Plaintiff denies Paragraph 291 of the Counterclaim.
78. Plaintiff denies Paragraph 292 of the Counterclaim.
79. Plaintiff denies Paragraph 293 of the Counterclaim.
80. Plaintiff denies Paragraph 294 of the Counterclaim.
81. Plaintiff denies Paragraph 295 of the Counterclaim.
82. Plaintiffs Michael Schmuff and Joanne Schmuff admit Paragraph 296 of the Counterclaim.

83. Plaintiffs admit so much of Paragraph 297 which states that on February 13, 2007, they gave a promissory note (the "Schmuff Note") in the amount of \$270,518.70 to Wachovia, but deny the validity of said Note and therefore deny the remaining allegations contained therein.

84. Plaintiffs deny Paragraph 298 of the Counterclaim.
85. Plaintiffs deny Paragraph 299 of the Counterclaim.
86. Plaintiffs deny Paragraph 300 of the Counterclaim.
87. Plaintiffs deny Paragraph 301 of the Counterclaim.
88. Plaintiffs deny Paragraph 302 of the Counterclaim.
89. Plaintiffs deny Paragraph 303 of the Counterclaim.
90. Plaintiffs deny Paragraph 304 of the Counterclaim.
91. Plaintiffs deny Paragraph 305 of the Counterclaim.
92. Plaintiff Matthew A. Terry admits Paragraph 306 of the Counterclaim.

93. Plaintiff admits so much of Paragraph 307 which states that on April 10, 2007, he gave a promissory note (the "Terry Note I") in the amount of \$132,743.00 to Wachovia, but denies validity of said Note and therefore denies the remaining allegations contained therein.

94. Plaintiff denies Paragraph 308 of the Counterclaim.

95. Plaintiff denies Paragraph 309 of the Counterclaim.

96. Plaintiff denies Paragraph 310 of the Counterclaim.

97. Plaintiff denies Paragraph 311 of the Counterclaim.

98. Plaintiff denies Paragraph 312 of the Counterclaim.

99. Plaintiff denies Paragraph 313 of the Counterclaim.

100. Plaintiff denies Paragraph 314 of the Counterclaim.

101. Plaintiff denies Paragraph 315 of the Counterclaim.

102. Plaintiff Matthew A. Terry admits Paragraph 316 of the Counterclaim.

103. Plaintiff admits so much of Paragraph 317 which states that on June 25, 2007, he gave a promissory note (the "Terry Note II") in the amount of \$125,724.70 to Wachovia, but denies validity of said Note and therefore denies the remaining allegations contained therein.

104. Plaintiff denies Paragraph 318 of the Counterclaim.

105. Plaintiff denies Paragraph 319 of the Counterclaim.

106. Plaintiff denies Paragraph 320 of the Counterclaim.

107. Plaintiff denies Paragraph 321 of the Counterclaim.

108. Plaintiff denies Paragraph 322 of the Counterclaim.

109. Plaintiff denies Paragraph 323 of the Counterclaim.

110. Plaintiff denies Paragraph 324 of the Counterclaim.

111. Plaintiff denies Paragraph 325 of the Counterclaim.

112. Plaintiffs Kathryn M. Tillman and Valerie A. Lowe admit Paragraph 326 of the Counterclaim.

113. Plaintiffs admit so much of Paragraph 327 which states that on April 11, 2007, they gave a promissory note (the "Tillman & Lowe Note") in the amount of

\$133,012.60 to Wachovia, but deny validity of said Note and therefore deny the remaining allegations contained therein.

- 114. Plaintiffs deny Paragraph 328 of the Counterclaim.
- 115. Plaintiffs deny Paragraph 329 of the Counterclaim.
- 116. Plaintiffs deny Paragraph 330 of the Counterclaim.
- 117. Plaintiffs deny Paragraph 331 of the Counterclaim.
- 118. Plaintiffs deny Paragraph 332 of the Counterclaim.
- 119. Plaintiffs deny Paragraph 333 of the Counterclaim.
- 120. Plaintiffs deny Paragraph 334 of the Counterclaim.
- 121. Plaintiffs deny Paragraph 335 of the Counterclaim.

AS TO THE TWENTY-SEVENTH DEFENSE

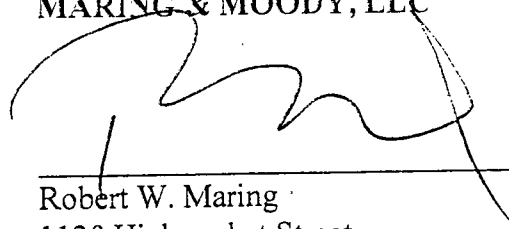
(Unjust Enrichment/Quantum Meruit)

- 122. Paragraph 336 does not require a response.
- 123. Plaintiffs Anders, admit Paragraph 337 of the Counterclaim.
- 124. Plaintiffs deny Paragraph 338 of the Counterclaim.
- 125. Plaintiffs deny Paragraph 339 of the Counterclaim.
- 126. Plaintiffs deny Paragraph 340 of the Counterclaim.
- 127. Plaintiff Cavicchia admits Paragraph 341 of the Counterclaim.
- 128. Plaintiff denies Paragraph 342 of the Counterclaim.
- 129. Plaintiff denies Paragraph 343 of the Counterclaim.
- 130. Plaintiff denies Paragraph 344 of the Counterclaim.
- 131. Plaintiff Ciulis admits Paragraph 345 of the Counterclaim.
- 132. Plaintiff denies Paragraph 346 of the Counterclaim.
- 133. Plaintiff denies Paragraph 347 of the Counterclaim.
- 134. Plaintiff denies Paragraph 348 of the Counterclaim.
- 135. Plaintiff Kurtz admits Paragraph 349 of the Counterclaim.
- 136. Plaintiff denies Paragraph 350 of the Counterclaim.
- 137. Plaintiff denies Paragraph 351 of the Counterclaim.
- 138. Plaintiff denies Paragraph 352 of the Counterclaim.
- 139. Plaintiff Morgan admits Paragraph 353 of the Counterclaim.

140. Plaintiff denies Paragraph 354 of the Counterclaim.
141. Plaintiff denies Paragraph 355 of the Counterclaim.
142. Plaintiff denies Paragraph 356 of the Counterclaim.
143. Plaintiffs O'Reillys admit Paragraph 357 of the Counterclaim.
144. Plaintiffs deny Paragraph 358 of the Counterclaim.
145. Plaintiffs deny Paragraph 359 of the Counterclaim.
146. Plaintiffs deny Paragraph 360 of the Counterclaim.
147. Plaintiffs Ryans admit Paragraph 361 of the Counterclaim.
148. Plaintiffs deny Paragraph 362 of the Counterclaim.
149. Plaintiffs deny Paragraph 363 of the Counterclaim.
150. Plaintiffs deny Paragraph 364 of the Counterclaim.
151. Plaintiff Shmukler admits Paragraph 365 of the Counterclaim.
152. Plaintiff denies Paragraph 366 of the Counterclaim.
153. Plaintiff denies Paragraph 367 of the Counterclaim.
154. Plaintiff denies Paragraph 368 of the Counterclaim.
155. Plaintiffs Schmuffs admit Paragraph 369 of the Counterclaim.
156. Plaintiffs deny Paragraph 370 of the Counterclaim.
157. Plaintiffs deny Paragraph 371 of the Counterclaim.
158. Plaintiffs deny Paragraph 372 of the Counterclaim.
159. Plaintiff Terry admits Paragraph 373 of the Counterclaim.
160. Plaintiff denies Paragraph 374 of the Counterclaim.
161. Plaintiff denies Paragraph 375 of the Counterclaim.
162. Plaintiff denies Paragraph 376 of the Counterclaim.
163. Plaintiff Terry admits Paragraph 377 of the Counterclaim.
164. Plaintiff denies Paragraph 378 of the Counterclaim.
165. Plaintiff denies Paragraph 379 of the Counterclaim.
166. Plaintiff denies Paragraph 380 of the Counterclaim.
167. Plaintiffs Tillman & Lowe admit Paragraph 381 of the Counterclaim.
168. Plaintiffs deny Paragraph 382 of the Counterclaim.
169. Plaintiffs deny Paragraph 383 of the Counterclaim.

170. Plaintiffs deny Paragraph 384 of the Counterclaim.

MARING & MOODY, LLC

A handwritten signature in black ink, appearing to read 'R. Maring', is written over a horizontal line.

Robert W. Maring
1130 Highmarket Street
P.O. Box 478
Georgetown, SC 29442-0478
Telephone: (843) 545-9544
Facsimile: (843) 545-9735
Attorney for Plaintiffs

Georgetown, SC
January 20, 2012

STATE OF SOUTH CAROLINA
14TH JUDICIAL CIRCUIT
COUNTY OF JASPER
COURT OF COMMON PLEAS
CASE NO. 2011-CP-27-00011

JEFFREY H. ANDERS AND MAUREEN
ANDERS ET, AL

PLAINTIFFS

VERSUS

MAY 7, 2013

TRANSCRIPT OF HEARING
BEAUFORT, SOUTH CAROLINA

THE SETTINGS OF MACKAY POINT,
LLC, ET AL

DEFENDANTS

B E F O R E:

HON. CARMEN T. MULLEN, JUDGE

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

ON BEHALF OF PLAINTIFFS:

HON. ROBERT W. MARING

ON BEHALF OF DEFENDANTS:

HON. S. STERLING LANEY II

WANDA H. ROWE, CVR-M
OFFICIAL COURT REPORTER

1 31, 2008, as by Paragraph 63. One of the former co-
2 plaintiffs purchased their lot on that date. So we know
3 for at least 16 months after he bought this lot, and a
4 number of, at least 112, lots were selling in this
5 development, which showed -- and he made no effort to try
6 to sell his lot in this time. So, there's absolutely --
7 it's pure speculation on his part to say he suffered any
8 kind of loss as a result of buying Lot 51, because he
9 never tried to sell it. Therefore, he has no idea
10 whether or not he would have lost any money, or would
11 have made any money if he'd chosen to put it on the
12 market at that time.

13 THE COURT: Mr. Maring, how are you going to, at
14 trial, show what his loss is?

15 MR. MARING: Well, your Honor, first of all, he's
16 going to have a judgment, I would assume, granted by you
17 today on the promissary note. Certainly, he has no
18 defense. I can't, in good faith, present a defense to
19 the note. It was signed. It was executed. He now owes
20 whatever the number will be.

21 THE COURT: 141 plus interest.

22 MR. MARING: Whatever that number's going to be, your
23 Honor.

24 THE COURT: Right.

25 MR. MARING: And he has -- I believe that will be one

State of South Carolina)
County Of Jasper)

In the Court of Common Pleas
Fourteenth Judicial Circuit
2011-CP-27-0011

Jeffrey H. Anders and Maureen Anders,)
Michael K. Callahan and Amy Callahan,)
Melinda A. Cavicchia; Michael B.)
Ciulis, Stephen Kipa and Kimberly)
A.K. Kipa, Chad Kurtz, Spencer L.)
Morgan, Richard O'Reilly and Alicia)
F. O'Reilly, Daniel Ryan and Susan)
Ryan, Gennady Shmukler, Michael)
Schmuff and Joanne Schmuff, Matthew)
Terry, Kathryn M. Tillman, Valerie A.)
Lowe, Tacg Properties, LLC, Mackay)
Marsh, LLC,)

Plaintiffs,)

vs.)

The Settings of Mackay Point, LLC,)
The Settings Development Companies,)
LLC, Branch Banking and Trust Co.,)
Wachovia Bank, N.A., Bond Safeguard)
Insurance Company, and Jasper County,)

Defendants.)

) Transcript of Record

May 28, 2013

Ridgeland, South Carolina

B E F O R E:

The Honorable Carmen T. Mullen, Judge

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

Robert Wade Maring, Esquire
Attorney for Spencer L. Morgan

Shelton Sterling Laney, III, Esquire
Hugh M. Claytor, Esquire
Attorneys for Wells Fargo

Elizabeth B. Harris, CVR-M
Circuit Court Reporter

I N D E X

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Certificate Page	22

E X H I B I T S

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C-2	Affidavit	9
C-3	Power of Attorney	15
C-4	Promissory Note	16
D-1	Transcript	10

1 THE COURT: My understanding is we have some
2 outstanding motions in the case of *Anders vs. Wachovia*.
3 Now it's Wells Fargo. Am I correct?

4 MR. MARING: That's correct, Your Honor.

5 THE COURT: Thank you. Yes, sir.

6 MR. MARING: Your Honor, first we talked about this
7 off the record, but for the record's sake, the first issue
8 is the defendants The Settings of Mackay Point and The
9 Settings Developments Company, LLC. They are currently in
10 default. Mr. Rivers here in Ridgeland has consented to
11 serve as a special referee for a damages hearing. Your
12 Honor, I would like to submit an order for your signature
13 later.

14 THE COURT: Absolutely. I'll grant that. Thank you.

15 MR. MARING: Your Honor, the second issue is a motion
16 for a continuance. As the court is aware, last week I was
17 told by my client Spencer Morgan that his employment was
18 going to require him to fly a plane which he is a pilot for
19 out of the country. This was a last minute, unplanned type
20 of situation. Your Honor, I'd like to submit the
21 affidavits that I submitted on Wednesday of last week.
22 I've got the original affidavits that I'd like to submit
23 for identification 1 and 2.

24 THE COURT: Thank you.

25 MR. MARING: And quite frankly, Your Honor, to kind of

1 give you a little bit of background on this case, this case
2 involves the Mackay Point subdivision in Jasper County. We
3 had numerous plaintiffs. In this particular -- for the
4 defendants we have ten plaintiffs dealing with Wells Fargo
5 and Wachovia. Over the last six months, we've been able to
6 mediate, and through extensive mediation and negotiations
7 we've resolved all but Mr. Morgan's case. It was for trial
8 here today, Your Honor, and again last week was the first
9 time that I was -- that we became apprised of his conflict
10 with his employer.

11 Your Honor, I think by looking at his affidavit, it
12 clearly indicates that he's unfortunately having to choose
13 between his employment and being here today. He wants to
14 be here. He does not want to avoid or delay the case. He
15 would like to have his day in state court.

16 THE COURT: Let me ask you, Mr. Maring. It says that
17 ~~he is scheduled to fly a Hawker 900XP. Is that a~~
18 helicopter or is that a plane?

19 MR. MARING: Your Honor, that is a plane, Your Honor.
20 It's a jet plane.

21 THE COURT: Okay.

22 MR. MARING: The Rio Bravo Helicopters is the owner of
23 it. He also is a helicopter pilot as well by trade, and
24 that particular plane is owned by, is owned by the Rio
25 Bravo Helicopters Corporation, Your Honor.

1 THE COURT: Okay.

2 MR. MARING: He is the only -- and he is pilot for the
3 insurance for the plane, and he was -- basically, Your
4 Honor, I hate to say this. He was required to do that,
5 required to be there.. We've got an affidavit from his
6 employer that corroborates Mr. Morgan's testimony for his
7 affidavit as well.

8 THE COURT: And you just say it was a last-minute trip
9 that he was required to fly for a private person?

10 MR. MARING: Yes. This was not him, Your Honor. This
11 was not a trip, Your Honor.

12 THE COURT: To go to St. Bart's.

13 MR. MARING: I mean, I want to make sure it's clear.
14 This was not him. This was not a vacation that he's taking
15 with his family. This is certainly just something that is
16 required by his employer. And certainly, Your Honor, he
17 chose to do that, to continue on with his employment.
18 Certainly did not want to jeopardize that, although he
19 certainly would like to be here.

20 I just want to also bring to the court's attention
21 that while this is a date certain, this case has not been
22 continued from any previous jury trial terms.

23 Secondly, Your Honor, that the plaintiff's testimony
24 is critical and necessary for me to bring in this case. I
25 cannot proceed with trial without his testimony. And, Your

1 Honor, in the event that Your Honor is unwilling or --
2 unwilling to continue the case for this particular term, I
3 would like to ask in the alternative that the case be
4 struck pursuant to 40(J) of the South Carolina Rules of
5 Civil Procedure, Your Honor. I think that would be the
6 only other relief, and I think that would be appropriate in
7 this matter. I'll let the defendant Wells Fargo testify as
8 to -- or give information regarding the 40(J), Your Honor.

9 But, Your Honor, that is my, that is my motion for a
10 continuance. Certainly Mr. Morgan would like to be here.
11 It's unfortunate. I've never -- been practicing law for
12 numerous years, Your Honor. I've never been in this
13 situation before, but I would just ask for the court's
14 understanding, and would just request this case be
15 continued. Thank you.

16 THE COURT: All, Mr. Laney.

17 MR. LANEY: Good morning, Your Honor.

18 THE COURT: Good morning.

19 MR. LANEY: I'm Sterling Laney on behalf of Wells
20 Fargo, defendant in this matter, Your Honor. And Well
21 Fargo's position is that, you know, we certainly abide by
22 the court's wishes and rulings here today, but we're not in
23 a position where we can consent to a 40(J) motion to the
24 continuance at this time, but certainly will abide by
25 whatever the court sees fit.

1 THE COURT: Well, Mr. Maring, as I think I told you
2 back in chambers, I've been on the bench now for six years,
3 and I have never had to dismiss a case for failure to
4 prosecute. My concerns with this case are I understand
5 it's been mediated a number of times. There were a number
6 of plaintiffs in this case, and your client was the last
7 one standing who had not resolved his cases with Wells
8 Fargo. I also understand he doesn't have a defense to the
9 note in this case, and that's something we're going to take
10 up on counterclaim.

11 I set this for this week's day certain back, I
12 believe, on January 23 -- is that correct -- of 2012, which
13 gave your client ample time to notify his employer. It was
14 a little bit unusual for me to actually give you a day
15 certain in a case like this for the simple fact that I know
16 it was only going to take about two or two and a half days.
17 And we did it for the simple fact that we were going to
18 make sure that your client could be here.

19 Again, he's the plaintiff in this case. I might be
20 more sympathetic if he was the defendant being sued, but
21 again we have summoned a jury panel here in Jasper. We
22 only have terms of court here about every other month. In
23 about another thirty minutes, I'm going to have about
24 eighty people showing up that the county of Jasper is going
25 to have to pay for, and we have no other cases for trial.

1 So, while I appreciate and sympathize with you, Mr.
2 Maring, and again I said this back in chambers and I say it
3 to you. I hate to do it to you as a lawyer personally.
4 Additionally, though, the case was set for trial. I cannot
5 continue it; I simply cannot do that. It's an old case.
6 It's a 2011 case. This was your week to try the case. So,
7 respectfully, sir, while I appreciate the affidavits, it
8 appears that your client does work for a helicopter
9 corporation, who I'm assuming assigns him. Knowing six
10 months in advance when his trial date was, he should been
11 here and been ready to go. So, I truly feel like we have
12 kind of bent over backwards to help your client, and again
13 he is not here.

14 With that said, there are some outstanding motions
15 in the case, is that correct, Mr. Laney, that we need to
16 hear?

17 MR. LANEY: That, that is correct, Your Honor.

18 THE COURT: Okay, and I'm going to go ahead and have
19 these marked for the record, Mr. Maring. I don't see that
20 we've done them as courts exhibits yet. So, let's go ahead
21 and mark them for the record.

22 MR. MARING: Thank you, Your Honor.

23 (AFFIDAVIT MARKED INTO EVIDENCE AS COURT'S EXHIBIT
24 NUMBER 1.)

25 (AFFIDAVIT MARKED INTO EVIDENCE AS COURT'S EXHIBIT

1 NUMBER 2.)

2 MR. LANEY: Your Honor, if I could, may I approach?

3 THE COURT: Sure. Please.

4 MR. LANEY: This is the transcript. If I could have
5 this marked as Exhibit Number 1? That is the transcript
6 from the summary judgement hearing when we were before Your
7 Honor on May 7th. of this year, 2013, when we argued the
8 motion for summary judgement.

9 THE COURT: Okay.

10 (TRANSCRIPT MARKED INTO EVIDENCE AS DEFENDANT'S
11 EXHIBIT NUMBER 1.)

12 THE COURT: All right, Mr. Laney, whenever you're
13 ready.

14 MR. LANEY: Okay. Thank you.

15 During oral argument at that time, and it's on page 15
16 of the transcript of line 15, Mr. Maring as counsel for
17 Spencer Morgan quite candidly -- and I appreciate his
18 candor, Your Honor -- stated that his client, Mr. Morgan,
19 had no defenses to our counterclaim on the note. Your
20 Honor, we would say that's tantamount to a judicial
21 admission in open court, and so would ask that the court
22 grant us summary judgment as to our counterclaim.

23 And obviously Mr. Morgan is not here to oppose our
24 counterclaim this morning, but, but even beyond that,
25 attached to our motion which we handed up this morning for

1 summary judgement motion, Mr. Morgan testified in numerous
2 places that he signed and executed the note through his
3 power of attorney, Helen Roper, and he purchased lot 51
4 with the proceeds of the note. It was \$130,279.30. Those
5 documents were executed on March 16, 2007.

6 It was a five-year note, sixty payments on interest,
7 only one balloon payment which was due on March 15, 2012.
8 He testified that he has not paid the note back, and not
9 only has he not paid the note back. He has no intention of
10 paying the note back. He, he testified very candidly, much
11 like Mr. Maring, in open court that he, he kept up with all
12 his other obligations and debt obligations, but due to the
13 principle of the matter, he was not going to pay
14 Wachovia/Wells Fargo back on this promissory note. So, he
15 has no intention to pay, pay us back.

16 Your Honor, based upon the judicial admission, Mr.
17 Morgan's own testimony which is attached as Exhibit B to
18 the motion that he -- that his attorney, in fact, signed
19 the note, he received the proceeds from the note, he
20 purchased lot 51 with the proceeds of the note, has a deed
21 issued to him, and he no intention of paying us back, nor
22 has he paid us back pursuant to the terms and conditions,
23 we would ask this court to grant summary judgement on our
24 are counterclaim to the note.

25 And we have Mr. Carlos Gonzales here from Wells Fargo

1 who can testify as to the amount that's currently due and
2 owing on the note if you'd like, Your Honor.

3 THE COURT: Okay. Sir, if you don't mind, you can
4 remain there in your seat, but if you'll just raise your
5 right hand, sir.

6 CARLOS GONZALES, BEING DULY SWORN,
7 TESTIFIES AS FOLLOWS:

8 THE COURT: And if you would again just repeat your
9 name for the record for my court reporter.

10 WITNESS: Yes.

11 DIRECT EXAMINATION BY MR. LANEY:

12 Q. Tell us your name.

13 A. My name is Carlos Gonzales.

14 Q. And what is your position, Mr. Gonzales?

15 A. I am a retail credit and small business consultant for
16 Wells Fargo Bank.

17 Q. As such, are you familiar with the loan that was made
18 to Spencer Morgan from Wachovia, which is now Wells Fargo
19 Bank, back in March 2007?

20 A. I am.

21 Q. And, Mr. Gonzales, you are familiar with the terms and
22 conditions of the promissory note which Mr. Morgan signed
23 through his power of attorney?

24 A. Yes.

25 Q. Ms. Helen Roper?

1 A. Yes, I am.

2 Q. If you would, would you please tell the court in your
3 own words what the current status of that loan is and how
4 much is currently due and owing on that?

5 A. Yes. Currently the loan is in default. Payoff
6 balance is \$139,228.68.

7 Q. And, Mr. Gonzales, that amount does not include any
8 attorneys' fees or costs incurred in the collection effort
9 with regard to the note?

10 A. No, it does not.

11 Q. Okay. Nor does that figure include interest or
12 late-fee charges past March of 2012. Is that correct?

13 A. That is correct.

14 Q. And I believe you said that the loan is currently in
15 default. What -- is it in default because Mr. Morgan has
16 not paid pursuant to the terms and conditions of the note?

17 A. That is correct.

18 Q. The maturity date of the note was March of 2012. Is
19 that correct?

20 A. Yes, that is correct.

21 Q. And today, Mr. Gonzales, Wells Fargo is simply asking
22 the court to award a judgment in the figure of 139, the
23 exact figure that you gave to it just a moment ago, and are
24 waiving any rights to seek attorneys' fee and costs
25 associated with the collection of that note?

1 A. That is correct.

2 MR. LANEY: I have no further questions at this time.

3 THE COURT: Mr. Maring, is there anything you need to
4 ask him?

5 CROSS-EXAMINATION BY MR. MARING:

6 Q. Sir, you're asking for a judgement in the amount of
7 139,228.68? I just want to make sure I have the number
8 right.

9 A. Yes. That is correct.

10 MR. MARING: I don't have any further questions, Your
11 Honor.

12 THE COURT: All right. Thank you. Okay.

13 MR. LANEY: Your Honor, based -- that's our case, Your
14 Honor. Based on that, we would ask the court to enter
15 judgment in favor of Wells Fargo against Mr. Morgan on its
16 counterclaim for breach of contract as to the promissory
17 note.

18 THE COURT: Okay.

19 MR. LANEY: And, Your Honor, we do have the original
20 note in the courtroom if we can -- I know Judge Dukes likes
21 that in Beaufort County. I didn't know what the court's
22 preference was.

23 THE COURT: That's fine. If you'd like to go ahead
24 and make it a court's exhibit, I'm happy to as well, or a
25 copy of it.

1 Mr. Maring, anything further from you? That's a no
2 for the record?

3 MR. MARING: Nothing further.

4 THE COURT: That was a shaking of the head.

5 MR. MARING: I've already had enough today, Your
6 Honor.

7 THE COURT: I understand. All right, I'm going to go
8 ahead and grant your motion on the breach of contract for
9 summary judgement in the amount of 139,228.68 against
10 Spencer Morgan.

11 MR. LANEY: Your Honor, may I approach?

12 THE COURT: Please.

13 MR. LANEY: I have the original copy of the promissory
14 note, but also the original power of attorney which has
15 been recorded in Jasper.

16 THE COURT: Okay.

17 MR. LANEY: It's in the public record.

18 THE COURT: Thank you.

19 MR. LANEY: Giving Ms. Roper the permission to sign on
20 his behalf.

21 THE COURT: Okay. Thank you.

22 MR. MARING: I have no objection to those exhibits
23 being entered, Your Honor.

24 THE COURT: I appreciate that. All right.

25 (POWER OF ATTORNEY MARKED INTO EVIDENCE AS COURT'S

1 EXHIBIT NUMBER 3.)

2 (PROMISSORY NOTE MARKED INTO EVIDENCE AS COURT'S
3 EXHIBIT NUMBER 4.)

4 THE COURT: Anything else, Mr. Laney?

5 MR. LANEY: We have two other motions, Your Honor.
6 Mr. Claytor will handle those.

7 THE COURT: Okay.

8 MR. LANEY: Court's indulgence.

9 MR. CLAYTOR: May it please the court? My name is
10 Hugh Claytor, and I also appear as an attorney for Wells
11 Fargo.

12 Your Honor, first I'll take up the matter of Michael
13 Ciulis, spelled C-i-u-l-i-s, and if I could approach? Just
14 for the court's convenience, I can hand you a copy.

15 THE COURT: Thank you.

16 MR. CLAYTOR: Of the motion. We've already filed that
17 this morning, Your Honor.

18 THE COURT: Thank you.

19 MR. CLAYTOR: But Mr. Ciulis is one of the plaintiffs
20 that was represented in this same Anders action, as we
21 refer to it. Through meditation, Mr. Ciulis agreed to
22 settle by confessing judgement to Wells Fargo in the amount
23 of 222,714.89. That was through meditation with Mr. Dawes
24 Cooke as mediator.

25 Pursuant to that agreement, we prepared the necessary

1 paperwork and forwarded it to Mr. Ciulis through Mr. Maring
2 and despite repeated efforts, Mr. Ciulis has refused to
3 sign that paperwork and consummate that settlement. So, we
4 are simply asking the court to issue a judgement against
5 Mr. Ciulis to enforce that settlement in the precise amount
6 he agreed to, which is 222,714.89.

7 MR. MARING: Thank you, Your Honor. Your Honor, all I
8 can say is that pursuant to our negotiations, an offer was
9 made by my client: basically pick three options. Wells
10 Fargo picked the option of the confession of judgment, Your
11 Honor, and certainly that was agreed upon, and I have
12 discussed that with my client. And, Your Honor, I
13 certainly understand their position and don't have anything
14 that I can say that is contradictory to what Mr., Mr.
15 Claytor has presented to the court.

16 THE COURT: Okay, and we have no notice issues as far
17 as this motion is concerned?

18 MR. MARING: Well, Your Honor, I already, I already
19 spoke to my client about this. For me to drive back here
20 ten days from now to have -- it would be the same. It's
21 going to be the same outcome as where, where we would be
22 ten days from now.

23 THE COURT: Okay.

24 MR. MARING: Certainly, Your Honor, I don't think that
25 notice -- he, they actually brought this up at the motion

1 for summary judgment which was several weeks ago, as Your
2 Honor is aware, as I certainly discussed that with my
3 clients at that point in time.

4 THE COURT: Okay. Yes, sir.

5 MR. CLAYTOR: And I would add, Your Honor, just for
6 the record that that number that was agreed by Mr. Ciulis
7 also waives attorneys' fees and costs associated with
8 collection efforts. It is again principal plus the
9 interest that was cut off as of the maturity day of -- date
10 of his note.

11 THE COURT: Okay. All right. Well, I'll go ahead and
12 grant your motion in the amount of 222,714.89, which is
13 what he agreed, and now let's see the second one.

14 MR. CLAYTOR: Your Honor, if it please the court, I
15 have one more, and this has to do with plaintiff Richard
16 O'Reilly. That's O apostrophe r-e-i-l-l-y.

17 THE COURT: Thank you.

18 MR. CLAYTOR: And through Dawes Cooke, we also reached
19 a settlement with Mr. and Ms. O'Reilly, and, Your Honor,
20 this one was a bit different, so I'll explain it so it's
21 clear.

22 Mr. and Ms. O'Reilly prior to mediation had divorced,
23 and so Ms. O'Reilly at that time was known as Ms. Fazio.
24 They reached separate agreements with Wells Fargo. Ms.
25 Fazio reached a settlement that required her to make a

1 lump-sum payment to Wells Fargo in exchange for being
2 dismissed and completely resolved. She did that. So, I
3 want the record to be clear that we're not seeking any
4 relief against Ms. O'Reilly Fazio. This is solely as to
5 Richard O'Reilly.

6 Mr. O'Reilly agreed to a settlement on terms that
7 required him to make regular monthly payments to Wells
8 Fargo beginning in March of 2013 in -- I think it was \$600
9 a month. I'm sorry, it was \$416.66 a month until he had
10 paid off a sum total of \$50,000, and that was payments of
11 the \$50,000 basically over ten years at 0% interest.

12 Mr. O'Reilly was sent the documents pursuant to that
13 settlement. We prepared them, sent them to Mr. Maring, who
14 forwarded them to Mr. O'Reilly. Mr. O'Reilly has also,
15 despite our repeated efforts, refused to sign the
16 documents. In addition, Mr. O'Reilly did not make a
17 payment on March 1st, April 1st, or May 1st.

18 So, all we're asking the court to do is to require Mr.
19 O'Reilly to abide by the terms of the settlement, which
20 that ten-year payment obligation was agreed to be secured
21 by a confession of judgment to be signed by Richard
22 O'Reilly in the amount of the loan difference between what
23 his ex-wife paid in cash and what they borrowed. And that
24 net was \$163,720.93, and that again is a figure that is a
25 net figure and it excludes attorneys' fees and costs.

1 Mr. O'Reilly agreed to sign it, and it was to secure
2 default in that ten-year payment obligation, which
3 obviously he has defaulted on. And so we're asking the
4 court to hold him to the agreement that he reached at
5 mediation and enter judgment against him in that amount.

6 THE COURT: Yes, sir.

7 MR. MARING: Your Honor, regarding Mr. O'Reilly, Your
8 Honor, I would just ask for the court to give him the
9 opportunity to make the payments current immediately in the
10 event, in the event that he would so desire to make the
11 back payments up immediately, and allow him to continue to
12 pay the terms of the settlement, Your Honor. And in the
13 alternative, if he doesn't bring payment, if he doesn't
14 bring those up immediately, certainly the confession of
15 judgment would be, would be, would be appropriate, Your
16 Honor. I would just like to give him that opportunity.

17 THE COURT: Sir.

18 MR. CLAYTOR: Your Honor, I always like to give people
19 the benefit of the doubt. May I suggest that the court
20 grant judgement, and we would agree not to enforce it if he
21 makes the payments, and we'll accept the other part of it,
22 but -- in fact, we'll have our security there that he has
23 refused to provide us by signature since December of last
24 year.

25 THE COURT: Okay.

1 MR. MARING: Your Honor, I think that would -- yeah,
2 that would be fine, Your Honor.

3 THE COURT: I think that's fine. Thank you. I'll go
4 ahead and grant your motion then. Thank you.

5 MR. CLAYTOR: Thank you, Your Honor.

6 THE COURT: Thank you. Anything else, gentleman?

7 MR. CLAYTOR: That's all for Wells Fargo, Your Honor.

8 MR. MARING: That's all we have, Your Honor.

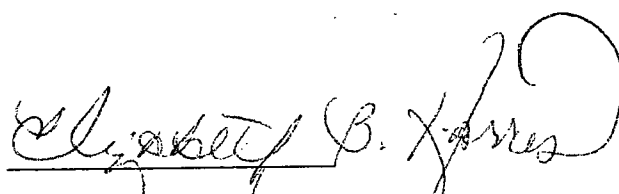
9 THE COURT: Thank you, y'all. I appreciate it.

10 --- END OF TRANSCRIPT OF RECORD ---

CERTIFICATE

I, THE UNDERSIGNED ELIZABETH B. HARRIS, CERTIFIED
VERBATIM OFFICIAL COURT REPORTER FOR THE FIFTH
JUDICIAL CIRCUIT OF THE STATE OF SOUTH CAROLINA, DO
HEREBY CERTIFY THAT THE FOREGOING IS A TRUE, ACCURATE
AND COMPLETE TRANSCRIPT OF RECORD OF ALL THE
PROCEEDINGS HAD AND EVIDENCE INTRODUCED IN THE HEARING
OF THE CAPTIONED CAUSE, RELATIVE TO APPEAL, IN THE
CIRCUIT COURT FOR JASPER COUNTY, SOUTH CAROLINA, ON
THE 28TH DAY OF MAY, 2013.

I DO FURTHER CERTIFY THAT I AM NEITHER OF KIN,
COUNSEL, NOR INTEREST IN ANY PARTY HERETO.


ELIZABETH B. HARRIS, CVR-M

COLUMBIA, SOUTH CAROLINA

OCTOBER 31TH, 2013

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2010-CP-27-00011

JEFFREY H. ANDERS AND MAUREEN ANDERS,
MICHAEL K. CALLAHAN AND AMY CALLAHAN,
MELINDA A. CAVICCHIA, MICHAEL B. CIULIS,
STEPHEN KIPA AND KIMBERLY A. K. KIPA,
CHAD KURTZ, SPENCER L. MORGAN,
RICHARD O'REILLY AND ALICIA F. O'REILLY,
DANIEL RYAN AND SUSAN RYAN,
GENNADY SHMUKLER, MICHAEL SCHMUFF AND
JOANNE SCHMUFF, MATTHEW TERRY,
KATHRYN M. TILLMAN, VALERIE A. LOWE,
TACG PROPERTIES, LLC, MACKAY MARSH, LLC

Plaintiffs,

vs.

THE SETTINGS OF MACKAY POINT, LLC,
THE SETTINGS DEVELOPMENT COMPANIES,
LLC, BRANCH BANKING AND TRUST CO.,
WACHOVIA BANK, N.A., BOND SAFEGUARD
INSURANCE COMPANY, AND JASPER COUNTY,

Defendants.

PLAINTIFF SPENCER MORGAN'S
RESPONSES TO WELLS FARGO'S
FIRST SET OF REQUESTS FOR
ADMISSION

**TO: DEFENDANT WELLS FARGO BANK, S. STERLING LANEY, III, ESQUIRE AND
HUGH CLAYTOR, ESQUIRE**

The Plaintiff (hereinafter referred to as "Plaintiff"), responding to the Defendant Wells Fargo Bank, N.A.'s First Set of Requests for Admission, hereby Interpose and incorporate each of the following objections into their responses:

- a. The Plaintiff objects to the Defendant's discovery requests to the extent that they maybe interpreted to seek information and/or documents protected from discovery by the attorney-client privilege or the work product doctrine.
- b. The Plaintiff objects to Defendant's discovery requests to the extent that they are overly broad, unduly burdensome, oppressive, vague, ambiguous and/or redundant.
- c. The Plaintiff objects to Defendants discovery requests to the extent that they seek information and/documents which are not relevant to this action or are not reasonably calculated to lead to the discovery of admissible evidence.

Subject to the foregoing general objections, the Plaintiff hereby responds to Defendant's Requests to Admit.

RESPONSES AND OBJECTIONS TO REQUESTS TO ADMIT
REQUESTS FOR ADMISSION

1. Admit that the document attached hereto and incorporated herein by reference as Exhibit "A" is a true and accurate copy of the Note dated March 16, 2007, signed by Helen R. Roper under a Power of Attorney given by Plaintiff Morgan (the "Note").

RESPONSE:

Admitted

2. Admit that by authorizing the signing of the Note, Plaintiff Morgan promised to pay Wachovia Bank, National Association ("Wachovia") \$130,279.30 plus interest.

RESPONSE:

Admitted

3. Admit that the documents attached hereto and incorporated herein by referenced as Exhibit B is a true and accurate copy of a Notice and Right to Cure Default dated August 9, 2010, addressed to Spencer Lee Morgan.

RESPONSE:

Admitted

4. Admit that the Plaintiff Morgan failed to make payments to Wachovia as required by the terms of the Note.

RESPONSE:

Admit the Plaintiff has failed to make payments to Wachovia, but denies the validity of the note.

5. Admit that Plaintiff Morgan is in default under the terms of the Note for failing to make payments as required by the terms of the Note.

RESPONSE:

Denied

6. Admit that Plaintiff Morgan did not cure his default under the terms of the Note after receiving notice of such default.

RESPONSE:

Denied

7. Admit that Plaintiff Morgan breached the terms of the Note.

RESPONSE:

Denied

8. Admit that the terms of the Note entitle Wachovia to a judgment against Plaintiff Morgan.

RESPONSE:

Denied

9. Admit that Plaintiff Morgan did not speak with any Wachovia Employee prior to agreeing to purchase Lot 51.

RESPONSE:

Denied

10. Admit that Plaintiff Morgan did not make any effort to independently ascertain the value of Lot 51 prior to agreeing to purchase Lot 51.

RESPONSE:

Denied

11. Admit that Plaintiff Morgan was not prevented by Wachovia from independently ascertaining the value of Lot 51 before Plaintiff Morgan purchased Lot 51.

RESPONSE:

Denied

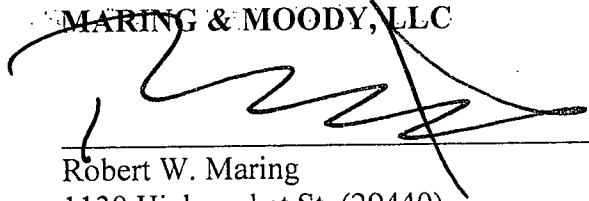
12. Admit that Plaintiff Morgan was not provided with an appraisal by Wachovia prior to agreeing to purchase Lot 51.

RESPONSE:

The Plaintiff objects to this question as being overly vague and ambiguous. However not withstanding this objection, the Plaintiff answers as follows:

The Plaintiff admits that he did not receive a copy of an appraisal prior to signing the contract. The Plaintiff was provided a copy of the appraisal prior to the consummation of the contract by way of closing the transaction. Therefore, the Plaintiff denies same.

MARING & MOODY, LLC



Robert W. Maring
1130 Highmarket St. (29440)
P.O. Box 478
Georgetown, SC 29442
843-545-9544 Office
843-545-9735 Facsimile
Attorney for Plaintiffs

Georgetown, SC

April 24, 2012

STATE OF SOUTH CAROLINA

COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-27-00011

JEFFREY H. ANDERS AND MAUREEN ANDERS,)
MICHAEL K. CALLAHAN AND AMY CALLAHAN,)
MELINDA A. CAVICCHIA, MICHAEL B. CIULIS,)
STEPHEN KIPA AND KIMBERLY A. K. KIPA,)
CHAD KURTZ, SPENCER L. MORGAN,)
RICHARD O'REILLY AND ALICIA F. O'REILLY,)
DANIEL RYAN AND SUSAN RYAN,)
GENNADY SHMUKLER, MICHAEL SCHMUFF AND)
JOANNE SCHMUFF, MATTHEW TERRY,)
KATHRYN M. TILLMAN, VALERIE A. LOWE,)
TACG PROPERTIES, LLC, MACKAY MARSH, LLC)

Plaintiffs,

vs.

THE SETTINGS OF MACKAY POINT, LLC,)
THE SETTINGS DEVELOPMENT COMPANIES.)
LLC, BRANCH BANKING AND TRUST CO.,)
WACHOVIA BANK, N.A., BOND SAFEGUARD)
INSURANCE COMPANY, AND JASPER COUNTY,)

Defendants.

NOTICE OF MOTION AND
MOTION FOR CONTINUANCE

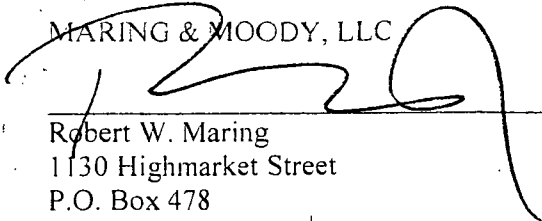
2011 MAY 23 AM 10:55
CLERK OF COURT
JASPER COUNTY SC

The Plaintiff Spencer Morgan, through his attorney of record, hereby moves before the Court to continue the Jury Trial scheduled for Tuesday, May 28, 2013. The Plaintiff has the following grounds in support of the motion:

1. The Plaintiff is a Professional Pilot for Rio Brave Helicopters, Inc.
2. This is the Plaintiff's primary source of income and means for supporting his family.
3. The Plaintiff's employer has planned a flight of great importance for May 27, 2013 through June 7, 2013, that cannot be rescheduled. The Plaintiff is the only authorized and approved named pilot on the aircraft insurance for this aircraft. Additionally, finding a replacement captain is not going to be possible due to the short time frame in which the flight was scheduled.
4. Should Plaintiff miss this flight it could jeopardized his employment status.
5. The Plaintiff has provided an affidavit in support of the Motion for Continuance. Additionally, the Plaintiff's employer is providing a supporting affidavit, copies which are attached to this motion and incorporated herein by reference and made a part and parcel hereof.

I SO MOVE.

MARING & MOODY, LLC



Robert W. Maring
1130 Highmarket Street
P.O. Box 478
Georgetown, S.C. 29440
Telephone: (843) 545-9544
Facsimile: (843) 545-9735

Georgetown, SC
May 22, 2013

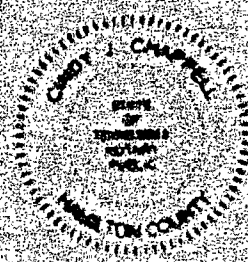
I Spencer L. Morgan do hereby attest to the following

I am a professional pilot by trade. I have been a pilot for Rio Bravo Helicopters Inc. via contract through International Aviation Services Inc. since 2009. This position is my primary and main means of providing for my family. I am the only Captain qualified and certified pilot for the airplanes owned by Rio Bravo Helicopters Inc. Rio Bravo Helicopters Inc. has spent in excess of \$80,000 properly licensing me for the Hawker 900XP in initial and recurrent training expenses. I am the only authorized and approved named pilot on the aircraft insurance for this aircraft in which there is a liability amount of \$25,000,000 and getting a replacement Captain vetted and approved may not be possible in a short timeframe. There is a recently planned flight of great importance to my employer that can't be rescheduled in which I am required to be present or jeopardize my continued employment status. The flight begins on May 27, 2013 and is expected to end on or about June 7, 2013. I ask and plead for the courts understanding of this matter. This is not an attempt to delay or hinder the case in question as I am eager to see this case to trial and I will take appropriate measures to see that the aforementioned issues are resolved should the court allow a continuance.

Spencer L. Morgan May 22, 2013

The foregoing instrument was acknowledged
(or affirmed or admitted to an affidavit) before me this 22 day of May, 2013
at Spencer L. Morgan and I am a duly sworn
notary public in the State of DC and my commission
expires on 8-19-14

My commission expires 8-19-14
Notary Public Indy O. Chappell



RIO BRAVO HELICOPTERS CORP
LAREDO, TX 78044-1827

4220 Sanders Ave.

TEL: (956) 726-2536

To Whom It May Concern:

I attest the following:

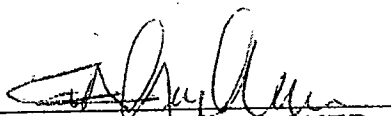
Spencer Morgan is the only Captain qualified Pilot for Rio Bravo Helicopters Corp for the Hawker 900XP

He is the only Captain on the Aircraft Insurance.

Rio Bravo Helicopters Corp has spent in excess of \$80,000.00 for initial and recurrent training expenses on Spencer Morgan to fly the Hawker 900XP

There is a recently schedule trip in the Hawker 900XP out of the United States.

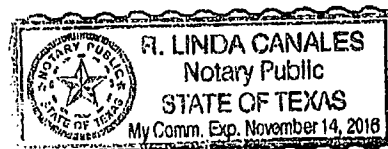
Spencer Morgan will be required by his employment/contract status to fly from May 27, 2013 until approximately the first week of June 2013


GARY A. LEYENDECKER
President
Rio Bravo Helicopters Corp

State of: Texas
County of: Webb

Subscribed and sworn to before me on this 22nd day of May, 2013

Notary Public: R. Linda Canales
R. Linda Canales
My commission expires on: 11/14/16



STATE OF SOUTH CAROLINA

COUNTY OF JASPER

IN THE COURT OF COMMON PLEAS
FOURTEENTH JUDICIAL CIRCUIT
CASE NO. 2011-CP-27-00011

JEFFREY H. ANDERS AND MAUREEN ANDERS,
MICHAEL K. CALLAHAN AND AMY CALLAHAN,
MELINDA A. CAVICCHIA, MICHAEL B. CIULIS,
STEPHEN KIPA AND KIMBERLY A. K. KIPA,
CHAD KURTZ, SPENCER L. MORGAN,
RICHARD O'REILLY AND ALICIA F. O'REILLY,
DANIEL RYAN AND SUSAN RYAN,
GENNADY SHMUKLER, MICHAEL SCHMUFF AND
JOANNE SCHMUFF, MATTHEW TERRY,
KATHRYN M. TILLMAN, VALERIE A. LOWE,
TACG PROPERTIES, LLC, MACKAY MARSH, LLC

Plaintiffs,

vs.

THE SETTINGS OF MACKAY POINT, LLC,
THE SETTINGS DEVELOPMENT COMPANIES,
LLC, BRANCH BANKING AND TRUST CO.,
WACHOVIA BANK, N.A., BOND SAFEGUARD
INSURANCE COMPANY, AND JASPER COUNTY,

Defendants.

NOTICE OF MOTION AND
MOTION FOR
RECONSIDERATION

2013 JUL -5 AM 9:20
JASPER COUNTY

**TO: THE HONORABLE CARMEN T. MULLEN, STERLING LANEY AND HUGH
CLAYTOR, ATTORNEYS FOR DEFENDANT, WELLS FARGO F/N/A
WACHOVIA BANK**

PLEASE TAKE NOTICE that, pursuant to Rule 59, South Carolina Rules of Civil Procedure (SCRCP), ten (10) days hereafter, or as soon thereafter as the matter may be heard, Defendant will move before the Court for a reconsideration of the Order dismissing the Plaintiff, Spencer Morgan's claims for failure to prosecute by order filed on June 20, 2013 and served on the Plaintiff on June 26, 2013:

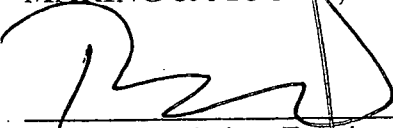
Said motion shall be based on the following grounds:

1. The Plaintiff would ask the Court to reconsider the dismissal of the Plaintiff's claims based upon the following:

a. The Plaintiff is a Professional Pilot for Rio Brave Helicopters, Inc.

- b. This is the Plaintiff's primary source of income and means for supporting his family.
 - c. The Plaintiff's employer has planned a flight of great importance for May 27, 2013 through June 7, 2013, that cannot be rescheduled. The Plaintiff is the only authorized and approved named pilot on the aircraft insurance for this aircraft. Additionally, finding a replacement captain is not going to be possible due to the short time frame in which the flight was scheduled.
 - d. Should Plaintiff miss this flight it could jeopardized his employment status.
 - e. The facts concerning the grounds for a continuance were corroborated by affidavits from Spencer Morgan and his employer.
2. Due to the unavailability of the Plaintiff, due to no fault of his own, the Court should have granted a continuance.

MARING & MOODY, LLC



Robert W. Maring, Esquire
1130 Highmarket Street
Post Office Box 478
Georgetown, SC 29442-0478
Telephone: (843) 545-9544
Facsimile: (843) 545-9735
Attorney for Plaintiff

Georgetown, SC
July 3, 2013

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM JASPER COUNTY
COURT OF COMMON PLEAS

Carmen T. Mullen, Circuit Court Judge

Case No. 2011-CP-27-00011

Wachovia Bank, N.A., ... Respondent,

v.

Spencer L. Morgan, ... Appellants,

NOTICE OF INTENT TO APPEAL

Spencer L. Morgan appeals the Order of the Honorable Carmen T. Mullen, Court of Common Pleas for Jasper County, dated June 20, 2013, and received by the Appellants on June 27, 2013.

July ²⁴~~25~~, 2013

Robert W. Maring
Maring & Moody, LLC
1130 Highmarket Street
P.O. Box 478
Georgetown, SC 29442
(843) 545-9544
Fax: (843) 545-9735
Attorney for Appellant

RECEIVED

SC Court of Appeals

Other Counsel of Record:

Sterling Laney, Esquire
Hugh Claytor, Esquire
Womble Carlyle
P.O. Box 10208
Greenville, SC 29603
Attorney for the Respondent,
Wachovia Bank, N.A.

THE STATE OF SOUTH CAROLINA
IN THE COURT OF APPEALS

APPEAL FROM JASPER COUNTY
COURT OF COMMON PLEAS

Carmen T. Mullen, Circuit Court

Case No. 2011-CP-27-00011

Wachovia Bank, N.A., ... Respondent,

v.

Spencer L. Morgan, ... Appellants,

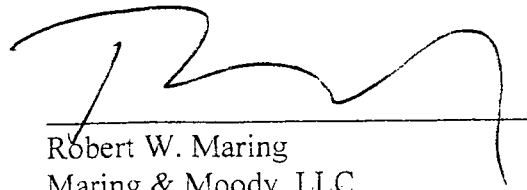
PROOF OF SERVICE

I, Robert W. Maring, attorney for the Appellant, Spencer L. Morgan, do hereby certify that on the 24th day of July, 2013, I served Notice of Intent to Appeal in the above-captioned action by depositing copies of same in the United States Mail, postage prepaid, in envelopes securely sealed, and addressed to:

Sterling Laney, Esquire
Hugh Claytor, Esquire
Womble Carlyle
P.O. Box 10208
Greenville, SC 29603
Attorney for the Respondent,
Wachovia Bank, N.A.

the same being their usual business addresses.

RECEIVED
JUL 29 2013
SC Court of Appeals

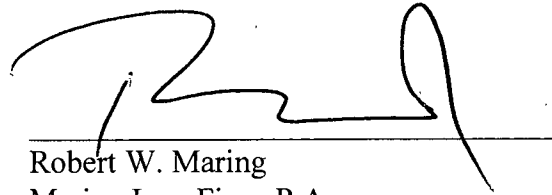


Robert W. Maring
Maring & Moody, LLC
1130 Highmarket Street
P.O. Box 478
Georgetown, SC 29442
(843) 545-9544
Fax: (843) 545-9735
Attorney for Appellants

CERTIFICATE OF COUNSEL

The undersigned hereby certifies that the Record on Appeal contains all material proposed to be included by any of the parties and not any other material.

March 3, 2014

A handwritten signature in black ink, appearing to be 'R. Maring', is written over a horizontal line.

Robert W. Maring
Maring Law Firm, P.A.
1130 Highmarket Street
P.O. Box 478
Georgetown, SC 29442-0478
Telephone: (843) 545-9544
Facsimile: (843) 545-9735
Attorney for Appellant

THE STATE OF SOUTH CAROLINA
In the Court of Appeals

APPEAL FROM JASPER COUNTY
Court of Common Pleas

The Honorable Carmen T. Mullen, Circuit Court Judge

Appellate Case No. 2013-1629
Circuit Court Case No. 2011-CP-27-011

Jeffrey H. Anders and Maureen Anders, Michael K. Callahan and Amy Callahan, Melinda A. Cavicchia, Michael B. Ciulis, Stephen Kipa and Kimberley A.K. Kipa, Chad Kurtz, Spencer L. Morgan, Richard O'Reilly and Alicia F. O'Reilly, Daniel Ryan and Susan Ryan, Gennady Shmukler, Michael Schmuff and Joanne Schmuff, and Matthew Terry, Kathryn M. Tillman, Valerie A. Lowe, TACG Properties, LLC, Mackay Marsh, LLC,

of whom

Spencer L. Morgan is the Appellant,

vs.

The Settings of Mackay Point, LLC, The Settings Development Companies, LLC, Branch Banking & Trust Co., Wachovia Bank, N.A., Bond Safeguard Insurance Company, and Jasper County

of which

Wachovia Bank, N.A. is the Respondent.

PROOF OF SERVICE

I certify that I have served the Record on Appeal by depositing a copy of said document in the United States Mail, postage prepaid, on March 3, 2014, addressed to Respondent's attorneys of record as follows:

S. Sterling Laney, III
Hugh M. Claytor
550 South Main Street, Suite 400
Greenville, SC 29601

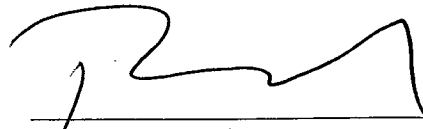
M. Todd Carroll
1727 Hampton Street
Columbia, SC 29201

RECEIVED

MAR 04 2014

SC Court of Appeals

March 3, 2014

A handwritten signature in black ink, appearing to read 'R. Maring', is written over a horizontal line.

Robert W. Maring
Maring Law Firm, P.A.
1130 Highmarket Street
P.O. Box 478
Georgetown, SC 29442-0478
Telephone: 843-545-9544
Facsimile: 843-545-9735
Attorney for Appellant